



SafeWork NSW

29 August 2024
Enquiries: Deahna Bowling
Direct Line:
Right to Information team Tel: 02 9219 3999
Our ref: 2024/008243

UNCLASSIFIED

Latileta Gaga
Australian Workers Union

Re: **RIGHT TO INFORMATION - NOTICE OF DECISION**

Dear Ms Gaga,

I refer to your formal application received on 10 May 2024, under the *Government Information (Public Access) Act 2009* (GIPA Act), seeking access to records the agency holds.

I am authorised by the principal officer, for the purposes of section 9(3) of the Act, to decide your access application. Under section 9(1) of the Act, you have a legally enforceable right to be provided with access to the information you request, unless there is an overriding public interest against its disclosure.

I have assessed the information and as required under S13 of the Act, I applied the public interest test to weigh the factors for and against release.

In line with section 58(1)(a), my decision is to grant access to some of the records, withholding specific information under section 58(1)(d) where there is an overriding public interest against disclosure.

The following details explain which information is withheld and provide the reasons for my decision.

If you have any queries about this notice or require further information, please contact me on telephone number (02) 9307 9604.

Yours sincerely

Sincerely,

Deahna Bowling
Senior Coordinator
Right to Information
SafeWork NSW



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1. Summary of access application

On the 10 May 2024, SafeWork NSW (the agency) received eight (8) separate requests under the *Government Information (Public Access) Act 2009* (GIPA Act).

The following four (4) projects were in relation to the Westconnex project and were considered under this access application:

- CPB Contractors UGL Ghella Joint Venture as part of the M6 Stage 1 Project (reference 2024/008235);
- Acciona Samsung Bouygues (ASB) Joint Venture as part of the M4-M5 link Project (reference 2024/008227);
- CPB Contractors Dragados Samsung (CDS) Joint Venture as part of the WestConnex New M5 Project (reference 2024/008248); and
- CPB Contractors Samsung John Holland (CSJ) Joint Venture as part of the WestConnex M4 East Project (reference 2024/008243) (projects).

Specifically, the access applications requested access to:

All Occupational Hygiene Exposure Assessment Reports or reports by another name that contain information and data on respirable dust and/or RCS in air concentrations (reports), that were reported to the projects.

2. Searches

Under s53 of the GIPA Act, the agency must conduct reasonable searches for government records that were held by the agency at the time the access application was received.

The electronic database, Workplace Services Management System (WSMS), contains reports generated in response to notifiable workplace incidents and complaints. WSMS is also used to manage projects conducted with selected groups of employers such as targeted interventions and verification activities.

Under the GIPA Act, the agency is to conduct searches using the most efficient means reasonably available.

The Systems & Process Improvement team (SPI) has the capability to search WSMS using relevant search terms to identify notifiable incidents, complaints, projects, and associated information related the information you seek to access.

SPI conducted a search of the WSMS to identify and locate the reports relevant to this request.

Additionally, SPI searched for reports concerning respirable dust or airborne exposure. The findings were compiled into a spreadsheet and sent to the Privacy & Right to Information team (PRTI Team), which included all identified and related WestConnex projects (SPI Spreadsheet).

The SPI Spreadsheet contained the following tabs:

Request for Service: (RFS) references; the spreadsheet contains (approximately 20 WSMS reports);

- Actions: Extract action data based on RFS located (approximately 39 Actions);
- Notices from RFS: Extract notices based on RFS (approximately 9 Notices);
- Project Actions: (approximately 100)



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- Project activities: Extracted project actions using project reference number (approximately 8).

Many of the following factors relevant to this decision, were captured in email correspondence between yourself and I, which details relevant matters subject to the decision-making process.

To facilitate reference, the email correspondence has been included in the records as 'Attachment A' and will be referred to as 'Attachment A' throughout this Notice of Decision.

The projects under this request were identified and assessed as the one application for the reasons set out in the email dated 7 June 2024, enclosed in Attachment A.

The act states under section 60(3), in deciding whether dealing with an application would require an unreasonable and substantial diversion of an agency's resources, the agency is entitled to consider two or more applications (including any previous application) as the one application, if the agency determines that the applications are related and are made by the same applicant.

