

5 March 2010

Our ref: 20T-0352

xxx – redacted

Email: xxx - redacted

Dear xxx - redacted

**Notice of decision on your access application under the
Government Information (Public Access) Act 2009 (GIPA Act)**

Applicant:	xxx - redacted
File reference:	20T-0352
Decision maker:	xxx - redacted
Received date:	6 February 2020
Due date:	5 March 2020
Extended due date:	N/A
Date of decision:	5 March 2020

1 Your access application

1.1 On 6 February 2020 Transport for NSW (TfNSW) received your access application under the GIPA Act for the following information:

Documents that assess the privacy risks associated with the mobile phone detection cameras in NSW including the AI technology (for example, a privacy impact assessment (PIA) or privacy risk assessments).

1.2 In your access application you indicated a preference for receiving correspondence by email at xxx - redacted.

2 Searches for information

2.1 Under the GIPA Act we must conduct reasonable searches to locate the government information for which you have applied.

2.2 The following areas of TfNSW have conducted searches:

- Corporate Services
 - Legal, Privacy and Information Access

2.3 Information has been identified as falling within the scope of your application.

3 Decision

3.1 I am authorised by the Principal Officer, for the purposes of section 9(3) of the GIPA Act, to decide your access application.

3.2 I have decided:

- to refuse to provide access in part to information under section 58(1)(d), and
- to provide access in part to information under section 58(1)(a).

3.3 Please see below a summary of my decision:

Page Ref.	Information	Act Ref.	Access
N/A	Document 1: Legal Advice and Privacy Impact Assessment	Section 58(1)(d) & Schedule 1 clause 5	Refused
1 - 20	Document 2: Transport for NSW Issues Summary – Correspondence from Transport for NSW to the NSW Privacy Commissioner – 18 February 2019 Redactions at pages: 9, 10, 12 & 13	Section 58(1)(d) & Section 14 Table Clause 2(b)	Partial release

4 Reasons for Decision

4.1 Under section 9(1) of the GIPA Act you have a legally enforceable right to access the requested information, unless there is an overriding public interest against its disclosure.

4.2 Under section 5 of the GIPA Act there is a presumption in favour of disclosing government information, unless there is an overriding public interest against its disclosure.

Document 1: Conclusive presumption of an overriding public interest against disclosure

4.3 Section 14(1) of the GIPA Act provides:

It is to be conclusively presumed that there is an overriding public interest against disclosure of any of the government information described in Schedule 1.

4.4 Clause 5 of Schedule 1 of the GIPA Act relevantly provides:

5 Legal professional privilege

- (1) *It is to be conclusively presumed that there is an overriding public interest against disclosure of information that would be privileged from production in legal proceedings on the ground of client legal privilege (legal professional privilege), unless the person in whose favour the privilege exists has waived the privilege.*

(2) *If an access application is made to an agency in whose favour legal professional privilege exists in all or some of the government information to which access is sought, the agency is required to consider whether it would be appropriate for the agency to waive that privilege before the agency refuses to provide access to government information on the basis of this clause.*

(3) *A decision that an agency makes under subclause (2) is not a reviewable decision under Part 5.*

4.5 I reviewed document 1 identified in paragraph 3.3 above and I am satisfied that:

- It is a communication to TfNSW from external legal advisors, who act with the requisite professional independence from TfNSW.
- It includes instructions from TfNSW and the advisors' legal advice.

4.6 I therefore concluded that it is information to which legal professional privilege exists in favour of TfNSW.

4.7 Before refusing access to this information clause 5(2) requires TfNSW to consider whether it would be appropriate to waive the privilege.

4.8 The delegated officer at TfNSW considered the matter and has decided that it is not appropriate to waive privilege in relation to the information in this document.

4.9 As a conclusive presumption of an overriding public interest against disclosure applies, I do not need to perform the public interest test in respect of this information.

4.10 I have consequently decided to refuse access under section 58(1)(d).

Document 2: Public interest test

4.11 To decide whether or not there is an overriding public interest against disclosure of information contained in document 2 identified in paragraph 3.3 above I applied the public interest test, which is set out in section 13 of the GIPA Act.

4.12 I applied the public interest test by:

- a. identifying any public interest considerations in favour of disclosure;
- b. identifying any relevant public interest considerations against disclosure;
- c. attributing weight to each consideration for and against disclosure; and
- d. deciding where the balance between them lies.

Public interest considerations in favour of disclosure

4.13 Under section 12(1) of the GIPA Act there is a general public interest in favour of disclosing government information. Section 12(2) of the GIPA Act sets out some examples of other public interest considerations in favour of disclosure. However, I am not limited to those considerations in deciding your application.

4.14 I find the following considerations in favour of disclosure are relevant to your application:

- The general interest in favour of disclosure.
- Disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance.
- Disclosure of the information could reasonably be expected to inform the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public.

Public interest considerations against disclosure

- 4.15 When applying the public interest test the only public interest considerations against disclosure that I can take into account are those set out in the table to section 14 of the GIPA Act.
- 4.16 I have identified the following considerations against disclosure as being relevant to some information in document 2:
- 4.17 Clause 2 of the Table to section 14 of the Act relevantly reads:

2 Law enforcement and security

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally):

....

