



**ACT**  
Government

Justice and Community Safety

JACS2021/200

██████████  
Via email: ██████████

Dear ██████████

### **DECISION ON FREEDOM OF INFORMATION ACCESS APPLICATION**

I refer to your application under the [Freedom of Information Act 2016](#) (the Act), received by the Justice and Community Safety (JACS) Directorate on 22 January 2021 in which you sought access to the KPMG Report to the Public Trustee for the ACT for a review undertaken in 2014.

As advised on 11 February 2021, the legislated due date for the response is 15 March 2021, allowing for third party consultation. This has now been finalised.

#### **Authority**

I am an Information Officer appointed by the Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

#### **Decision**

I have identified one document containing information within the scope of your access application.

I have decided to refuse access to the information. Please see the reasons outlined in the 'reasons for decision' at [Attachment A](#).

#### **Online publishing – disclosure log**

Under section 28 of the Act, JACS maintains an online record of access applications called a disclosure log. My decision will be published on the JACS disclosure log no later than 10 days after the decision. Your personal contact details will not be published.

You may view the JACS' disclosure log at: <http://www.justice.act.gov.au/page/disclosure-log>

#### **Ombudsman review**

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in the JACS disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman  
GPO Box 442  
CANBERRA ACT 2601

Via email: [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au)

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The review of decision application form is available at:

[https://www.ombudsman.act.gov.au/data/assets/pdf\\_file/0026/79190/Apply-for-Ombudsman-review.pdf](https://www.ombudsman.act.gov.au/data/assets/pdf_file/0026/79190/Apply-for-Ombudsman-review.pdf)

### **ACT Civil and Administrative Tribunal (ACAT) review**

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision.

Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal

Level 4, 1 Moore St

GPO Box 370

Canberra City ACT 2601

Ph: (02) 6207 1740

<http://www.acat.act.gov.au/>

If you have any queries concerning the Directorate's processing of your request, or would like further information, please contact JACS FOI via [jacsfoi@act.gov.au](mailto:jacsfoi@act.gov.au) or phone 6207 2167.

Yours sincerely



Bianca Kimber

A/g Parliamentary Counsel

15 March 2021

## Attachment A – Reasons for decision

### 1. Material considered

In reaching my decision, I considered:

- your original access application
- the criminal proceedings relating to two former employees has concluded
- the document containing the information that falls within the scope of your access application
- the views of a third party
- *Freedom of Information Act 2016*

### 2. Reasons for my decision

As a decision maker, I am required to determine whether the information within scope is in the public interest to release. To make this decision, I am required to:

- assess whether the information would be contrary to public interest to disclose as per Schedule 1 of the Act
- perform the public interest test as set out in section 17 of the Act by balancing the factors favouring disclosure and factors favouring non-disclosure in Schedule 2

I have included below the factors relevant to my decision on access.

#### 2.1. Public interest test

I have assessed the information against the factors favouring disclosure and factors favouring non-disclosure in Schedule 2. On balance, I have decided that it would be contrary to the public interest to disclose the information. I have included below the relevant factors for your information.

##### 2.1 Factors favouring disclosure in the public interest

- (a) disclosure of the information could reasonably be expected to do any of the following:
  - (i) promote open discussion of public affairs and enhance the government's accountability;
  - (iii) inform the community of government's operations, including the policies, guidelines and codes of conduct followed by the government in its dealing with members of the community;
  - (v) allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or public official.

##### 2.2 Factors favouring nondisclosure in the public interest

- (a) disclosure of the information could reasonably be expected to do any of the following:
  - (xi) prejudice trade secrets, business affairs or research of an agency or person;
  - (xii) prejudice an agency's ability to obtain confidential information;

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- (xiii) prejudice the competitive commercial activities of an agency;
- (xv) prejudice the management function of an agency or the conduct of industrial relations by an agency;
- (xvii) prejudice the effectiveness of testing or auditing procedures.

The report referenced in your request was undertaken by a third party service provider (KPMG). Information for the report was gathered from interviewees and witnesses as part of an investigation by KPMG, and on the understanding that the information would be kept confidential. I have placed significant weight on the confidentiality of the information in the report and the expectation of confidentiality with which it was given.

The public release of this report has the potential to damage the commercial interests of KPMG, including its ability to undertake research, by compromising its ability to obtain confidential information from current or prospective interviewees and witnesses for similar investigations.

I consider that the release of the information, and breach of confidentiality that would result, has the potential to undermine the Public Trustee and Guardian's (PTG) ability to obtain confidential information from staff, service providers or clients when undertaking similar investigations in the future. It may also undermine the ability of the Justice and Community Safety Directorate to obtain procurement and other confidential information from future suppliers.

The report contains detailed information about control methods used to identify and detect fraudulent activity within PTG. The release of the report has the potential to prejudice the effectiveness of future testing or auditing to identify fraudulent activity in PTG and its management function by providing information that could be used to circumvent controls and avoid detection.

### **3. Summary of my decision**

In conclusion, I have decided to refuse access to the report as the release of this information is not within the public interest.