As shown in Attachment A, a significant amount of time and resources would be required to perform thorough searches for records in accordance with the original request.

Based on the reasoning provided in Attachment A, I informed you via email on June 7, 2024, that I had concluded Section 60(1)(a) of the GIPA Act applies. This allows the agency to refuse to process an access application, if doing so would result in an unreasonable and substantial diversion of its resources.

The application was put on hold under Section 60(4) to allow you the opportunity to modify the scope of your request.

3. Revised rescope:

The following points address discussions aimed at defining a mutually agreed-upon scope of work that the agency can efficiently manage regarding search requirements. Further details are included in Attachment A.

On 14 June 2024, it was agreed to revise the scope by limiting the reports to the first six months of each respective project. The access application was placed on hold while the agency assessed the feasibility of conducting the necessary searches based on the revised terms.

It was agreed that the agency would use the SPI spreadsheet as the reference source for identifying the requested records.

On the 19 June 2024, I wrote to you to advise the outcome of the assessment.

To facilitate an estimation of the time required to search for records, a thorough review of the spreadsheet was examined to determine the earliest date associated with each WSMS report or project action. Subsequently, I examined each project for a 6-month period commencing from that date. You agreed to this approach in meeting the timeframe terms.

Based on that analysis of the revised terms, I concluded that the searches were reasonable for recommencing the decision-making process.

You agreed to an extension of 10 days, to allow for the effective completion of these searches, accordingly, this made the revised date 3 July 2024. The extension is in accordance with s57(4) of the GIPA Act.

On Friday, 21 June 2024, you requested that the application be assessed over a 12-month period.

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Your application was placed back on hold under Section 60(4) to allow time to reassess the revised terms.

On June 27, 2024, I informed you that assessing records over a 12-month period would lead to an unreasonable burden for the agency, in accordance with Section 60(1)(a) of the GIPA Act.

In your email dated June 11, 2024, you confirmed to proceed with the 6-month timeframe instead of 12 months, along with the inclusion of records and reports provided by the Hygiene & Toxicology Team (H&T team).

Due to the complexity of coordinating the searches, on July 11, 2024, I asked for your consideration to keep the application on hold until I return from a week of leave. For consistency, you agreed to this request.

4. Additional searches

The relevant SafeWork NSW teams were requested to search for and provide the PRTI Team with all information that fell within the scope of your request.

Hygiene & Toxicology Team

The Hygiene & Toxicology Team (H&T Team) provided a folder containing a variety of documents, including Sample Registers, Exposure Sampling Notifications, Monitoring Results, and Occupational Hygiene Exposure Assessments specifically concerning the WestConnex M4 project.

SafeWork Construction Metro

The PRTI team identified information within the SPI spreadsheet that suggested the agency might possess relevant information. The Construction Metro team (Metro Team) were then requested to search for and identify any information that fell within the scope of your request, including the information identified within the SPI spreadsheet.

In response, the Metro Team advised that extensive searches had been carried out in Trim for all Requests for Service (RFS) and Projects outlined in the SPI spreadsheet, and records were provided to the PRTI team. Upon reviewing these records, the PRTI team determined that the records provided were not within the scope of your request.

To facilitate further searches, I created spreadsheets based on the original SPI data, focusing on the Inspectors associated with service requests, project actions, or issuing of notices that met the terms of the request.

These spreadsheets highlight actions related to Occupational Hygiene Exposure Assessment Reports or similarly named reports, which contain information on respirable dust and/or RCS air concentrations linked to the corresponding actions or investigations. Each Inspector was assigned a unique spreadsheet to track their individual action items.

In cases where staff members were no longer with the agency, a request was made to the internal IT team to search two (2) Inspectors respective backup files on their computers.

Please see the attached schedule for a detailed list of the records located.

5. Processing charges

On 01 August 2024, I notified you that processing the application would take approximately 14 hours, with a total application cost of \$420.00.

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In accordance with Section 68(1) of the Act, I requested an advance deposit of \$195.00, which represents 50% of the estimated processing charges. In line with Sections 68(1)(2), the timeframe for deciding the application is paused until the agency receives the advance deposit.

On 07 August 2024, the agency confirmed receipt of the \$195.00 payment. The decision-making process recommenced, with a revised decision date for 9 August 2024.

