



Ms Evelyn Doyle

Via email: foi+request-1024-72b26701@righttoknow.org.au

Dear Ms Doyle

FREEDOM OF INFORMATION REQUEST

I refer to your application received by the Justice and Community Safety Directorate on 19 March 2015, in which you sought access, under the *Freedom of Information Act 1989* (the FOI Act), to a copy of the KPMG Report to the Public Trustee for the ACT (PTACT).

I am the officer authorised under section 22 of the Act to make a decision in relation to your request.

Although the FOI Act facilitates the objective of public access to documentation, the release of information is subject to a number of exemption provisions. In this instance, I am claiming full exemption for the information you have requested, in accordance with the following sections of the FOI Act.

Section 36 Internal working documents

Section 36 provides that:

(1) *A document is an exempt document if its disclosure under this Act –*

- (a) *would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency or Minister or of the Territory.*

The KPMG report you have requested was commissioned to inform the deliberative process by providing recommendations in relation to the control methodologies in use at the Public Trustee's office. It is not in the public interest for this information to be released as disclosure may reasonably be expected to diminish the effectiveness of the control methodologies described, thereby jeopardising the ability of the Public Trustee to provide services to the community.

Section 37 Documents affecting enforcement of the law and protection of public safety

Section 37 provides that:

A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to –

- (1)(a) *prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance.*
- (2)(a) *prejudice the fair trial of a person or the impartial adjudication of a particular case.*

The report you have requested contains details that relate to an ongoing police investigation. Disclosure of the report at this stage has the potential to prejudice the proper conduct of this investigation and any potential future legal proceedings. Furthermore as this matter is subject to media interest, the release of related documents under FOI has the potential to generate further public attention that may reasonably be expected to prejudice the fair and impartial adjudication of the case in question should it go to trial.

Section 40 Documents concerning certain operations of agencies

Section 40 provides that:

- (1) *A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*
- (a) *prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*
 - (c) *have a substantial adverse effect on the management or assessment of personnel by the Territory or by an agency;*
 - (d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

Release of the document you have requested could reasonably be expected to prejudice the agency's auditing and review capabilities, thereby compromising its ability to obtain effective assurance from such processes in the future. In particular I note that disclosure of this information could lead to a reduction in the frankness and candour of staff participating in similar reviews and it is in the public's interest for such mechanisms to be fully effective. The disclosure of the control methods detailed in the report may also prejudice any future audits by revealing avenues to avoid detection.

Exemption has also been claimed for information where it could reasonably be expected to have a substantial adverse effect on the management of personnel. In particular, I note that staff participating in the KPMG review were given a confidentiality undertaking prior to interview. Disclosure of the information they provided may therefore reasonably be seen as a breach of trust and cause a detriment to staff morale and functioning.

Information is also exempt from release where its release could reasonably be expected to have a substantial adverse effect on the proper and efficient operations of the ACT Public Trustee's Office. This includes information on internal financial, operational and fraud control procedures currently in use, or proposed for use at PTACTION. As outlined previously, disclosure of this information could seriously compromise the effectiveness of these procedures by revealing mechanisms for the circumvention of assurance controls.

Section 43 Documents relating to business affairs

Section 43 provides that:

- (1) *A document is an exempt document if its disclosure under this Act would disclose:*
- (c) *information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, being information –*

- (i) *the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect to its lawful business, commercial or financial affairs;*
- (ii) *the disclosure of which under this Act could reasonably be expected to prejudice the future supply of information to the Territory or an agency for the purpose of the administration of a law or the administration of matters administered by an agency.*

The review referenced in your request was undertaken by a third party service provider. Public release of this report has the potential to damage the commercial interests of the third party provider by compromising its ability to obtain information of a similar confidential nature from current or prospective interviewees.

Section 45 Documents containing material obtained in confidence

Document 45 provides that:

- (1) *A document is an exempt document if its disclosure under this Act would constitute a breach of confidence.*

As previously advised, information was provided to the KPMG review team with an expectation of confidentiality. This content has therefore been exempted as release would constitute a breach of confidentiality.

I have also assessed your request for information under the ACT Government's Online Freedom of Information Publication Policy and have determined that the documents relevant to your request **will not** be published online once the processing of your request is completed. For more information about the ACT Government's Online Freedom of Information Publication Policy, visit http://www.cmd.act.gov.au/open_government/report/freedom_of_information_online

You have a right to seek a review of the outcome of this FOI under section 59 of the Act. You have 28 days from the date of this letter, or such other period as the Director-General permits, to seek a review. This right of review extends to a review of the adequacy of the search for documents undertaken by the Directorate. If you wish to seek a review you should write to:

The Director-General
ACT Justice and Community Safety Directorate
C/- Freedom of Information Officer
GPO Box 158
CANBERRA ACT 2601

You also have the right to contact the Ombudsman regarding the processing of your request. If you wish to discuss this matter with the Ombudsman you should write to:

The Ombudsman
GPO Box 442
CANBERRA ACT 2601

If you have any queries concerning this Directorate's processing of your request, or would like further information, please contact the FOI Coordinator, Ms Lauren Callow on 6207 2167.

Yours sincerely

A handwritten signature in black ink, appearing to read 'V Parker', with a horizontal line underneath.

Vicki Parker
Deputy Director General, Justice
Justice and Community Safety Directorate

18 May 2015