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## PUBLIC DATA RE-USE POLICY, BUT NOT FOR ROAD CONSTRUCTION PROCUREMENT DOCUMENTS IN AUSTRALIA

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### ABSTRACT

Australian states are mandated to provide researchers access to public sector information (PSI) through three legislative mechanisms: Public Sector Information, Public Records and Freedom of Information. In theory open government is possible because digital technologies allow all PSI to be accessible. Thus, construction management researchers should be able to access public construction documents via government Internet sites. However, this pilot study of 30 road projects indicates a gap between theory and practice. An archival method was used to search the online procurement documents of three states; New South Wales, Western Australia and Queensland. The searches aimed to find the five commonly used road construction procurement documents that could be used by construction management researchers for comparative analysis. However, documentation for road projects could not always be found. Analysis of the search process and the type of procurement documents accessed indicates significant open PSI differences in these three states. Discussion of the application of the three types of public sector information access legislation is one way of making sense of the variability of access to EOI, EIA, RFP, RFT, and Contract procurements documents via an open PSI in a system within a multiplicity of states and departments.

Keywords: Australian transport departments, open public sector information, public road procurement.

### INTRODUCTION

Governments are increasingly aware of the need for researchers to access public sector information (PSI). Australian states are mandated to provide PSI through three legislative mechanisms: Public Sector Information, Public Records and Freedom of Information. In theory more open government is possible with universal Internet access allowing researchers the opportunity to re-use government documents as research data-sets (Allen 2012; Burton et al. 2012).

In an information-rich environment (DBCDE 2013; Burton et al. 2012; DFD 2010) public infrastructure procurement documents are an important primary source for construction management researchers (Laryea 2011). Australian state transport departments develop and supply a common set of procurement documents. For example, the public linear infrastructure procurement cycle depends on five types of

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documentation. Publicly funded state transport departments are expected to develop an *Expression of Interest* (EOI) document that outlines in general terms the type of project; building a new road, extending a rail line or building a replacement bridge. In some cases interested eligible providers are invited to be part of a two stage process to ‘workshop’ the project concept into a more constructible deliverable. Because all infrastructure projects in Australia require an *Environmental Impact Assessment* (EIA), road authorities employ specialist consultants.

A second major step in the public procurement process is for the transport department to issue a *Request for Proposal* (RFP). A RFP provides specifications as well as limitations and is one way to gauge the number of possible contractors available for the project (Kenley et al. 2000). It is usual for the public client to compile a shortlist of qualified contractors who meet pre-qualification in the relevant jurisdiction. The short-listed contractors are provided with a *Request for Tender* (RFT) that has complex specifications for the public works project. Included in the RFT is a set of tender evaluation criteria (considered necessary to obtain ‘value for money’) used to decide the ‘winning’ tender. The final phase of the public procurement process is the negotiation of the *Contract* (Ruparathna et al. 2014).

From the perspective of a construction management researcher, at the very least, the EOI, EIA, RFP and RFT documents for major road projects, should be available for researcher re-use (Zuiderwijk and Janssen 2014).

## CONTEXT

### Public sector information principles

In 2010 the Australian Commonwealth Government indicated public information was a national resource in the Declaration of Open Government (DFD 2010) based on an e-government Internet-based platform. The Australian Office of the Information Commissioner (AOIC) has oversight of implementation processes allowing public access to data sets paid for by all levels of government. One important purpose of Open Public Sector Information is to provide government and privately funded researchers with primary research sources.

The eight AOIC Open Public Sector Information (PSI) Principles assist all government entities with their digital implementation process (McMillan 2013). Each principle, based on best practice processes, is a guide for department practices to collect, record, manage and archive documents. Principle 6 proposes ‘clear re-use rights’ for research in the national interest.

### Construction management research

Research into public infrastructure, especially road networks is in the national interest. New construction and maintenance of the existing 872,849k road network is necessary for both economic activities and the wellbeing of the population. The *Australian Infrastructure Statistics Yearbook* provides some numbers for the financial year 2013-14: infrastructure industries accounted for 9.6% of GDP; transport was responsible for almost 50% of infrastructure construction; \$AU25.0b was spent on roads (BITRE 2014).

This amount of public investment lends itself to issues of process transparency especially with the continuing controversies over the Australian infrastructure public

private partnership projects (Regan et al. 2013; Raisbeck et al. 2010). Because information for *re-use* by researchers is a major purpose of PSI, then it follows that other PSI principles would need to support this desired outcome.

Five PSI Principles (of the eight) relate to an open information policy for researcher re-use (McMillan 2013). These five also have specific relevance for construction management research relating to the basic road procurement documents listed above:

- Principle one “open access to information as a default position”
- Principle four “robust information asset management”
- Principle five “discoverable and usable information”
- Principle six “clear re-use rights”
- Principle seven “appropriate charging for access”.