Please note that the processing charges do not account for the time spent coordinating and locating the necessary records. Below is a summary of the time spent thus far in processing the application:

Part 1: Time Spent to date dealing with the application	
Coordinating and locating records within scope	Approx 21 hours
Time for considering the application, (assessment of the scope).	1
Part 2: Time estimated to deal with the application (post searches)	
Time for third party consultation	5
Time for preparation of documents, decision-making, any redactions, and preparation of Notice of Decision and released documents.	8
Total hours	35
Total cost	\$1050.00
Final fee payable	\$825.00
Less 50% advance deposit	-\$195.00
Less application fee	-\$30.00
Fee waived	-\$825.00
Final payment	\$0.00

SafeWork NSW elected to waive the final fee payable in line with section 127 of the GIPA Act.

6. Extensions applied for deciding the application

The decision was extended by 10 working days in line with 57(2)(a) to allow for consultation, making a further revised date for deciding the application 23 August 2024.

A further 5 days was granted to allow for the appropriate consideration of third-party consultation responses, extending the due date to **30 August 2024**.

7. Third Party consultation

The following reports located, were provided by CPB Contractors Pty Limited (CPB), as the principal contractor, under a section 155 Notice to Produce:



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- Seven (7) Level 3 monthly Occupational Hygiene Exposure Assessment Reports for the Northcote location at the M4East project prepared by Ventia (Oct 2016, Jan 2017, March 2017, May 2017, June 2017 and August 2017 (*2));
- Six (6) Exposure Sampling Communication Forms; and
- Five (5) Excel sample registers (raw data results).

(together, Reports).

The Documents contain the business information in the form of health monitoring data, prepared for the benefit of the joint venture participants being CPB Contractors Pty Limited, John Holland Pty Limited and Samsung C&T, arising from the delivery of the Westconnex M4 East Project.

The underlying material was prepared by Ventia for the benefit of the CSJ Joint Venture. As such, the following third parties were identified as having legitimate commercial interests in the data.

1. CPB Contractors Pty Limited (CPB)
2. John Holland Group (JHG)
3. Samsung C&T Corporation (Samsung)
4. Ventia

Additional information relevant to the business interest of Acciona Infrastructure Projects Pty Limited (Acciona) was identified within scope and collected by the agency during investigations relating to reference WSMS 1-424794 & 1426596.

Records were obtained under Notice for investigation 1-426596. The concerns raised pertained to the work environment underground, including heat, humidity, dust.

Gas and TWL monitoring forms and thermal risk assessment records were obtained under Notice in relation to investigation 1-424794.

Based on this information, some records were identified and deemed to fall within the scope of the request.

Under s54 of the GIPA Act, I was required to consult with the above-named parties, to determine whether there is an overriding public interest against disclosure before releasing the information.

The purpose of consultation under s54 of the GIPA Act, is to ascertain whether the person has an objection to disclosure of some or all the information and the reasons for any such objections.

Under the GIPA Act, the definition of "person" is to be interpreted broadly and in accordance with the Interpretation Act 1987, which states the person includes an individual, a corporation and a body corporate or politic.

8. Third Party consultation outcomes

The outcome of the consultations was considered when applying the 'public interest test' to determine if there was an overriding public interest against release of those details. The response to the consultations is explained in more detail below.

Venita

Ventia did not object to disclosure of the information, but because the information does not belong to Ventia, Ventia advised they were unable to consent to any disclosure.

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CPB Contractors Pty Limited

CPB informed their submission in response to consultation was filed by CPB both in its capacity as a joint venture participant who obtained and received the reports but also as the principal contractor who received a section 155 notice and provided the reports to the agency.

CPB objected to the reports being released pursuant to the application under the GIPA Act. CPB submits that there is an overriding public interest against disclosure. The reasons underlying their objections are set out in detail below in this decision.

John Holland Group

JHG objected to the disclosure of the documents in their entirety on the basis that there is an overriding public interest against disclosure of the documents, pursuant to section 13 of the GIPA Act.

For completeness, JHG informed they were part of a joint venture with CPB Contractors Pty Ltd (CPB) and Samsung C&T Corporation (Samsung) on WestConnex M4 East (together, CJS JV). Their objections raised were on behalf of JHG only.