- (b) *prejudice the prevention, detection or investigation of a contravention or possible contravention of the law or prejudice the enforcement of the law,*

TfNSW functions

- 4.18 TfNSW and Roads and Maritime's traffic management functions are set out in Schedule 1 and section 52A, respectively, of the *Transport Administration Act 1988* as follows:

Schedule 1, Cl. 4. Road safety, road travel efficiency and road traffic management

(1) *TfNSW may:*

(a) *conduct testing, research and investigations in connection with promoting or improving road safety, road travel efficiency and road traffic management, and*

(b) *develop and implement programs, projects, strategies and campaigns for promoting or improving road safety, road travel efficiency and road traffic management, and*

(c) *provide advice and assistance to public and local authorities for the promotion or improvement of road safety, road travel efficiency and road traffic management.*

Section 52A Functions relating to traffic management and safety

2) *RMS may:*¹

(d) *carry out or promote research or investigations into matters connected with any of RMS's functions under this Part including research or investigations into:*

(i) *traffic control facilities, and*

(ii) *the cause of accidents, their incidence and the ways and means that may be adopted for their prevention or for controlling or mitigating their effects*

- 4.19 Implementing a mobile phone camera detection solution in New South Wales is part of TfNSW's functions to investigate and implement relevant programmes and strategies to improve road safety. This is consistent with the NSW Government's long term road safety

¹ As from 1 December 2019, by virtue of the *Transport Administration Amendment (RMS Dissolution) Act 2019*, Roads and Maritime Services (RMS) was dissolved and all of its functions, assets, rights (including immunities) and liabilities were transferred to Transport for NSW (TfNSW).

goals, which include camera based technology to enforce mobile camera phone offence provisions.²

- 4.20 The use of the cameras is intended to detect the illegal use of a mobile phone while a person is driving a motor vehicle. It is also used as a deterrence mechanism.
- 4.21 Some of the information in Item 2 discusses how the cameras operate and record. It appears to me that disclosure will make it possible to engage in conduct that may be adopted to avoid detection of contraventions.
- 4.22 I consider that there is more than a mere possibility that this will occur, taking into account that disclosure of information in response to an access application cannot be made subject to restrictions for further use or dissemination.³
- 4.23 For this reason I concluded that public release of this information could reasonably be expected to seriously undermine the capacity of the scheme to prevent and detect offending behaviour by motorists and that clause 2(b) applies to this information.

Balancing the public interest considerations

- 4.24 I have considered the relevant public interest considerations in favour of and against disclosure of the requested information.
- 4.25 Whilst I have accorded significant weight to the public interests in favour of disclosure of the majority of information in document 2, I have accorded low weight to the interests in favour of releasing this small part of the document that I discuss above.
- 4.26 I have accorded high weight to the interests against disclosure of this information, as I am of the view that it is of the utmost significance to ensure that the scheme of prevention and detection of motoring offences operates uninhibited from avoidance behaviours for the benefit of the public.
- 4.27 Having weighed up the considerations, I have decided that there is an overriding public interest against disclosure of this information and to refuse access under section 58(1)(d).
- 4.28 I have not identified any public interest considerations against disclosing the balance of the information in document 2 and I have decided to release it under section 58(1)(a).

5 Access

Form of access

- 5.1 You will be provided with a copy of the information that has been identified for release.

6 Processing Charges

- 6.1 Under section 64 of the GIPA Act, we may require you to pay processing charges, at a rate of \$30 per hour, for the time spent dealing with your access application. The application fee of \$30 counts as payment of one hour of the processing charges.
- 6.2 I have decided not to impose any additional processing charges for dealing with your application.

7 Disclosure Log

- 7.1 If information that would be of interest to other members of the public is released in response to a formal access application, an agency must record certain details about the application in its 'disclosure log' (under sections 25 and 26 of the GIPA Act).

² See information about the NSW Government Road Safety Plan 2021- Available at: <https://roadsafety.transport.nsw.gov.au/aboutthecentre/strategies/road-safety-plan-2021/index.html>

³ See sections 15 and 73 of the GIPA Act

7.2 In the letter acknowledging receipt of your application, you were told about the disclosure log. You were also advised of your right to object to the inclusion of details about your access application in the disclosure log.

7.3 I note that you have not objected to such disclosure.

7.4 I have decided not to include details about your access application in the disclosure log.

8 Review rights

8.1 If you disagree with my decision, you may apply for it to be reviewed by seeking:

- an internal review by another officer of TfNSW, who is no less senior than me;
- an external review by the NSW Information Commissioner; or
- an external review by the NSW Civil and Administrative Tribunal (NCAT).

8.2 You have 20 working days from the date of this letter to apply for an internal review and 40 working days to apply for an external review by the NSW Information Commissioner or the NCAT.

9 More information

9.1 For your information and assistance, I enclose a fact sheet explaining your rights to have my decision reviewed.

9.2 Please do not hesitate to contact me by phone on xxx-redacted if you have any questions about this letter.

Yours sincerely

Signature - redacted

xxx - redacted

A/Senior Advisor, Information Access