



12 April 2018

Redacted

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

<b>Applicant:</b>	Redacted
<b>File reference:</b>	RWC-004659
<b>Decision maker:</b>	Natacha Doust
<b>Received date:</b>	12 March 2018
<b>Due date:</b>	11 April 2018
<b>Extended due date:</b>	26 April 2018
<b>Date of decision:</b>	12 April 2018

**1 Your access application**

1.1 On 12 March 2018 we received your access application under the GIPA Act for the following information:

*'I request access to the following information:*

- (1) The total cost of the M5 cashback in 2016-17.*
- (2) The total number Toll Class 2/car trips undertaken on the M5 southwest motorway in 2016-17?*
- (3) The total number of trips that received the M5 cashback in 2016-17?*
- (4) The number of Toll Class 2/car trips vehicles that paid more than \$1,300 in tolls on the M5 Southwest in 2016-17?*
  - a. And the total value of tolls they paid.*
- (5) The number of Toll Class 2/car trips vehicles that paid more than **\$2,402.40** in tolls on the M5 Southwest in 2016-17?*
  - a. And the total value of tolls they paid.'*

- 1.2 On 9 April 2018 we informed you that we were required to consult third parties in relation to your application. In accordance with section 57(2) of the GIPA Act, we extended the timeframe for deciding your application to 26 April 2018.
- 1.3 Your application letter dated 12 March 2018 notes that the contact person for this application is **Redacted** and provides email contact details for **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. The following areas of this agency have conducted searches:
- Transport Shared Services (TSS) – Service Delivery
  - Motorways – Partnerships and Planning
- 2.2 Enquiries were also made of the Tolling Branch of the Motorways Division in relation to this matter. The Tolling Branch referred us to TSS. We were further informed by TSS that Partnerships and Planning held some information in relation to the matter.
- 2.3 Some information has been identified as falling within the scope of your application.
- 2.4 In relation to items 4 and 5 of the request I am informed that Roads and Maritime Services does not receive the total numbers and values requested. This data is held by private motorway companies.

## 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 Please see below a summary of my decision:

Page Ref.	Information	Act Ref.	Access
New record created	<i>The total cost of the M5 cashback in 2016-17</i>	s58(1)(a)	Full
	<i>The total number Toll Class 2/car trips undertaken on the M5 southwest motorway in 2016-17?</i>	s58(1)(a)	Full
	<i>The total number of trips that received the M5 cashback in 2016-17?</i>	s58(1)(a)	Full
N/A	<i>The number of Toll Class 2/car trips vehicles that paid more than \$1,300 in tolls on the M5 Southwest in 2016-17? a. And the total value of tolls they paid.</i>	s58(1)(b)	N/A
N/A	<i>The number of Toll Class 2/car trips vehicles that paid more than <b>\$2,402.40</b> in tolls on the M5 Southwest in 2016-17?</i>	s58(1)(b)	N/A

## 4 Reasons for Decision

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

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.

#### 4.1 Public interest test

To decide whether or not there is an overriding public interest against disclosure of the information you asked for, I applied the public interest test, which is set out in section 13 of the GIPA Act.

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.

#### 4.2 Public interest considerations in favour of disclosure

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.

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

- 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.

#### 4.3 Public interest considerations against disclosure

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.

I am informed that the information in response to item 2 of your request is provided to Roads and Maritime under an arrangement with **Redacted**. There were concerns raised by the business that the disclosure of this information would be in potential breach of its commercial arrangement with **Redacted** and therefore raise the following issue:

Clause 4 of the Table to section 14 of the Act relevantly reads:

##### **4 Business interests of agencies and other persons**

*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:*

- (d) *prejudice any person's legitimate business, commercial, professional or financial interests*

#### 4.4 Consultation

The information you requested includes business information of a third party. Under section 54 of the GIPA Act, I was therefore required to consult with that entity before releasing the information.

There were no objections to the release of the information.

## 4.5 Balancing the public interest considerations

- 4.5.1. I have considered the relevant public interest considerations in favour of and against disclosure of the information that you have requested.
- 4.5.2. I have not identified any considerations against disclosure as being relevant to your application.
- 4.5.3. I have decided that there is no overriding public interest against disclosure of the information.
- 4.5.4. I have therefore decided, in relation to item 1 to 3 of your request, to release the information in full under s 58(1)(a) of the GIPA Act. In relation to items 4 and 5, I have decided that the information you have requested is not held by the agency, for the reason outlined in paragraph 2.4 of this letter.

## 5 Access

### 5.1 Form of access

In accordance with section 72(1)(c) of the GIPA Act a new record has been created which collates the information provided from the various business areas. The new record is as follows:

#### ITEM 1

I am informed by Motorways that the total cost of the M5 cashback scheme for Roads and Maritime Services was \$109.142 million in 2016/2017.

#### ITEM 2

Month	Total Class A Toll Traffic	Total Class B Toll Traffic
Jul-16	4,204,043	341,627
Aug-16	4,311,141	371,528
Sep-16	4,237,135	373,102
Oct-16	4,285,558	356,697
Nov-16	4,319,597	392,903
Dec-16	4,199,565	334,968
Jan-17	3,922,581	319,277
Feb-17	3,989,787	334,108
Mar-17	4,425,887	371,202
Apr-17	4,077,786	319,183
May-17	4,458,398	403,487
Jun-17	4,220,551	361,621
<b>Total</b>	<b>50,652,029</b>	<b>4,279,703</b>

#### ITEM 3

I am informed by Transport Shared Services that during 2016/2017, 25,452,469 motorway journeys were refunded through M5 cashback.

## 6 Processing Charges

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.

I have decided not to impose any additional processing charges for dealing with your application.

## 7 Disclosure Log

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).

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.

I have decided to include details about your access application in the disclosure log.

## 8 Review rights

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

- an internal review by another officer of this agency, 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).

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 Further information

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

Please do not hesitate to contact me by phone on **Redacted** if you have any questions about this letter.

Yours sincerely,

**Redacted**

**Natacha Doust**

Manager, Information Access