Samsung C&T Corporation

Samsung C&T Corporation did not raise any objections to the release of the information.

Acciona Infrastructure Projects Pty Limited

Acconia raised objections to the release of personal information.

9. The public interest test

Under section 9(1) of the GIPA Act, you have a legally enforceable right to access the information 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, I applied the public interest test, as outlined 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; and
- c. deciding where the balance between them lies.

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

- a. in a way that promotes the objects of the GIPA Act;
- b. with regard to any relevant guidelines issued by the Information Commissioner;
- c. 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);
- d. without taking into account the fact that disclosure of information might be misinterpreted or misunderstood by any person (as that fact is irrelevant); and

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- e. with regard to the fact that disclosure cannot be made subject to any conditions on the use or disclosure of information.

10. Public interest considerations in favour of disclosure

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

- Section 12(1) states there is a presumption in favour of the disclosure of government information unless there is an overriding public interest against disclosure;
- Disclosure of the information could reasonably be expected to inform the public about the operations of the agencies and practices for dealing with members of the public;
- Release of this information would promote open discussion of public affairs, enhancing government accountability on issues of public importance;
- Considerations was given to the fact that John Holland Group did not object to the reports being released.

55 Consideration of personal factors of application

I invited you to provide any personal factors of the application for consideration when applying the public interest test. No personal factors were provided.

11. 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 have identified considerations against disclosure as being relevant to your application and have considered them as follows.

- Clause 6(1) of the table to Section 14

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to constitute a contravention of a provision of any other Act or statutory rule (of this or another State or of the Commonwealth) that prohibits the disclosure of information, whether or not the prohibition is subject to specified qualifications or exceptions.

The reports in question contain business information represented as health monitoring data, compiled for the benefit of the joint venture participants involved, specifically CPB.

SafeWork NSW obtained these records through a formal notice under the *Work Health and Safety Act 2011* (WHS Act).

Disclosing them could reasonably be expected to breach section 271 of the WHS Act, which restricts anyone who has obtained information or access to a document under the WHS Act from disclosing that information. According to section 271(1) and (2) of the WHS Act:

271 Confidentiality of Information (1) This section applies if a person obtains information or gains access to a document in exercising any power or function under this Act (excluding Part 7). (2) The person must not do any of the following — (a) disclose to anyone else — (i) the information, or (ii) the contents or information contained in the document, (b) give access to the document to anyone else, (c) use the information or document for any purpose.

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Maximum penalty — (a) for an individual — 115 penalty units, or (b) for a body corporate — 575 penalty units.

CPB has objected to the release of the reports under the GIPA Act. If the prohibition in the WHS Act could be bypassed through the GIPA Act, the ability of WHS regulators to collect necessary information during investigations would be significantly compromised, particularly contrary to the consent of the parties involved. These parties were compelled to provide this information under the WHS Act and might not have complied otherwise.

Under section 155, SafeWork NSW has the authority to compel responses and the production of documents, and all section 155 notices come with a formal caution stating that a person must not refuse or fail to comply without a reasonable excuse.

CPB highlighted that the documents were not provided voluntarily to SafeWork NSW; rather, SafeWork NSW accessed the reports through the exercise of its powers under the Act.

This creates a legitimate expectation of confidentiality and non-disclosure, which is recognised by section 271 of the WHS Act. According to general legal principles, confidential information obtained under statutory compulsion can only be used or disclosed for the purposes for which it was originally obtained unless express or implied legal authorisation exists. The materials in question were compelled under the specific and narrow purposes outlined in section 155 of the WHS Act and are protected by section 271.

This legitimate expectation of confidentiality is reaffirmed in caselaw (See *Fraser v SafeWork NSW* (No 2) [2021] NSWCATAD 79 at [34]). SafeWork NSW must obtain and maintain confidential information to fulfill its statutory roles and functions under the WHS Act, furthering the critical objectives of that Act.

