

From: [Alex](#)
To: [FOI](#)
Subject: Freedom of Information request - PID investigation report prepared by Kate McMullan, acting assistant commissioner integrity, performance and employment policy
Date: Sunday, 8 May 2022 1:10:00 PM

Dear Australian Public Service Commission,

As you would be aware, several articles were published in The Australian about an investigations conducted under the Public Interest Disclosure Act 2013 by Kate McMullan. You would also be aware that there has been considerable interest in those articles and the allegations contained in those articles because the APSC has received many FOI requests for documents relating to Ms McMullan's investigation.

The articles contain allegations of unlawful activities engaged in by senior officials in the Federal Court Statutory Agency. They appear to relate primarily to acts of patronage or of cronyism, both of which are unlawful.

According to the articles, two unmeritorious candidates were selected for the role of National Registrar in the Federal Court.

Through the FOI process, the identity of one of those National Registrars has been confirmed. The female National Registrar, who Ms McMullan concluded had been promoted in contravention of the Public Service Act, is Ms Caitlin Wu. The Federal Court granted access to her promotion notice on this website:

https://www.righttoknow.org.au/request/untried_lawyers_score_key_positi_2#incoming-25203

On 7 March 2022 Ms Giorgina Strangio, the assistant commissioner integrity, performance and employment policy, granted access to a redacted copy of the investigation report prepared by Kate McMullan as part of her PID investigation.

It is a ten page document.

Most of the content has been redacted.

Given that it is now clear that part of that PID report relates to Ms Wu and the way that she was promoted, I think it would no longer be appropriate to deny access to the part of the report that deals with Ms McMullan's findings about Ms Wu and, in particular, about the three people who selected Ms Wu, according to Ms McMullan, "over a field of candidates all of whom did have [the essential] work-related quality", that quality being admission as a legal practitioner.

It is hard to believe that a person who was not a legal practitioner could be selected by the selection committee to, among other things, exercise judge delegated functions when every single other candidate was an admitted legal practitioner. It is also clear the Ms Wu was elevated from an APS4 position into an EL1 position overnight. It is hard not to conclude that the promotion was not affected by some form of patronage or cronyism.

I appreciate that the report is a report prepared pursuant to the Public Interest Disclosure Act 2013, but that alone is not enough to remove it from the scope of the FOI Act.

Given that:

- a) key passages from Ms McMullan's PID report have been published in a national newspaper, particularly in respect of her findings that Ms Caitlin Wu was not selected on her merits and that the persons who selected her (Ms Sia Lagos, Mr David Pringle and Ms Andrea Jarratt) contravened the Public Service Act 1999 in selecting an unmeritorious candidate;
- b) the identify of the promoted National Registrar is now beyond any doubt (i.e. Caitlin Wu);
- c) it is apparent that Ms McMullan made serious errors during her investigation (this is known not only because the PID investigation is, by Ms Strangio's own admission, now the subject of a (Category 4) investigation by the Commonwealth Ombudsman, under section 8 of the Ombudsman Act 1976, but also because there are printed passages from Ms McMullan's report that are plainly wrong - for example, her claims that there were no

contraventions of law because a "role review" process had been undertaken, which broadbanded a role over the Executive Level 2 and Senior Executive Band 1 classifications bands, which is plainly contrary to law (see subrules 9(4) and 9(5) of the Public Service Classification Rules 2000)); and
d) the people who selected Ms Wu, Ms Lagos, Mr Pringle and Ms Jarratt, are still in the employ of the Commonwealth (in the case of Ms Lagos and Mr Pringle, they are, respectively, now the CEOs and Principal Registrars of the Federal Court of Australia and Federal Circuit and Family Court of Australia),

the PID report should be made available to the public.

Ms McMullan's errors cannot be permitted to go without public scrutiny.

Ms McMullan was charged with a very special role under one of the Commonwealth's most important items of integrity legislation and it appears that Ms McMullan has stitched up the investigation and let some very senior people at the Federal Court off the hook for what would amount to conduct that would lead to the termination of ordinary members of the APS. There is no federal integrity commission, so investigations under the Public Interest Disclosure Act have an especial importance in monitoring and eliminating corruption and unlawfulness in the Australian Public Service. Ms McMullan plainly breached the trust reposed in her by the Parliament to conduct a lawful investigation. Her investigation was plainly inadequate and the APSC should not try and protect her. Also, if the APSC is serious about PID investigations and integrity, it will voluntarily face up to the errors committed by Ms McMullan and allowed to go unresolved for the last 18 or so months.

Based on some of the FOI decisions that have been made and published on this website by officials in the APSC, I suspect that the APSC is going to fight tooth and nail to withhold access to that PID report. I think that is sad because decisions must be made dispassionately, according to law, and without regard to the embarrassment that it is likely to cause the APSC or the Commonwealth. Nevertheless, I am prepared to "play the long game" and ensure that this request, if not dealt with according to law, be considered by the Information Commissioner according to the terms of the FOI Act.

References to IC review decisions about other PID related matters are of little relevance in this instance. In those instances, there are no suggestions that the investigators made impermissible errors of law or so thoroughly messed up the PID investigations. Nor were those PID related matters the subjects of public commentary in a national newspaper (it would very much appear that the disclosure of that information to the journalists at The Australian was made according to the terms of the PID Act, under the external disclosure provisions of the PID Act). Your decision must, among other things, be made by reference to the context of this request, the document requested, and the information already in the public domain. Each FOI request must be dealt with according to its own terms and by reference to the relevant considerations that are unique to each case.

Under the FOI Act I request access to the ten page PID report, which was prepared by Ms McMullan and finalised on 9 December 2020, in relation to allegations of misconduct by senior officials in the Federal Court Statutory Agency

For the purposes of this FOI request, I only want access to that part of the PID report that deals with the allegations of misconduct relating to Ms Wu's promotion and the consequences of that promotion (e.g. what Ms Wu suggests should happen to those who unlawfully selected Ms Wu).

Please do not redact the names of the person who was promoted contrary to law as well as those to promoted her.

You may redact other parts of the PID report for the purposes of this FOI request.

Yours faithfully,

Alex

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xxxxxxxxxxxxxxxxxxxxxxxxxxxx@xxxxxxxxxx.xxx.xx

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