

11 April 2016

Our reference: RWC-001006

Ms Wendy Bacon  
Right to Know

Email: [foi+request-1565-eef3334c@righttoknow.org.au](mailto:foi+request-1565-eef3334c@righttoknow.org.au)

Dear Ms Bacon

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

|                           |                   |
|---------------------------|-------------------|
| <b>Applicant:</b>         | Wendy Bacon       |
| <b>File reference:</b>    | RWC-001006        |
| <b>Decision maker:</b>    | Clarinda Campbell |
| <b>Due date:</b>          | 24 March 2016     |
| <b>Extended due date:</b> | 11 April 2016     |
| <b>Date of decision:</b>  | 11 April 2016     |

**1. Your access application**

- 1.1 On 25 February 2016 we received your access application under the GIPA Act for the following information:

*I am inquiring about the Dial a Dump site at Albert St, St Peters. This is now known locally as the Alexandria Landfill Site and as far as I am aware is known as that to RMS. WestConnex Delivery Authority took it over in December 2014 but it was later transferred to RMS and is currently in its possession. I want all documents and records including information about or relating to any storm damage on site after a storm event in April 2015. Even if any such records were originally WDA records they would be included in RMS records for the site.*

- 1.2 On 11 March 2016 we informed you that we were required to consult third parties in relation to your application. In accordance with section 54 of the GIPA Act, we extended the timeframe for deciding your application to 11 April 2016.
- 1.3 On 29 February 2016 in your email to Mr Andrew Seccombe, you clarified your application terms to include:

*I want all documents and records in any form relating to any damage on the old Dial a Dump site at Albert St, St Peters (Alexandria Landfill Site) otherwise known as the site for the St Peters Westconnex Interchange which occurred as a result of either a storm or flood event in April 2015. This includes any documents now held by RMS whether or not they were originally RMS documents.*

1.4 In your email to Mr Seccombe on 11 March 2016, you advised:

*I would agree it advance to any personal addresses or personal phone numbers being deleted about communications with third parties.*

1.5 In your email to Mr Seccombe on 11 March 2016, you advised the following documents are within the scope of your application:

*AECOM Site Inspection Report – St Peters Interchange Slope Failure  
AECOM Proposed Site Stabilisation Works - Concept Design St Peter Interchange (SPI)  
AECOM – WestConnex – St Peters Interchange (Geotechnical Desktop Study and Slope Risk Assessment  
Progress reports from July 2015, August 2015, September 2015 and October 2015 (only parts of these reports briefly refer to the progress of the stabilisation works).*

## **2. Searches for information**

2.1 Under the GIPA Act, we must conduct reasonable searches to locate the government information you have applied for. The following areas of this agency have conducted searches:

- Network Sydney, Journey Management Division (JMD)
- Network Motorways, JMD
- Legal, Corporate and Commercial Division.

2.2 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 Please see below a summary of my decision

| Page Number                | Description of Item  | Release/Withheld |
|----------------------------|--|------------------|
| <b>PART ONE 1-57 Pages</b> |  |                  |
| Pages 1-5                  | Letter from Roads & Maritime Services (Roads & Maritime) to NSW EDO dated 9 October 2015                                       | Release          |
| Pages 6-10                 | Letter from NSW EDO to WestConnex Delivery Authority (WDA) dated 15 September 2015   | Release          |
| Pages 11-40                | Proposed Soil Conservation Works WestConnex – Alexandria Landfill: Minor Works Review of Environmental Factors dated July 2015 | Release          |
| Pages 41-47                | Letter from AECOM to WDA dated 15 June 2015 and attachments  | Release          |