I have also evaluated the exemptions to the disclosure prohibition stated in section 271. SafeWork NSW must not give access to anyone else unless few specified exceptions apply under subsection (3). Section 271(3) states:

(3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document, or the use of information or a document —

(a) about a person, with the person's consent, or

(b) if necessary for exercising a power or function under this Act, or

(c) if done by the regulator or an authorised person when the regulator reasonably believes the disclosure, access, or use —

(i) is necessary for administering, monitoring, or enforcing compliance with this Act, or (ii) is necessary for administering or enforcing another Act prescribed by the regulations, or (iii) is necessary to mitigate or prevent a serious risk to public health or safety, or

(iv) is necessary for recognizing authorizations under related WHS laws, or (v) is required for exercising a power or function under such laws, or (d) required by any court, tribunal, authority, or person with lawful authority to demand documents or answers, or (e) required or authorized by law, or (f) to a Minister.

Upon review, none of these exemptions apply, particularly since the GIPA Act is not referenced in the Work Health and Safety Regulations 2017, as indicated in section 702. The legislature had a

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clear opportunity to include this but deliberately chose not to, indicating that it would be inappropriate to contravene section 271 of the Act.

I recognise that section 11 of the GIPA Act states it may override other Acts that prohibit disclosure. Consequently, I find it necessary to balance the public interest considerations for and against disclosure.

In addition to clause 6 of the table in section 14, I have identified clauses 1(d) as relevant public interest considerations against disclosure, which I will explore further below.

- Clause 1(d) of the Table to section 14

There is a public interest consideration against disclosure if disclosure of the information could reasonably be expected to prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency's functions (whether in a particular case or generally).

SafeWork NSW collects this information to conduct inquiries, following the guidelines established by the Work Health and Safety Act 2011 (WHS Act).

As discussed, the information was provided by CPB to the agency, as mandated by the WHS Act. CPB expressed their expectation that the documents were shared in accordance with the existing confidentiality obligations.

The ability of Work, Health, and Safety (WHS) regulators to gather vital confidential information would be seriously compromised if disclosures made in response to individuals' obligations under the Work Health and Safety regulations could be bypassed under the GIPA Act, contrary to the preferences of the parties concerned. The CPB was obligated to supply the information and may not have done so otherwise.

Promoting public interest and workforce safety relies on the exchange of information between persons conducting business undertakings and SafeWork NSW, and I have considered substantial weight should be given to the significance of fostering that objective.

Any disruption in this information flow, whether through voluntary disclosures or via section 155 may negatively on the ability for CPB to be open and transparent with the information provided to SafeWork NSW and have significant implications on the ability of CPB to effectively exercise its health and safety functions as a Principal Contractor under NSW health and safety laws.

Every request from SafeWork must be approached with a dual focus on compliance with health and safety legislation and the understanding that any interaction with the agency could be subject to a GIPA request, resulting in information becoming public. This creates an environment of caution regarding engagement with Agency NSW, which undermines transparency between the agency and those it supervises.

In the case of *Adams v Commissioner for Police* [2022] NSWCATAD 178, the court determined at paragraph 101:

The real issue in regard to this public interest against disclosure ground is whether, the disclosure of the information could reasonably be expected to prejudice the supply to the respondent of confidential information that facilitates the effective exercise of the respondent's functions. That is, it is not a question as to whether the particular confider of the information in issue would in future refuse to supply that information. It is a question as to whether information

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of this nature (a) facilitates the effective exercise of the respondent's functions and (b) the disclosure of such information could reasonably be expected to prejudice the supply of such information. [Flack v Commissioner of Police, New South Wales Police]

Given these considerations, releasing the records would work against the public interest by significantly obstructing Agency NSW's ability to fulfill its statutory responsibilities, which include safeguarding workers and the general public from unsafe workplace practices and enhancing workplace health and safety in New South Wales. Therefore, I have placed significant weight on clause 6(1) and 1(d).

- **Clause 4(d) of the Table to section 14**

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to prejudice any person's legitimate business, commercial, professional or financial interests.

The word "Prejudice" in this context should be given its ordinary meaning of "cause detriment or disadvantage" (*McLennan v University of New England* [2013] NSWADT 113).

The Information and Privacy Commission (IPC) is of the view that the relevant meaning of "legitimate" for the purposes of this consideration is its ordinary meaning, that is "genuine and not spurious" (*IPC Information Sheet, Master List* (2019) p.23).