AOIC (2013) research into information for researcher re-use found that the PSI Principles are being implemented unevenly in government departments (Allen 2012). However, if these five principles (1,4,5,6,7) are being adhered to, then public road procurement documents for construction management researchers would be available via state transport department Internet websites. But is that the case?

## **RESEARCH DESIGN**

### **Road project procurement document collection**

To test whether or not Open Public Sector Information construction management researcher re-usable data was easily accessed via the Internet, an archival research method was used. Archival research is based on systematic searching for a document that is presumed to exist. However, documents in archival repositories are not always logically recorded or stored (Saunders et al. 2007).

Searching was confined to the websites of three Australian state transport departments. New South Wales Roads and Maritime Services (NSW RMS), Queensland Department of Transport and Main Roads (QTMR) and Main Roads Western Australia (MRWA) are the transport departments responsible for construction and maintenance of extensive road networks – 17,600, 33,000, 17,800 respectively. It was assumed that each website would provide straightforward access to the five commonly used major road procurement documents: EOI, EIA, RFP, RFT and Contract documents as part of their Open PSI implementation.

A four part archival search began with the primary search for online links and tabs labelled with the key term "project". The result of this initial search provided the names of ten road projects from each department website. The sample of 30 project names provided individual identifiers that became the basis of the secondary keyword "procurement" search of each of the department websites.

For this pilot study, searching was limited to the transport department websites or links found on those pages when searching for individual project webpages. Subsequent key word searches within each of the 30 projects webpages included the five types of transport department procurement documents: *Expression of Interest* (EOI), *Environmental Impact Assessment* (EIA), *Request for Proposal* (RFP) and *Request for Tender* (RFT), and *Contract*. Searches incorporated possible variations: full, partial and abbreviation descriptors.

Three criteria were considered fundamental for documents that could be ‘re-used’ for comparative construction management research: available without payment, original complete document readily accessed; either pdf or word format for downloading. A secondary summary of a project was not considered as reusable as a primary data source. The presence or absence of linear infrastructure procurement documents is noted in table 1.

Table 1: Online availability of Australian public road construction procurement documents

State transport department	Number of projects with documents	Type of documents found	Project summary only
New South Wales: RMS	10	EIA, RFT, Contract	0
Western Australia: MRWA	5	EIA, EOI, RFP, PFT	5
Queensland: QTMR	0	none	10

## DISCUSSION

Discussion of the results from the archival searches attempts to link Open Public Sector Information Principles and commonly used road procurement documents (EOI, EIA, RFP, RFT, and Contract) for road works. Not one of the 30 projects had researcher Internet access to all five procurement document types necessary to do substantive research into public road procurement. Therefore, for purposes of analysis the study accepted that any type and number of complete downloadable project documents would be counted as presence. For example, all NSW RMS project contracts were available, but EIA document availability was inconsistent. And although, the largest range of types of procurement documents was found for MRWA projects, this range was uneven across the five construction projects.

NSW RMS is at one end of the open public access range providing some procurement documents for 100% of the 10 projects reviewed. QTMR is at the other end of the scale with a complete absence of available re-usable researcher procurement documents. MRWA is an example of the middle ground: 50% of projects have downloadable procurement documents and 50% of the projects only have summaries available.

Information about PSI available on road department Internet sites provides a clue of how to make sense of the variability of road procurement document availability. All websites in the first quarter of 2014 provided information concerning their state legislation concerning public information availability (DFD 2010; NSW RMS, 2014; MRWA 2014; QTMR 2014). Application of this type of legislation is useful to explain similarities and differences in transport department website implementation of the Open Public Sector Information Principles found during the archival searches.

### NSW RMS: open access policy

Some but not all procurement documents were available for each of the 10 named RMS projects. Of all the types of procurement documents, *Contracts* were the most difficult to gain access to on all the state transport department websites. However, persistence and random searches enabled the discovery and access to NSW RMS procurement *Contracts* for 80% of the named projects. What explains this?

Freedom of Information Act 1989 (NSW) has been in place for over a quarter of century. It allows the public a general right of access to public documents. It appears that the FOI Act supports a NSW RMS open data policy by satisfying Open PSI Principle 1 that sets basic access to PSI as a default policy. However, access to a document is only available through an application under the FOI Act and this usually involves a fee (Open PSI Principle 7). In addition to this monetary restriction (buying research documents can be a limiting factor for researchers), a document can be exempt from access if it discloses confidential business information (Janssen et al. 2012).

The fact that contracts divulge confidential business information may be why they are difficult to find generally. So what accounts for their public availability on the NSW RMS website? The NSW Government Information Act 2009 claims that it is the agency's responsibility to ensure that construction contracts enable the agency to have an immediate right of public access to the information contained in public records held with the contractor. This obviously provides an explanation why it is possible to find more NSW RMS road construction contracts than for either MRWA or QTMR.

Additionally, other NSW legislation supports Open PSI Principles 4 and 5 through effective information asset management and by enabling the discovery and usage of PSI. The State Records Act 1998 (NSW) outlines rights to access archived documents; a record is considered 'open' if it is at least 30 years since it came into existence. The NSW RMS sample projects were not more 30 years old, but all projects had been completed.

