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Mr Paul Tarrant

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<b>NOTICE OF DECISION</b> <i>Government Information (Public Access) Act 2009</i>	
<b>File Ref:</b>	T23-02345
<b>Decision-maker:</b>	Peter Brandt, Associate Director
<b>Date of decision:</b>	25 January 2024

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## 1. Summary of access application

On 23 November 2023, Treasury received your access application under the *Government Information (Public Access) Act 2009* (the GIPA Act). On 23 November 2023 you also paid the \$30.00 application fee by electronic bank transfer.

You requested access to the following information:

I am seeking a list of unsuccessful bidders for Contract 622, relating to the removal of deceased, for the period of 2006 to 2019. Only when contract 622 was awarded to Statewide Mortuary Transfers P/L (SMT). Additionally, I kindly request that you provide contact details for each of the unsuccessful bidders identified in the aforementioned list.

On 27 November 2023, I acknowledged receipt of your application, the payment of the application fee and confirmed the application to be a valid application under the GIPA Act. I advised that under usual circumstances your application must be decided by 21 December 2023.

On 29 November 2023, I wrote to you and advised that following discussions with NSW Procurement, the requested information is expected to be stored by Government Records Repository, the archive repository for NSW government information. I advised that in the event of retrieval of information from archives the GIPA Act provides an additional 10 working days be added to the decision period. Consequently, I advised your application must be decided by 18 January 2024.

On 17 January 2024 I advised you that I had consulted with the third parties, being the unsuccessful tenderers. I further advised that in the event of third-party consultation the GIPA Act provides an additional 5 working days be added to the decision period, making a decision due on your application on 25 January 2024.

## 2. Decision

I am authorised by the principal officer of Treasury, for the purposes of section 9(3) of the GIPA Act, to decide your access application.

I have decided under section 58(1)(a) of the GIPA Act, to provide access to some of the information. Under section 58(1)(d) of the GIPA Act, to refuse to provide access to some other information because there is an overriding public interest against disclosure of some of that information, and because some of the information is out of scope of your application request.

In this Notice I explain my reasons. To meet the requirements of section 61 of the GIPA Act, I am required to tell you:

- the reasons for my decision and the findings on any important questions of fact underlying those reasons (together with a reference to the sources of information on which those findings are based); and
- the general nature and format of the records containing the information you asked for, with reference to the relevant public interest considerations against disclosure (see the attached Schedule of Documents).

You can ask for a review of this decision. For details about how to do so, please see part 9 of this Notice.

### 3. Searches for information

Under the GIPA Act, we must conduct reasonable searches for the government information requested in your application.

Searches were conducted within Treasury for information subject to your application. These searches were conducted by NSW Procurement, being the area that was expected to hold the information you sought. I have been advised that the requested information meeting the terms of your request is not held by NSW Procurement. I was further advised by NSW Procurement that if the information from 2006 is still held, it would be held by the Government Records Repository. This has been certified by the Associate Director Goods and Services and the Executive Director Operations and Governance, NSW Procurement. Based on this certification, I am satisfied that reasonable searches have been undertaken by NSW Procurement. Further, based on this advice I requested a search for the requested information by Government Records Repository.

Nine business names of unsuccessful tenderers were provided to me.

### 4. Consultation

Under the GIPA Act, in certain circumstances agencies must consult third parties to see whether they object to the release of the information being sought.

The information for which you applied includes the business names and addresses of tenderers who were unsuccessful for a tender to transport deceased persons within NSW. The applicants for the tender are funeral directors working in a small industry where knowledge of unsuccessful tendering could reasonably prejudice the standing of the business and prejudice its legitimate business interests. I was therefore required to consult third parties when making my decision.

There were objections to the release of the information by some business owners, there were no objections to the release by some other business owners, while other business owners advised they were not applicants for contract 622.

The objections do not mean that I cannot release the information. However, I must take them into account when making my decision. Details about how these objections were considered in my decision are set out in the reasons below.

### 5. Reasons for decision

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

Further, 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.

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:

- identifying any public interest considerations in favour of disclosure;

- identifying any relevant public interest considerations against disclosure;
- attributing weight to each consideration for and against disclosure, and deciding where the balance between them lies.

I did this in the way required by section 15 of the GIPA Act, which is:

- in a way that promotes the objects of the GIPA Act;
- with regard to any relevant guidelines issued by the Information Commissioner;
- without taking into account the fact that disclosure of information may cause embarrassment to, or a loss of confidence in, the Government (as that fact is irrelevant);
- without taking into account the fact that disclosure of information might be misinterpreted or misunderstood by any person (as that fact is irrelevant); and
- with regard to the fact that disclosure cannot be made subject to any conditions on the use or disclosure of information.

### **5.1 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 additional public interest considerations in favour of disclosure. However, I am not limited to only 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 and enhance Government accountability.
- Disclosure of the information could reasonably be expected to inform the public about the operations of agencies.
- Disclosure of the information could reasonably be expected to ensure effective oversight of expenditure of public funds.

### **5.2 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 Schedule 1 of the GIPA Act and the table to section 14 of the GIPA Act.

Having reviewed the information you have requested I find that the following public interest considerations against disclosure apply:

- Disclosure could prejudice any person's legitimate business, commercial, professional or financial interests; Item 4(d) of the section 14 Table.