Importantly, too, in considering the potential effects of the considerations described in the Table to section 14". The phrase "could reasonably be expected to" was interpreted by the Tribunal in *Leech v Sydney Water Corporation* [2010] NSWADT 298; which has emphasised that the damage that is expected to occur must be 'more than a mere possibility, risk or a chance' and is based on 'real and substantial grounds'.

This interpretation was further reaffirmed by the Tribunal in *Newcastle City Council v Newcastle East Residents Action Group Inc* [2018] NSWCATAP 254 at [46].

Reputational Damage – 'a Legitimate Business Interest'

Reputational damage was recognised as a relevant public interest consideration against disclosure under the GIPA Act in a number of cases (see for example, *Turner v Department of Planning and Environment* [2019] NSWCATAD 166; and *Pemberton v Macquarie University* [2014] NSWCATAD 76).

CPB raised, release of the reports will likely have a significant negative impact on CPB's (and its constituent entities) business, commercial, professional and financial interests. Relevantly in this regard, disclosure of the reports would, or could be reasonably expected to:

- adversely impact upon the reputation of CPB in the general public forum, including because it is reasonable to expect that the reports will lead to adverse media coverage in respect of the management of health risks, including the risks presented by respirable dust and RCS;
- adversely impact upon the CPB's ability to attract and retain clients in an industry, which is extremely competitive and characterised by obtaining work by tender;
- adversely impact the reputation of CPB (and its constituent entities) as an employer and, by extension, its ability to attract and retain talent. This would also impact the prospects of CPB (and its constituent entities)
- in attracting new business, including by undermining its prospects in future tenders, which may cause significant commercial and financial loss;

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- diminish the ability for CPB (and SafeWork NSW) to effectively monitor the future health of workers; and
- expose commercially sensitive information.

JHG objected as release of the reports would reveal information in relation to risk assessments of occupational hygiene exposure, which may prejudice the business and financial interests of the relevant parties, particularly as safety standards are often a competitive factor when bidding on construction contracts.

- adversely impact upon the reputation of CSJ JV in the general public forum, including because it is reasonable to expect that the Documents will lead to adverse media coverage
- adversely impact upon CSJ JV's ability to attract and retain clients in an industry, which is extremely competitive and characterised by obtaining work by tender;
- adversely impact the reputation of CSJ JV (and its constituent entities) as an employer and, by extension, its ability to attract and retain talent. This would also impact the prospects of CSJ JV (and its constituent entities) in attracting new business, including by undermining its prospects in future tenders, which may cause significant commercial and financial loss; and
- expose commercially sensitive information.

CPB and JHG have legitimate business, commercial, professional and financial interest in preserving its reputation and protecting against allegations regarding a lack of safety.

In line with the above reasoning, I find that clause 4(d) to the table in s14 of the GIPA Act applies in the circumstances of your access application, and I have given this moderate weight.

- **Clause 2(d) of the Table to section 14**

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to endanger the security of, or prejudice any system or procedure for protecting, any place, property or vehicle (whether in a particular case or generally).

CPB provides, the records were prepared as part of the CSJ JV's system for ensuring, so far as reasonably practicable, the health and safety of workers who were involved in work for the Project.

Further, they were prepared as part the CSJ JV's compliance with its obligations under WHS Act and Work Health and Safety Regulation 2017. Disclosure of the records would only result in a small segment of material being disclosed and not the entire documented system of work to eliminate or minimise exposure to occupational illness.

CPB claims, divorcing the Documents from the entire system of work in place at the M4East project would lead to an improper and misleading interpretation of the system of work in place at the time of the personal monitoring, likely to call into question the integrity of the broader system of work and its usefulness in managing exposure to occupational hygiene, thus it may endanger, or prejudice the system or procedure for protecting, the life, health or safety of any person.

I have given this consideration minimal weight.

- **Clause 3(d) of the Table to section 14**

There is a public interest consideration against disclosure if disclosure of the information could reasonably be expected to prejudice the fair trial of any person, the impartial adjudication of any case or

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a person's right to procedural fairness. The meaning of the word prejudice is to "cause detriment or disadvantage".

CPB and John Holland expressed concern that the reports include information potentially usable against them in third-party civil claims. To validate the applicability of 3(d), it must be shown that there is a reasonable expectation of prejudice to a pending or ongoing case or trial. CPB and John Holland failed to establish the existence of any pending or current legal matters.