|                             |  |   |
|-----------------------------|--|---|
| Pages 48-51                 | Briefing for Project Director – Delivery dated 18 May 2015   | Release   |
| Pages 52-53                 | Briefing for Project Director – Delivery dated 18 June 2015  | Release   |
| Pages 54-57                 | Internal Roads & Maritime email and attached letter to Marrickville Council dated 4 November 2015  | Release   |
| <b>PART TWO 1-203 Pages</b> |  |   |
| Page 1                      | Holding Lines – Alexandria landfill slope failure dated 21 May 2015  |   |
| Pages 2-9                   | Brief for Chief Operating Officer – Approval of the Reimbursable Notice (RWCN001). Emergency slope stabilisation variation dated 8 July 2015 including attachments letter to WDA dated 7 July 2015 and letter from Ward Civil Engineering Pty Ltd (Ward) dated 6 July 2015 | Part Release (Item 4(d) in the table to section 14 of the GIPA Act) |
| Pages 10-20                 | Letter from AECOM to WDA dated 27 May 2015 and attachment  | Part Release (Item 4(d) in the table to section 14 of the GIPA Act) |
| Page 21-40                  | Letter from AECOM to WDA: Proposed Stabilisation Works – Concept Design St Peter Interchange (SPI) dated 18 June 2015 and attachments  | Release   |
| Pages 41-158                | AECOM Report – WDA – St Peters Interchange (Geotechnical Desktop Study and Slope Risk Assessment) dated 10 November 2015   | Release   |
| Pages 159-168               | WDA Managing Contractor-St Peters Interchange Site Preparation Works - Progress report from July 2015  | Release (information out of scope has been redacted)                |
| Pages 169-182               | WDA Managing Contractor-St Peters Interchange Site Preparation Works - Progress report from August 2015  | Release (information out of scope has been redacted)                |
| Pages 183-203               | WDA Managing Contractor-St Peters Interchange Site Preparation Works - Progress report from September 2015   | Release (information out of scope has been redacted)                |
| Pages 204-218               | SMC/WDA Managing   | Release (information out of   |

|                                  |   |  |
|----------------------------------|---|--|
|                                  | Contractor-St Peters Interchange Site Preparation Works – October 2015  | scope has been redacted)               |
| <b>PART THREE<br/>Pages 1-70</b> |   |  |
|                                  | Correspondence (including drafts) between Roads & Maritime and Marrickville Council, Ashurst law firm, Office of the Minister for Roads, Maritime and Freight, NSW EDO regarding the Alexandria Landfill Site dated 15 September 2015 to 4 November 2015 and internal Roads & Maritime correspondence | Clause 5 in Schedule 1 of the GIPA Act |

- 3.3 Please be aware that for some of the records above (specifically the WDA Managing Contractor-St Peters Interchange Site Preparation Works Progress Reports from July to October 2015), I have solely included the pages that fall within the scope of your application. This accounts for the pages in those reports which I have not provided. Further, within the pages provided, I have further redacted other content that does not fall within the scope of your application.
- 3.4 I have decided that there will be no processing charges payable for access to this information.

#### 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 Conclusive presumption of an overriding public interest against disclosure

Section 14(1) of the GIPA Act states:

*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.*

Clause 2(1) 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.*

I am informed that documents itemised under PART THREE (Pages 1-70) in the table at paragraph 3.2 above were prepared for the dominant purpose of obtaining or giving legal advice. Such communication is, and is understood to have been, made in confidence.

Legal professional privilege will only attach to a confidential communication made for the dominant purpose of obtaining or giving legal advice or for use in legal proceedings. The protection of legal professional privilege is not limited to communications made between a solicitor and client as communications between a client's legal representative and third parties may also attract privilege if it can be shown that the document was prepared for the dominant purpose of actual or contemplated legal proceedings.

I have examined the documents in question which, by their very nature were obviously prepared for the dominant purpose of the provision of legal advice and as such there is an overriding public interest against their disclosure by virtue of Schedule 1 Clause 5(1) of the GIPA Act.

I have also taken into account the provisions of Clause 5(2) of the GIPA Act which requires consideration of whether it would be appropriate to waive the privilege before Roads & Maritime makes a decision to refuse access on the basis of this clause. I am informed that Roads & Maritime has elected not to waive privilege in relation to these documents.

#### **4.2 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.

#### **4.3 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:

- there is a general public interest consideration in favour of disclosing government information
- 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
- disclosure of the information could reasonably be expected to ensure effective oversight of the expenditure of public funds.

#### 4.5 Public interest considerations against disclosure

When applying the public interest test, the only public interest consideration against disclosure that I can take into account are those set out in the table to section 14 of the GIPA Act.

I have identified the following considerations against disclosure as being relevant to your application:

- Item 4(d) in the Table to section 14 of the GIPA Act – the disclosure of the information could reasonably be expected to prejudice any person's legitimate business, commercial, professional or financial interests.

