



Mr John Flymore

foi+request-11984-1532296b@righttoknow.org.au

Dear Mr Flymore

Freedom of Information Request - Reference 23-128

I refer to your application for access to government information received by Transport Canberra and City Services (TCCS) on 1 September 2024. It is my understanding that you are seeking access to the following government information under the *Freedom of Information Act 2016* (FOI Act):

“1. MyWay+ contract with NEC and costings of the project

2. Other contractors/vendors and their offers”.

Timeframes

A decision is due on your access application by 15 October 2024.

Authority

I am an Information Officer appointed by the Director-General under section 18 of the Act to deal with access applications made under Part 5 of the FOI Act.

Decision on access

Part 1

In accordance with the FOI Act, a search of TCCS records has been completed and the contract has been identified.

In accordance with section 45 of the FOI Act, I am refusing to deal with this part of your application because the information is publicly available on the Tenders ACT website at:

<https://www.tenders.act.gov.au/contract/view?id=204268>.

Part 2

In my review of the information within the records identified under part 2 of your application and applying the public interest test under section 17 of the FOI Act, I have decided to refuse access to the records.

Reasons for my decision are detailed further below in the statement of reasons.

Statement of Reasons

In making my decision on disclosing the relevant government information, I must identify all relevant factors in schedule 1 and 2 of the FOI Act and determine, on balance, where the public interest lies. I have taken the following into account:

- The FOI Act; and
- The *Human Rights Act 2016*.

Schedule 1:

- No factors identified

Schedule 2:

Factors favouring disclosure (Schedule 2.1)

- Schedule 2.1(a)(i) - promote open discussion of public affairs and enhance the government's accountability;
- Schedule 2.1(a)(ii) - contribute to positive and informed debate on important issues or matters of public interest;
- Schedule 2.1(a)(iii) - inform the community of the government's operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community;
- Schedule 2.1(a)(iv) - ensure effective oversight of expenditure of public funds;
- Schedule 2.1(a)(viii) - reveal the reason for a government decision and any background or contextual information that informed the decision.

Factors favouring non-disclosure (Schedule 2.2)

- Schedule 2.2(a)(ii) - prejudice the protection of an individual's right to privacy or any other right under the *Human Rights Act 2016*;
- Schedule 2.2(a)(xi) - prejudice trade secrets, business affairs or research of an agency or person;
- Schedule 2.2(a)(xii) - prejudice an agency's ability to obtain confidential information;
- Schedule 2.2(a)(xiii) - prejudice the competitive commercial activities of an agency.

In reviewing the information within scope of your application, I have identified information that is likely to reveal the reason for a government decision and any background or contextual information that informed the decision. Further, I acknowledge that disclosure may promote open discussion of public affairs and enhance government's accountability generally and contribute to an effective oversight of expenditure of public funds.

In my consideration of factors favouring non-disclosure, I have identified factors which are applicable. My considerations on the weight of these factors are discussed below.

In reviewing the relevant records, information relating to the business affairs of third parties have been identified. This includes the name, financial, contractual, and operational information. I have considered that this information has come into the possession of TCCS for the purpose of a procurement process and was provided with the expectation that the information be held in confidence.

The confidentiality of information is an expectation of tenderers and is agreed upon during the procurement process. I have also noted that the tender called for innovative solutions, which require a respondent to provide extensive information about their operations and limitations. I have extended this consideration to information where the capabilities of respondent submissions are measured against each other, as this deliberative process is unable to be disclosed without also disclosing information relating to their business affairs.

I have also considered that this information is not readily available to the public and is likely to reveal information that results in a competitive disadvantage. The ability for TCCS to obtain confidential information is essential for a competitive procurement process and its ability to procure a service vital to its functions. I have considered that the disclosure of information likely to harm third party business affairs is likely to prejudice the ability of obtaining confidential information in future.

I have placed significant weight on schedule 2.2(a)(xi), 2.2(a)(xii) and 2.2(a)(xiii) as the disclosure of the information is likely to prejudice the ability to obtain confidential information in future procurement processes, by prejudicing the business affairs of the relevant third parties.

Charges

In accordance with [Freedom of Information \(Fees\) Determination 2018](#), a fee of \$0.35 per page of information disclosed, except for the first 50 pages, may be applied to an access application. This fee is not applicable as I am not releasing any records.

Online publishing – disclosure log

Under section 28 of the Act, TCCS maintains an online record of access applications called a disclosure log. In accordance with section 28, your application and my decision will be published within 3 – 10 business days. Your personal information will be removed prior to publication. You may view the TCCS' disclosure log [here](#).

Ombudsman review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek an Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in TCCS' disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision, you may write to the Ombudsman at:

ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601
Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) review

Under section 84 of the Act, if a decision is made under section 82 on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision.

Further information may be obtained from ACAT at:

ACT Civil and Administrative Tribunal
GPO Box 370
CANBERRA CITY ACT 2601
Telephone: (02) 6207 1740
www.acat.act.gov.au

If you have any queries concerning the directorate's processing of your request, or would like further information, please contact the TCCS FOI team on (02) 6207 2987 or email to tccs.foi@act.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'LJ', is positioned below the text 'Yours sincerely'.

Lisa Johnson
Information Officer
14 October 2024