Consequently, this consideration has not been given any weight.

- Clause 3(b) of the Table to section 14

There are public interest considerations against disclosure of information if disclosure could reasonably be expected to:

- 3(b) Reasonably be expected to contravene an information protection principle as prescribed in the *Privacy and Personal Information Protection Act 1998* or a Health Privacy Principle under the *Health Records and Information Privacy Act 2002*.

The legal definition of "personal information" is provided by section 4 of the *Privacy and Personal Information Protection Act 1998* (PIPA Act), section 4 of the PIPA Act defines "personal information" as:

"Information or an opinion (including information or an opinion forming part of a database and whether or not in a recorded form) about an individual whose identity is apparent or can be reasonably be ascertained from the information or opinion".

Personal information may include an individual's name and signatures.

The records you seek access includes "personal information" of third parties as defined in the PIPA Act.

The primary purpose for SafeWork NSW gathering the information was to investigate a work health and safety matter. SafeWork NSW can only disclose personal information in limited circumstances if the individuals involved have consented to the release of the information. Consent was not obtained to release third parties' personal information.

The PIPA Act imposes restrictions on the disclosure of personal information held by an organisation. Specifically, the Act prohibits the disclosure of health information for a secondary purpose that is not directly related to the primary purpose for which it was collected.

Release of the personal information under the PIPA Act would be considered a disclosure for secondary purposes that does not relate directly to the primary purpose. I consider that a breach of information protection principle 11 of the PIPA Act may occur, if the agency were to release these details for a purpose, other than the purpose for which the information was originally collected.

I have turned my mind to the exemptions outlined in division 3 of the PIPA Act and I conclude that no exemptions apply to the third-party personal information.

I am satisfied the third-party personal information attracts protection under clause 3(b) in the circumstance of your application, and I have given the consideration significant weight.

12. Decision

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

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In the balancing exercise I have also taken into account section 73 of the GIPA Act under which an agency is 'not entitled to impose any conditions on the use or disclosure of information once such information is released in response to an access application'.

I have carefully considered the information and decided to release the records you seek access in line with s58(1)(a).

However, some of the information has been redacted as permitted by Section 74 of the GIPA act to mitigate the effect of, or reduce the weight of, public interest considerations against disclosure or even avoid an overriding public interest consideration against disclosure arising.

I am of the view that, on balance, the public interest considerations in favour of disclosure do not outweigh the considerations against the disclosure of third parties' personal information. Similarly, I have determined that consent was not obtained to release information obtained under a Notice 155 of the Work Health and Safety Act, and therefore this information will be withheld.

Section 58(1)(b), the information is not held by the agency:

The relevant SafeWork teams undertook multiple searches as discussed above. However, it has been determined the agency has no records within the terms of your application for the following sites:

- CPB Contractors UGL Ghella Joint Venture as part of the M6 Stage 1 Project
- CPB Contractors Dragados Samsung (CDS) Joint Venture as part of the WestConnex New M5 Project

13. Form of Access

Provided in line with 72(1)(b) is a copy of the information that I have decided can be release.

Please see the schedule of information for further details.

14. 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. Before you do so, I encourage you to contact me to discuss your concerns.

You have three review options:

- internal review by another officer of this agency, 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 to apply for an internal review. If you would prefer to have the decision reviewed externally, you have 40 working days from the date of this Notice to apply for a review by the Information Commissioner or NCAT.

To assist you, I have enclosed a fact sheet published by the Information and Privacy Commission NSW (IPC), entitled *Your review rights under the GIPA Act*. You will also find some useful information and frequently asked questions on the IPC's website: www.ipc.nsw.gov.au.

You can also contact the IPC on freecall 1800 IPC NSW (1800 472 679).