### **5.3 Balancing the public interest test**

In balancing the public interest considerations in favour of, and against, disclosure I

determined that there is an overriding public interest against disclosure in relation to some of the information sought by your application.

I have considered the public interest considerations provided in the GIPA Act in favour of disclosure, as stated in paragraph 5, above. I have also considered the additional public interest considerations in favour of disclosure described in paragraph 5.1, above.

As required by the GIPA Act, I have also considered the comments provided by the third-party funeral directors whom I consulted pursuant to section 54 of the GIPA Act. Where the third parties raised no objection to their business name being disclosed, I find that the public interest is in favour of disclosure. Consequently, those business names are provided to you:

Bob Rudd Funerals  
73 Reynolds Street  
GOULBURN NSW 2580

Victor Rulis Funeral Services  
1323 West Street  
COFFS HARBOUR NSW 2450

Logan Funerals  
24 Wee Waa Road  
NARRABRI NSW 2390

Where the third-party funeral directors objected to their business names being disclosed, I have given their objection considerable weight. I did this as tender applications for contracts should be treated with a high degree of confidentiality. Tender applications invariably contain significantly commercial in confidence information which could, if disclosed, reasonably prejudice legitimate business interests, and could reasonably provide other businesses with an advantage.

In this case, there is no commercially sensitive business information requested, however, funeral directors operate in a small business community. Knowing that a funeral director had applied for a contract within the industry, and was unsuccessful, could reasonably prejudice their business interests within that industry. I have decided that the reputation and business standing within the funeral industry is an important consideration when weighing up the public interests in favour, and against, disclosing their identity and the fact that they were unsuccessful tenderers for contract 622. Even though the tenders were lodged over 15 years ago, does not diminish the impact on the current businesses as they are still trading within the funeral industry.

Consequently, after weighing the public interest considerations in favour of disclosure, those against, and the objection by the third party, I have decided the weight of public interest is against disclosing the requested information to you. Access to that information is refused in relation to four businesses, particularly when disclosing the unsuccessful tenderer business names is akin to disclosing the information to the world at large.

There are two further categories of businesses about which I have been provided with information. The first are two businesses where during consultation the third party advised that they had not tendered for contract 622; rather they had tendered for contract 623. Due to the age of the information, and the fact that there are no electronic copies of the contract documents, which are still in existence, it appears that some tenderers for

contract 623 were filed with tenderers for contract 622. Following extensive searches of the old paper files, we could not locate any additional tenderers for contract 622 filed wrongly with tenderers for 623.

As your request specifically seeks tenderers for contract 622, I decided that tenderers for contract 623 were out of scope of your request.

The second category of businesses tendering for contract 622 were businesses where we could not locate any contact information by searching the name used during the tender process. I have no way of knowing if these businesses are no longer trading at all or are trading under a different name. Consequently, if the businesses are trading under a different name, and as I could not undertake third party consultation with them, I decided that the weight of public interest is against disclosing their business names. Access to the information on these business names is refused.

## **6. Access**

You are provided with the information to be disclosed to you, in the body of this Notice.

Certain decisions about access to information are reviewable under section 80(i) of the GIPA Act; please see part 9 of this Notice.

## **7. Processing charges**

Under section 64 of the GIPA Act, we can require you to pay processing charges, at a rate of \$30.00 per hour, for the time spent dealing with your access application. The application fee of \$30.00 counts as payment for one hour of the processing charges.

Some 21 hours were spent processing your application; some 5 hours searching and discussions with NSW Procurement, some 8 hours discussing searches and relevant information with the Government Records Repository, some 1 hour reviewing the information, some 5 hours consulting with third parties and some 2 hours drafting this decision. These times do not take into account the hours spend by archives staff searching for archive boxes, and files, and transporting the files to the Treasury offices and back to archives. Some boxes were transferred more than once.

Pursuant to section 127 of the GIPA Act, however, I have decided to waive the processing charges on this occasion.

## **8. 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.

Having reviewed the information released to you, I have decided that the information comprising of the name and location of three funeral businesses, with no context, and dating back some 15 years, would not be of interest to general members of the public. Consequently, the information disclosed to you will not be listed on the Treasury disclosure log.

## 9. Review rights

If you disagree with any of the decisions in this notice that are reviewable, you may seek a review under Part 5 of the GIPA Act. You have three review options:

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

You have 20 working days from the date of this Notice, that is, by 23 February 2024, to apply for an internal review and 40 working days from the date of this Notice to apply for an external review by the Information Commissioner or NCAT, that is, by 22 March 2024.

To assist you, I have enclosed a fact sheet published by the Information and Privacy Commission NSW (IPC) titled *Your review rights under the GIPA Act*. You can also find useful information and frequently asked questions on the IPC's website [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au), and you can contact the IPC on 1800 472 679.

Information on NCAT can be found on their website at [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au).

## 10. Further information

If you have any further questions about this decision or would like further information, please contact me on (02) 9228 3517 or at [peter.brandt@treasury.nsw.gov.au](mailto:peter.brandt@treasury.nsw.gov.au).

Peter Brandt  
Associate Director Information Access

25 January 2024.