

12 November 2018

Our Ref: [REDACTED]  
Matter No [REDACTED]

Dear [REDACTED]

**Formal Access Application - Notice of Decision**

I refer to your Formal Access Application under the *Government Information (Public Access) Act 2009* (the GIPA Act), that you lodged with Department of Family and Community Services. I note that you have requested access to a copy of the following information:

- 1) *"Please provide all Briefing Notes issues by the FAGS legal Branch prepared from 5 September 2018 to today's date relating to any missing documents or any interaction with a courier relating to missing document(s).*
  - a. *Please provide all Briefing Notes issued by the Care Leaver Records Access Branch prepared from 5 September 2018 to today's date relating to any missing documents or any interaction with a courier relating to missing document(s).*
  - b. *Please provide all Briefing Notes issued by the Freedom Exchange and Access branch prepared from 5 September 2018 to today's date relating to any missing documents or any interaction with a courier relating to missing document(s).*
  - c. *Please provide all Briefing Notes issued by the Office and Fleet Services Branch prepared from 5 September 2018 to today's date relating to any missing documents or any interaction with a courier relating to missing document(s).*
  - d. *Please provide all Briefing Notes issued by the Right to Information Unit Branch prepared from 5 September 2018 to today's date relating to any missing documents or any interaction with a courier relating to missing document(s).*
- 2) *All protocols and Department policies regarding procedures in place, including time-frames, for notifying individuals whose documents have been lost and in notifying the Privacy Commissioner.*
  - a. *A copy of the register of the number of breaches of privacy incidences for the past 24 months."*

I have carefully considered your request in view of the objectives of the GIPA Act where you have a legally enforceable right to obtain information, unless there is an overriding public interest against disclosure of the subject information. Further, I have also considered the requirements of section 74 of the GIPA Act, which provides that an agency may delete information from a record to which access is provided if the deleted information is not relevant, or within the scope of the information applied for, or an agency has decided to refuse access to that information.

In processing your application, I have taken into account the obligations referred to in section 53 of the GIPA Act which states:

**“53 Searches for information held by agency**

- (1) The obligation of an agency to provide access to government information in response to an access application is limited to information held by the agency when the application is received.*
- (2) An agency must undertake such reasonable searches as may be necessary to find any of the government information applied for that was held by the agency when the application was received. The agency’s searches must be conducted using the most efficient means reasonably available to the agency.*
- (3) The obligation of an agency to undertake reasonable searches extends to searches using any resources reasonably available to the agency including resources that facilitate the retrieval of information stored electronically.*
- (4) An agency is not required to search for information in records held by the agency in an electronic backup system unless a record containing the information has been lost to the agency as a result of having been destroyed, transferred, or otherwise dealt with, in contravention of the State Records Act 1998 or contrary to the agency’s established record management procedures.*
- (5) An agency is not required to undertake any search for information that would require an unreasonable and substantial diversion of the agency’s resources.”*

In accordance with the obligations outlined in section 53 of the GIPA Act, I confirm that I liaised with the following directorates within the department, in order to search and identify any information that may fall within the scope of Part 1 of your access application:

- Finance and Strategy, Corporate Services.
- Ministerial and Communication Services, Corporate Services.
- Community Services State-wide Services, Northern Cluster.

After liaising with these directorates, I was able to identify a briefing note that falls within the scope of the request that I have paginated 1 to 5.

In relation to Part 2 of your access application, the Manager of FACS’ Privacy Unit confirms that there are no protocols, policies or time-frames in place for notifying individuals whose documents have been lost. However, the department complies with the requirements of the Information and Privacy Commission New South Wales’ *IPC Data Breach Guidance*.

The guidance promotes agencies to voluntarily report instances where a data breach has occurred, and provides agencies with information about notifying individuals or organisations that have been affected by a data breach. The Manager of FACS' Privacy Unit confirms that as at 26 September 2018, FACS has notified the Privacy Commissioner of a data breach on 3 occasions since the voluntary reporting scheme commenced in May 2018.