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15. Further information

If you have any questions about this notice or would like any further information, please contact me on

Deahna Bowling

Senior Coordinator

16. Schedule of Information

Records	Decision	Information redacted
Records provided by CPB Contractors Pty Limited under 155 Notice (reports)		
M4 R3 Northcote R1	Withheld in full – s6(1), 1(d), 2(d), 4(d)	
M4 R9 Northcote	Withheld in full – s6(1), 1(d), 2(d), 4(d)	
M4 R13 Northcote	Withheld in full – s6(1), 1(d), 2(d), 4(d)	
M4 R17 Northcote	Withheld in full – s6(1), 1(d), 2(d), 4(d)	
M4 R21 Northcote	Withheld in full – s6(1), 1(d), 2(d), 4(d)	
M4 R25 Northcote	Withheld in full – s6(1), 1(d), 2(d), 4(d)	
M4 R25 Northcote-r	Withheld in full – s6(1), 1(d), 2(d), 4(d)	
Monitoring results Dec 2016	Withheld in full – s6(1), 1(d), 2(d), 4(d)	
Monitoring results Feb Dec 2017	Withheld in full – s6(1), 1(d), 2(d), 4(d)	
Monitoring results Oct 2026	Withheld in full – s6(1), 1(d), 2(d), 4(d)	
R13 M4E Sample Register	Withheld in full – s6(1), 1(d), 2(d), 4(d)	
R17 M4E Sample Register	Withheld in full – s6(1), 1(d), 2(d), 4(d)	
R21 M4E Sample Register	Withheld in full – s6(1), 1(d), 2(d), 4(d)	
R25 M4E Sample Register	Withheld in full – s6(1), 1(d), 2(d), 4(d)	
R29 M4E Sample Register	Withheld in full – s6(1), 1(d), 2(d), 4(d)	
R17 Exposure Sampling Notification	Withheld in full – s6(1), 1(d), 2(d), 4(d)	

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R21 Exposure Sampling Notification	Withheld in full – s6(1), 1(d), 2(d), 4(d)	
R25 Exposure Sampling Notification	Withheld in full – s6(1), 1(d), 2(d), 4(d)	
Records provided by Acciona Infrastructure Projects Pty Limited		
WSMS 1-426596 – 611E PBR 20210118	Withheld in part – 3(b)	Names, signature
WSMS 1-426596 – 611E PBR 20210119	Withheld in part – 3(b)	Names, signature
WSMS 1-426596 – 611E PBR 20210120	Withheld in part – 3(b)	Names, signature
WSMS 1-426596 – 611E PBR 20210121	Withheld in part – 3(b)	Names, signature
WSMS 1-426596 – 611E PBR 20210122	Withheld in part – 3(b)	Names, signature
WSMS 1-426596 – LSB6241 PBR 20210118	Withheld in part – 3(b)	Name
WSMS 1-426596 – LSB6241 PBR 20210120	Withheld in part – 3(b)	Name
WSMS 1-426596 – LSB6241 PBR 20210121	Withheld in part – 3(b)	Name
WSMS 1-426596 – LSB6241 PBR 20210122	Withheld in part – 3(b)	Name
<ul style="list-style-type: none"> CPB Contractors UGL Ghella Joint Venture as part of the M6 Stage 1 Project CPB Contractors Dragados Samsung (CDS) Joint Venture as part of the WestConnex New M5 Project 	No records found s58(1)(b)	

EXTRACTS FROM THE GIPA ACT TABLE TO SECTION 14

1 Responsible and effective government

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)--(d) prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency's functions



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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)-- d) endanger, or prejudice any system or procedure for protecting, the life, health or safety of any person*

3. Individual rights, judicial processes and natural justice

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:

- (b) *contravene an information protection principle under the Privacy and Personal Information Protection Act 1998 or a Health Privacy Principle under the Health Records and Information Privacy Act 2002,*
- .(d) prejudice the fair trial of any person, the impartial adjudication of any case or a person's right to procedural fairness*

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,*

SCHEDULE 4 OF THE ACT

4. Personal information

Personal information does not include any of the following;

- (3) (b) information about an individual (comprising the individual's name and non-personal contact details) that reveals nothing more than the fact that the person was engaged in the exercise of public functions,.....

SECTION 74

74 DELETION OF INFORMATION FROM COPY OF RECORD TO BE ACCESSED

An agency can delete information from a copy of a record to which access is to be provided in response to an access application (so as to provide access only to the other information that the record contains) either because the deleted information is not relevant to the information applied for or because (if the deleted information was applied for) the agency has decided to refuse to provide access to that information