##### Item 4(d) in the table to section 14 of the GIPA Act

The records contain the business information of relevant third parties: AECOM, NSW EDO, Jones Nicholson Consulting Engineers (Jones Nicholson) and (Ward).

The records relating to AECOM include correspondence for a slope stability assessment and a Site Inspection Report. The records contain assumptions, methodology, test results, risk assessments, recommendations and certain cost/budget estimations which were submitted in confidence. Due to the variety of potentially commercially sensitive information, the records, if released, may prejudice AECOM's legitimate business, commercial, professional or financial interests.

The records relating to NSW EDO includes NSW EDO's correspondence with WDA on behalf of its client regarding WDA's compliance with its health and safety obligations for the Alexandria Landfill Site.

The records relating to Jones Nicholson include a building plan.

The records relating to Ward include Ward's cost structure and Variation Budget Calculation information, included in its correspondence to WDA.

AECOM and Ward's financial information concern those entities' financing arrangements, cost structure or profit margins and I consider it is information which is commercially sensitive to AECOM and Ward.

I am satisfied that the disclosure of AECOM and Ward's financial information to the public at large will enable this information to be made available to competitors and it is reasonably expected that this may impact on those entities' business, commercial and financial interests.

For this reason, I have attributed significant weight to the public interest considerations against disclosure for AECOM and Ward's financial information.

#### 4.6 Consultation

The information that you asked for includes information that is business information. I was therefore required to consult with those people before releasing the information (under section 54 of the GIPA Act).

No response has been received from either NSW EDO or Ward.

There were no objections to the release of the information from Jones Nicholson.

There was an objection to the release of some of the information from AECOM.



The objection does not mean I cannot release the information. However, I must take it into account when making my decision. I have therefore considered it when applying and balancing the public interest test.

I have attributed significant weight to the public interest considerations against disclosure for AECOM's financial information.

#### **4.7 Balancing the public interest considerations**

I have considered the relevant public interest considerations in favour of and against disclosure of the information that you have requested.

I have attributed a significant amount of weight to the public interest considerations in favour of disclosure as there is a general public interest consideration in favour of disclosing government information. Further, State Government Agencies have obligations to inform the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public and matters of compliance. I also note that a transparent investigation and reporting process enhances Government accountability.

With regard to AECOM and Ward's budget and cost structure information, I have attributed a significant amount of weight to the public interest considerations against disclosure. The financial information is sensitive to AECOM and Ward and has been provided to Roads & Maritime in confidence. Disclosure of this information is reasonably expected to prejudice their business, commercial and financial interests. In striking a balance with the public interest considerations in favour of disclosure, I have decided to release the relevant correspondence minus this sensitive financial information.

Having weighed up the considerations, I have decided to:

- in relation to the majority of the information there is not an overriding public interest against the disclosure. As such I have decided to provide access to this information in accordance with section 58(1)(a) of the GIPA Act.
- in relation to AECOM and Ward's budget and cost structure information there is an overriding public interest against the disclosure. As such I have decided to refuse access to this information in accordance with section 58(1)(d) of the GIPA Act).

### **5. Access**

#### **5.1 Form of access**

In accordance with section 72(1)(b) of the GIPA Act you will be provided with a copy of the information identified for release.

I note the documentation is separated into Part One (57 pages) and Part Two (203 pages) and the records are numbered accordingly.

In accordance with section 74 of the GIPA Act, information within the WDA Managing Contractor-St Peters Interchange Site Preparation Works Progress reports (July to October 2015) has been deleted as it is information that falls outside the scope of your application.

In accordance with section 74 of the GIPA Act, information relating to AECOM and Ward's budget and cost structure information has been deleted as it is information you have been refused access to.

## 6. Processing Charges

Under sections 64(1) and 64(2) 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 dated 26 February 2016 acknowledging receipt of your valid 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.

You did not object to details about your application being included in the disclosure log.

I have decided not to include the 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;
- 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 Mr Seccombe on 02 9563 8685 or [andrew.seccombe@rms.nsw.gov.au](mailto:andrew.seccombe@rms.nsw.gov.au) if you have any questions about this letter.

Yours sincerely



Ms Clarinda Campbell  
Manager  
Information & Privacy Unit