In relation to pages 1 to 5 that fall within the scope of Part 1 of your access application, I have decided to provide you with a copy of those pages in accordance with section 58 of the GIPA Act, with the exception of a page, which contains information that is subject to an overriding public interest consideration against disclosure under the GIPA Act. The decision schedule attached lists the document that contains information where there is an overriding public interest consideration against disclosure. In the decision schedule, (P) means that a document has been withheld in part from disclosure.

In deciding which information to withhold in full or in part, I was required to conduct a "public interest test" where the public interest considerations favouring disclosure of government information were weighed against those factors that do not favour disclosure. The following are a number of public interest factors I considered which favour disclosure of the information requested:

- 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 and, in particular, their policies and practices for dealing with members of the public.
- Disclosure of the information could reasonably be expected to ensure effective oversight of the expenditure of public funds.
- Disclosure of the information could reasonably be expected to reveal or substantiate that an agency (or a member of an agency) has engaged in misconduct or negligent, improper or unlawful conduct.
- Disclosure of the information could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision.
- Disclosure of the information could reasonably be expected to contribute to the administration of justice generally, including procedural fairness.

However, I have decided to partially withhold information as a public interest factor against disclosure, outweighs the factors in favour of disclosure.

Information that has been withheld from disclosure under clause 3(a) of the table to section 14 of the GIPA Act is information that would reveal an individual's personal information. An individual's personal information may include their identity, contact information, etc. I am of the view that there is an overwhelming public interest against disclosing information that reveals an individual's personal information.

If you are aggrieved by any of the reviewable decisions in this notice of decision, you may seek a review under Part 5 of the GIPA Act, by requesting any one of the following:

- An internal review which must be lodged with the Right to Information Unit within 20 working days of this notice of decision. You must lodge your internal review at the address shown at the bottom of the first page and must be accompanied by the appropriate application fee of \$40.
- Alternatively, a request for an external review may be lodged with either the Information and Privacy Commission, or the NSW Civil and Administrative Tribunal. Please note that you must lodge your request for an external review within 8 weeks of this notice of decision.

Further attached is a receipt for the amount of \$30 which represents the application fee for processing your Formal Access Application.

If you have any questions regarding this notice, please contact me on telephone (02) 8753 8386.

Yours sincerely



Rita Peci  
**Manager**  
**Right to Information Unit**  
**Department of Family and Community Services, Legal**

# Decision Schedule

ACCESS APPLICANT'S NAME	[REDACTED]	DECIDING OFFICER	Rita Peci
FACS REFERENCE	[REDACTED]	INTERNAL REVIEW OFFICER	

## INFORMATION THAT WAS NOT DISCLOSED

PAGE NUMBER	PUBLIC INTEREST CONSIDERATIONS AGAINST DISCLOSURE					DESCRIPTION OF FOLIO / REASON FOR NON-DISCLOSURE
	Schedule 1 information	Table to Section 14 of the GIPA Act 2009				
		Clause 10	Clause 1(d)	Clause 1(f)	Clause 1(g)	
5					P	Email transmission that identifies another person and their contact details.



## Courier contracts - misplaced records and privacy breaches

<b>Topic</b>	<p>The Office of the Secretary has requested an urgent briefing on courier contracts to cover:</p> <ul style="list-style-type: none"> <li>• Current status of all courier contracts for transporting physical documents</li> <li>• Details of all known instances since 1 July 2017 where records have been misplaced</li> <li>• Notification of any possible breaches of confidentiality to the Privacy Commissioner through records being misplaced during courier deliveries.</li> </ul>
<b>Analysis</b>	<p>Given that the Department of Family and Community Services (FACS) has experienced issues with the reliability and security of courier services provided by the Toll Group, some services have been terminated and responsibility transitioned to other providers, including Australia Post. As there were no perceived breaches in client confidentiality in both instances of misplaced files, the Privacy Commissioner was not notified.</p>

To note by 13 September 2018

Secretary's signature

Date

### Recommendation: for information only

The Secretary notes:

1. Actions undertaken by Finance and Strategy to transition some courier services from Toll to Australia Post.
2. Work in progress by Finance and Strategy in the tendering for new contracted services that meet stringent information security protocols.
3. Advice from acting General Counsel indicates that in both instances, it is unlikely that client information was compromised, therefore the Privacy Commissioner was not notified. In fact, there is no evidence of any breach of privacy.

