

# ***Government Information (Public Access) Act 2009***

## **Explanatory Table**

### **Letter of Intent to commence Services under the Draft OTS2 Independent Certifier Deed**

Capitalised terms in this table have the meanings given to them in the Letter of Intent to commence Services under the Draft OTS2 Independent Certifier Deed (**LOI**), unless the context indicates otherwise.

In preparing this explanatory table, the Principal has:

- (a) identified the reason(s) under the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**) for each redaction; and
- (b) weighed each redaction against the following key public interest considerations for disclosure:
  - (i) promoting open discussion of public affairs, enhancing government accountability or contributing to positive and informed debate on issues of public importance;
  - (ii) creating public awareness and understanding on issues of public importance;
  - (iii) enhancing government transparency and accountability;
  - (iv) informing the public about the operations of the agency;
  - (v) ensuring effective oversight of the expenditure of public funds and the best use of public resources; and
  - (vi) ensuring fair commercial competition within the economy.

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
1.	Addressee details	The information redacted are names and email addresses.	<p><i>Section 32(1)(d), item 3(a) of the table in section 14</i></p> <p>The disclosure of this information would reveal an individual's personal information.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because the redacted information is the names and contact details of individual persons.</p> <p>The Principal considers that any public interest in favour of the disclosure is not significantly advanced by the disclosure of this information, and is outweighed by the public interest against the disclosure as identified above.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
2.	Clause 6	The information redacted is the entire clause.	<p><i>Section 32(1)(a), paragraph (e) of the definition of "commercial-in-confidence provisions" at clause 1 of Schedule 4</i></p> <p>The disclosure of this information would place the Independent Certifier at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information describes the term of the LOI;</li> <li>b) revealing the redacted information would provide insight into the parties' assessment of the risk of proceeding with the Services on an interim basis, and would also reveal a bespoke mechanism negotiated by the parties; and</li> <li>c) revealing the information would place the parties at a substantial commercial disadvantage in future agreements of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information would reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as</p>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>events and circumstances change.</p>
3.	Clause 7	<p>The information redacted is part of the clause.</p>	<p><i>Section 32(1)(a), paragraph (e) of the definition of "commercial-in-confidence provisions" at clause 1 of Schedule 4</i></p> <p>The disclosure of this information would place the Independent Certifier at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out bespoke mechanisms which apply on termination of the LOI; and</li> <li>b) revealing the information would place the parties at a substantial commercial disadvantage in future agreements of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information would reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	
4.	Clause 8	The information redacted is the entire clause.	<p><i>Section 32(1)(a), paragraph (e) of the definition of "commercial-in-confidence provisions" at clause 1 of Schedule 4</i></p> <p>The disclosure of this information would place the Independent Certifier at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <p>a) revealing the redacted information would reveal specifically negotiated terms between the parties and therefore the level of risk that the parties were willing to accept in regards to proceeding with the Services on an interim basis under the LOI; and</p> <p>b) revealing the information would place the parties at a substantial commercial disadvantage in future agreements of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information would reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	
5.	Clause 10	The information redacted is part of the clause.	<p><i>Section 32(1)(a), paragraph (e) of the definition of "commercial-in-confidence provisions" at clause 1 of Schedule 4</i></p> <p>The disclosure of this information would place the Independent Certifier at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) the redacted information sets out bespoke mechanisms agreed between the parties in regards to the Effective Date of the LOI; and</li> <li>b) revealing the information would place the parties at a substantial commercial disadvantage in future agreements of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information would reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	
6.	Clause 11	The information redacted is part of the clause.	<p><i>Section 32(1)(a), paragraph (e) of the definition of "commercial-in-confidence provisions" at clause 1 of Schedule 4</i></p> <p>The disclosure of this information would place the Independent Certifier at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:</p> <ul style="list-style-type: none"> <li>a) revealing the redacted information would provide insight into the parties' assessment of certain risks and would reveal a bespoke mechanism specifically negotiated by the parties; and</li> <li>b) revealing the information would place the parties at a substantial commercial disadvantage in future agreements of a similar nature, as the information would be readily accessible to potential future clients, competitors and contractors. Therefore the disclosure of the information would reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</li> </ul> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			There is an overriding public interest against disclosure.	
7.	Sign-off line for letter	Signature and name.	<p><i>Section 32(1)(d), item 3(a) of the table in section 14</i></p> <p>The disclosure of this information would reveal an individual's personal information.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because the redacted information is the name and signature of an individual.</p> <p>The Principal considers that any public interest in favour of the disclosure is not significantly advanced by the disclosure of this information, and is outweighed by the public interest against the disclosure as identified above.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
8.	Execution blocks	Signatures and names.	<p><i>Section 32(1)(d), item 3(a) of the table in section 14</i></p> <p>The disclosure of this information would reveal an individual's personal information.</p> <p>There is an overriding public interest against disclosure.</p>	<p>The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because the redacted information is the names and signatures of individual persons.</p> <p>The Principal considers that any public interest in favour of the disclosure is not significantly advanced by the disclosure of this information, and is outweighed by the public interest against the disclosure as identified above.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>
9.	Attachment 1	The entire attachment.	<i>Section 32(1)(a), paragraph (b), (c) and (e) of the definition of "commercial-in-confidence provisions" at clause 1 of Schedule</i>	The Principal weighed the competing public interest considerations and determined that there was an overriding public interest against disclosure of this information because:

Item	Clause (and general description)	Information redacted	Reason(s) for redaction under GIPA Act	Public interest considerations
			<p>4</p> <p>The disclosure of this information would place the Independent Certifier at a substantial commercial disadvantage in relation to potential competitors and other contractors.</p> <p><i>Section 32(1)(d), item 1(f) of the table in section 14</i></p> <p>The disclosure of this information could prejudice the effective exercise by an agency of the agency's functions.</p> <p><i>Section 32(1)(d), items 4(b), 4(c) and 4(d) of the table in section 14</i></p> <p>The disclosure of this information could reveal commercial-in-confidence provisions of a government contract, diminish the competitive commercial value of information to a person and prejudice a person's legitimate business and commercial interests.</p> <p>There is an overriding public interest against disclosure.</p>	<p>a) the redacted information is a draft deed for independent certification services which remains subject to ongoing negotiation by the parties;</p> <p>b) the redacted information details commercial-in-confidence information including the scope and fee structure of the Independent Certifier;</p> <p>c) disclosure of the redacted information may provide insight into the Independent Certifier's assessment of risk under the Draft OTS2 Independent Certifier Deed and how the Independent Certifier priced and accepted the Services. If this information were revealed, it could place the Independent Certifier at a substantial commercial disadvantage in future projects of a similar nature, as the information would be readily accessible to other contractors who the Independent Certifier may have to negotiate or bid against; and</p> <p>d) in addition, the Principal will be negotiating agreements similar to the Draft OTS2 Independent Certifier Deed with other contractors on the Sydney Metro City &amp; Southwest and disclosure would therefore place the Principal at a commercial disadvantage in these negotiations.</p> <p>Therefore the disclosure of the information could reduce the information's competitive commercial value and prejudice the parties' legitimate business, commercial or financial interests.</p> <p><b>Review:</b> This information would be reviewed for disclosure as events and circumstances change.</p>