Also, project cost seems to affect the presence/absence of re-usable data since procurement documents are only accessible for projects with a 'major works' classification. The Government Information (Public Access) Act 2009 (NSW) states that agencies must provide access to PSI regarding state classification of works including access to the raw data, i.e. class 3 contracts (major works). Hence, the open data policy of NSW RMS does provide open public access to major infrastructure procurement projects contracts, but it also maintains confidentiality of smaller projects in line with the FOI exceptions.

However, having contracts for 80% of projects, and EIAs for five projects, is far from having the basic five procurement documents necessary for a comparative analysis of publicly funded road projects.

### **MRWA: medium access policy**

There is no mention of 'public information access policy' on the WA website (January 2013-May 2015). The legislation governing Public Sector Information in Western Australia is only linked to: Freedom of Information Act 1992 (WA) and State Records Act 2000 (WA). These Acts appear to have the same objectives as the NSW Acts with the same limitation of 30 years and fee for service on requested non-restricted government documents.

Some procurement documents for road construction projects may be published on the WA Tenders website (which is the state procurement portal) but the portal is only open to registered suppliers. However, MRWA online does provide mainly secondary

research data such as works project summaries which does not divulge confidential business information. Five of the named roads projects in this study had one or more of these types of basic procurement documents (EIA, EOI, RFP, RFT). However, the question remains as to why all types of documents for all road construction projects are not available for researcher re-use (Burton et al. 2012) as per Open PSI Principles 1 and 6. It is possible that the complexity of creating e-government accessibility is currently a barrier (Kenley and Harfield 2013) and all Western Australia government departments will in future comply with the Open PSI Principles.

### **QTMR: closed access policy**

There was a total absence of publicly available procurement documents for specific road projects on the QTMR website for this study. It is possible that these documents will be available closer to the 30 year date as set out in the Public Records Act 2002 (QLD). However, in July 2009 the *Right to Information Act 2009* replaced the *Freedom of Information Act 1992*. The change was, in part, to change the public access model to one of 'routine release of information' (QTMR 2013).

However, in early 2014 QTMR tender information and documentation was still only available with a login and password, issued by Queensland Government Chief Procurement Office. From 2009, pre-contract procurement documents (EOI, EIA, RFP, RFT) should have been available in accordance with the Open PSI agenda. However, the QTMR *Open Data Strategy Report* (2013) states that data will remain restricted due to issues of confidentiality, despite claims to make primary data available for re-use by researchers.

It appears that in Queensland theory and practice are aligned. Because Open PSI Principles 1 and 5, specifying basic open access to information as a default position, are not satisfied, it is difficult to know if any other Open PSI Principles have not been implemented. Therefore, the primary data sources for construction management researchers, construction procurement documents, must remain un-examined. However, the issue of lack of accessibility of public sector information comparative source material is not confined to Australia. In their review of international construction procurement, Ruparathna and Hewage (2014) were unable to access procurement documents to use in their research.

### **CONCLUSION**

In 2010 the Australian Commonwealth Government indicated public information was a national resource in the Declaration of Open Government (DFD 2010) based on an e-government Internet-based platform. The Australian Office of the Information Commissioner (AOIC) has oversight of implementation processes allowing public access to data sets paid for by all levels of government.

For effective analysis of government infrastructure construction projects, construction management researchers need access to re-usable Public Sector Information (PSI) documents related to the procurement process. These five commonly used documents generated by public transport departments would provide re-useable comparative data sets for construction management researchers: *Environmental Impact Assessment*, *Expression of Interest*, *Request for Proposal*, *Request for Tender*, and *Contract*.

At the time of this study, access to government produced road construction procurement documents are most easily accessed from NSW RMS. On the other hand Main Roads WA provided downloadable client procurement documents for only five of the ten road projects investigated. No complete (only summaries) downloadable QTMR project procurement documents are available to researchers, these types of documents appear to only be available for registered suppliers.

One way of making sense of restricted access to road procurement documentation, is by suggesting that interpretation of legislation governing government records management and public accesses to government documents provides insight into the open information re-use policies of these transport departments. In contrast, QTMR appears to have adopted a stricter interpretation of the legislative requirements of Public Sector Information, and thus has the most restrictive public data re-use policy. QTMR appears to completely ignore AOIC Open PSI Principle 1 “open access to information is the default position”. This policy seems to contradict incentives such the Queensland Premier’s Awards for Open Data for “the innovative use of publicly released Queensland Government data”.

From this pilot study, is a simple and comprehensive recommendation that all Australian state transportation departments review their current Open PSI status to ensure that Open PSI Principle 1 moves from theory into practice. Access of basic procurement documents for construction management scholars could be the first step in changing their Public Sector Information practices. An expansion of this pilot study, taking into account the upgrading of process and procedures to support the Open Public Sector Information agenda, will lead to more specific recommendations for improved open data practices to support construction management research.

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