### 4. Key issues

FACS has courier contracts in place with the following service providers:

1. The Toll Group (Toll Transport, Fast, Priority, DX Mail)
2. Flourish (an Australian Disability Enterprise)
3. Flagstaff (an Australian Disability Enterprise)
4. Australia Post

FACS also has a variety of ad-hoc courier accounts, which are primarily used by the operational clusters. The following accounts have been in use since July 2017:

1. Mail Plus
2. DHL Express
3. Bonds Transport Group
4. TNT Australia

**Briefing for Secretary: for information**

5. GMS Direct Mail
6. Classic Couriers

To date, there have been no reported instances of records misplaced by any of the non-contracted service providers to Finance and Strategy.

Finance and Strategy is aware of two instances where records have been misplaced by contracted service provider Toll Group since June 2018:

- 14 June 2018 - A ministerial bag was misplaced in transit from Minister Williams Office in Parliament House to Ashfield. The bag was recovered four days later and returned to a Parliament House internal mailbox on 18 June 2018.
- 6 July 2018 – Government Records Repository (GRR) in Ashfield sent five boxes of client files to Maitland Community Services Centre (CSC). The CSC registered the receipt of four boxes on 9 July. The CSC received the remaining files on 13 July, in a satchel, rather than a box.

Following the misplaced ministerial bag, the FACS Office Services Facilities Manager met with Toll representatives to review and update processes. Additional security protocols for the collection and delivery of ministerial bags were implemented, effective from 30 June 2018. These remedial actions included:

- 4 additional CCTV cameras installed around 223 Liverpool Road Ashfield, to cover the entry into the basement of the building
- a designated courier car space in the basement of 223 Liverpool Road
- predetermined times for mail collection

On 27 August 2018, courier services relating to Ministerial functions were transitioned from Toll to Australia Post.

**Further analysis**

FACS did not notify the Privacy Commissioner about potential breaches in confidentiality by Toll.

Advice received from the acting General Counsel has confirmed that client privacy was unlikely to have been compromised due to:

- Ministerial bag – Three items in the bag did not contain any highly sensitive papers or documents signed by the Minister.
- The ministerial bag was returned to an internal mailbox in Parliament House within four days of being picked up for delivery to Ashfield.
- There is not evidence to suggest that the mailbag left Parliament House and once recovered, there is no evidence of the documents being accessed or interfered with.
- Maitland CSC files – The misplaced files were delivered to Maitland CSC within four days of being notified they were missing from the initial delivery. On 13 September, the A/Executive District Director Hunter New England and Central Coast Districts, confirmed that to the best of her knowledge, all client files had been accounted for.
- FACS asked Toll Group to undertake further investigation into the whereabouts of the fifth batch of files between 6-13 July. Toll's internal investigation were inconclusive (Attachement A).
- As there is no evidence to suggest that the misplaced files left Toll's network between 6-13 July, it is unlikely that a breach of privacy occurred during this time.

**Background**

FACS engaged Toll under a Whole-of-Government Standing Offer Agreement 630 on 24 October 2007, for the provision of courier delivery services.

**Briefing for Secretary: for information**

The agreement was varied and extended on 20 June 2012 to incorporate rate review clauses and an extension of the term until 31 December 2012.

A further three year extension with Toll Transport and Toll Fast was approved 1 January 2013 to June 2016.

Toll has been on 'hold-over' under the current terms and conditions until July 2018.

**Chronology of events (Toll Contract)**

The table below provides summary events in relation to Toll Services:

Date	Action
24 Oct 2007	Initial contract with Toll under the Whole of Government Agreement #630
20 Jun 2012	First contract extension with additional rate review clauses
01 Jan 2013	Second contract extension
01 Jan 2016	Second contract extension expires. On 'hold over' under current terms and conditions
15 Jun 2018	A document satchel collected from Minister Williams' Office and was misplaced en route to Ashfield building 223 Liverpool Road.
18 Jun 2018	The missing satchel was returned to Minister Williams' office via a Parliament House internal post box, without any notes or postal markings.
6 Jul 2018	Five boxes of client records collected from Ashfield, en route to Maitland CSC.
9 Jul 2018	Four of the five boxes requested receipted by Maitland CSC. A FACS Customer Service Officer contacted Toll to advise that files were missing.
13 Jul 2018	Remaining files received by Maitland CSC, in a satchel, rather than a box. The two files were placed on an Admin Officers desk until 7 August.
Jul 2018	A decision was made to terminate Toll's services in relation to Ministerial services and transition to alternate service provider/s under contract with FACS
1 Aug 2018	Scoping commenced for a new specification and alternative service providers
27 Aug 2018	Australia Post service replaced the Toll Group in providing the Ministerial mail function

**Further Actions in Progress**

Finance and Strategy has commenced action to establish a new tender specification for mail and courier contracts to be implemented in October 2018.

The new contract is designed to deliver the following improved controls:

- Contracted services that meet stringent information security protocols for information and goods sent via mail/courier services
- Service options for Highly Confidential documents and High Risk parcels
- Contractual obligations under service level agreements (SLA) to report, escalate and respond to incidents related to missing packages
- Contracted reporting requirements to better understand volume, cost and service level adherence
- Service obligations and SLAs which empower FACS to actively manage the approved vendor/s.

**Attachments**



Briefing for Secretary: for information

Tab	Title
A	Correspondence from Toll Group following internal investigation of misplaced files

Approval

Position	Electronic approval	Date
Office Services, Facilities Manager	John Karanikolas	06.09.2018
Manager, Accommodation Strategy	Rick Towerton	07.09.2018
Director, Finance, Accommodation & Office Services	Craig Napper	10.09.2018
A/Executive District Director, Hunter New England and Central Coast Districts	Susan Mullard	12.09.2018
A/General Counsel	Chris Valacos	12.09.2018
Executive Director, MACS	Rod Nockles	13.09.2018
Chief Financial Officer	Alastair Hunter	18.09.2018
A/Deputy Secretary	Sarma Rajaraman	.09.2018

*Handwritten signature in purple ink, appearing to be 'MTH'.*

**Peter Bazzo**

---

**From:** John Karanikolas (FACS)  
**Sent:** Thursday, 13 September 2018 5:00 PM  
**To:** Alastair Hunter  
**Cc:** Erin Tsappas  
**Subject:** Fwd: Consignment 00903UX6TU

Hi Alastair  
See below email from [REDACTED] as requested this morning.

Regards  
John Karanikolas

Sent on the go with Vodafone

----- Original message -----

**From:** [REDACTED]  
**Date:** 13/9/18 4:45 pm (GMT+10:00)  
**To:** "John Karanikolas (FACS)"  
**Subject:** Consignment 00903UX6TU

Good Afternoon John,

After further investigation into the whereabouts of 00903UX6TU05 between 09/07/2018 and 13/07/2018, I have been unable to confirm for certain where this box was.

Freight was collected by Toll Fast on 06/07/2018 and taken to our Bankstown depot. From there, we have no further scanning until items 1 – 4 scan on board for delivery on 09/07/2018 in Maitland.

We raised nationwide checks for the outstanding box however these were returned as negative. I personally checked our unidentified and damaged freight register which was also negative.

We then received communication that the files contained in this box had been received in Maitland, however not in their original packaging.

I cannot offer any concrete explanation for where these files were between 09/07/2018 and 13/07/2018. I believe, however this is based purely on speculation, that the outer carton (including the connote label) may have been damaged in transit and details on the files contained suggested that these belonged to the Maitland site, causing the depot to repack and send on. As advised, this is based purely on speculation as I have no hard evidence to support this hypothesis.

Kind Regards,

[REDACTED]  
Client Manager  
Sales & Marketing  
**Global Express**  
26 McPherson Street  
Banksmeadow, NSW, 2019  
M +61 [REDACTED]

[www.tollgroup.com](http://www.tollgroup.com)

