

Thompson, Corinne

From: Thompson, Corinne on behalf of CMTEDD FOI
Sent: Wednesday, 22 February 2017 3:45 PM
To: pball@kpmg.com.au
Subject: HPRM: Notice of Consultation on Freedom of CMTEDD 5 [SEC=UNCLASSIFIED]
Attachments: Consultation Letter to KPMG.pdf

Dear Mr Ball

Please find attached a letter from Mr Peter Murray, Executive Director of Infrastructure Finance and Advisory, notifying you of consultation on a Freedom of Information request received by the Directorate.

Please note that the letter seeks a response from you by **7 March 2016**. If additional time is required to respond to the letter, please contact me as soon as possible to discuss.

Thank you.

Regards

Corinne Thompson | [Project Officer](#) | Governance

Corporate Management | Phone: +61 2 6207 3743 | Email: corinne.thompson@act.gov.au

Chief Minister, Treasury and Economic Development Directorate | **ACT Government**

Level 2, Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

Please consider the environment before printing this email. If printing is necessary, print double-sided and black and white.



Our ref: 53/16-17

Mr Peter Ball
Partner Advisory
KPMG Brisbane
71 Eagle St
BRISBANE CITY QLD 4000

Via email: pball@kpmg.com.au

Dear Mr Ball

Notice of Consultation on Freedom of Information Request

The Chief Minister, Treasury and Economic Development Directorate (CMTEDD) has received a request under the *Freedom of Information 1989 Act* (the Act) for access to advice provided to the Directorate by KPMG, specifically concerning infrastructure advisory services for Australia Forum.

In complying with the applicant's request, the Directorate has identified the "Australia Forum Strategic and Delivery Options Analysis" final report March 2016 as falling within the scope of the request. This was provided to CMTEDD by Mary Brady of KPMG by email on 3 March 2016.

I am authorised under section 22 of the Act to make decisions on access to documents. Prior to making my release decision, I am seeking your views on the release of the listed documents.

Section 27 of the Act provides for a consultation process when a document, identified as falling within the scope of a request, contains information concerning a person in respect of the person's business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking. The proprietor of the business may reasonably wish to contend that the documents (or portions of documents) are exempt under section 43 of the Act.

Where disclosure of a document would involve the unreasonable disclosure of an individual's business or professional affairs, or concerning the business, commercial, or financial affairs of an organisation or undertaking, that document (or portion) could be deemed exempt from disclosure under section 43 of the Act (copy of the exemption provision attached).

In order to justify use of the exemption provisions available under section 43, I need to establish that disclosure would:

- reveal trade secrets; or
- reveal information having a commercial value which could be, or could reasonably be expected to be, destroyed or diminished if disclosed; or
- have an adverse effect on the operation or activities of a business or supply of information to government.

If you consider that your business may be adversely affected by the public release of the "Australia Forum Strategic and Delivery Options Analysis" final report March 2016, please support your conclusions with sufficient reasons (in line with the above mentioned provision) to enable me to make an informed decision on whether to claim an exemption for that information and substantiate that claim to the applicant.

Please note that the mere assertion that release of the documents without your consent would be unreasonable is not sufficient to sustain exemption of the information from disclosure under the Act.

Section 21 of the Act allows information to be deleted where it is exempt and for the rest of the document to be disclosed. Please address the question of whether the deletion of sensitive information from the documents could eliminate or substantially reduce any objections you might have to release.

Although I am not bound by the contentions you may make, I shall give them careful consideration. Should I not accept your objections, you will be advised of your review rights and how you may continue to object disclosure prior to any public release.

Online Freedom of Information (FOI) Policy

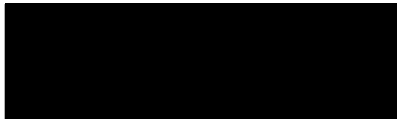
Please be aware that under the ACT Government's Online FOI Publication Policy, information released in response to an FOI request may be published on the internet. The policy, with details about what information may be published on the internet, is available at: http://www.cmd.act.gov.au/data/assets/pdf_file/0016/250333/FOI_Web_Release_Policy_-_Final.pdf.

What to do next

In order that I may meet my obligations under the Act, to make a decision regarding this request within the specified timeframe, I would appreciate it if you could provide your comments by **Tuesday, 7 March, 2017**. Please forward any comments to CMTEDDFOI@act.gov.au.

If I have not received comments by 7 March, 2017 I shall assume that you have no objection to the disclosure of your business information and I shall make my decision on that basis. Should you have any enquiries concerning this matter please do not hesitate to contact Ms Kylie Bailey on (02) 620 54994 or contact the CMTEDD FOI Coordinator on (02) 620 78175.

Yours sincerely



Peter Murray
Executive Director
Infrastructure Finance and Advisory

21 February 2017

Thompson, Corinne

From: Ball, Peter G <pball@kpmg.com.au>
Sent: Thursday, 23 February 2017 8:32 AM
To: CMTEDD FOI
Subject: HPRM: RE: Notice of Consultation on Freedom of CMTEDD 5 [SEC=UNCLASSIFIED]

Thanks Corinne we will respond accordingly.

Kind regards

Peter G Ball

Partner
Advisory

KPMG
Riparian Plaza
71 Eagle Street
Brisbane QLD 4000 Australia

Tel + 7 3233 9449
Fax + 7 3233 3100
pball@kpmg.com.au

kpmg.com.au



From: Thompson, Corinne [mailto:Corinne.Thompson@act.gov.au] **On Behalf Of** CMTEDD FOI
Sent: Wednesday, 22 February 2017 2:45 PM
To: Ball, Peter G <pball@kpmg.com.au>
Subject: Notice of Consultation on Freedom of CMTEDD 5 [SEC=UNCLASSIFIED]

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Thank you.

Regards

Corinne Thompson | Project Officer | Governance

Corporate Management | Phone: +61 2 6207 3743 | Email: corinne.thompson@act.gov.au

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Thompson, Corinne

From: Brady, Mary G <mgbrady@kpmg.com.au>
Sent: Thursday, 23 February 2017 11:40 AM
To: Thompson, Corinne
Subject: FW: Notice of Consultation on Freedom of CMTEDD 5 [SEC=UNCLASSIFIED]
Attachments: Consultation Letter to KPMG.pdf

Hi Corinne

Thank you for your information regarding the Freedom of Information request on the Australia Forum report. Please note that 2 other organisations also provided information for the report. These organisations were Populous (architects) and Wilde and Woollard (Quantity Surveyors). You might like to contact these organisations directly for their comments. We will provide further comments on the report next week.

Thanks for your assistance.

Regards

Mary

Mary Brady

Senior Manager
Management Consulting

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Riparian Plaza
71 Eagle Street
Brisbane QLD 4000 Australia

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Fax +61 7 3233 3100

Mob 0409 629 817

mgbrady@kpmg.com.au

From: Thompson, Corinne [<mailto:Corinne.Thompson@act.gov.au>] **On Behalf Of** CMTEDD FOI

Sent: Wednesday, 22 February 2017 2:45 PM

To: Ball, Peter G <pball@kpmg.com.au>

Subject: Notice of Consultation on Freedom of CMTEDD 5 [SEC=UNCLASSIFIED]

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Corinne Thompson | [Project Officer](#) | Governance

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Thompson, Corinne

From: Hulme, Spencer <shulme@kpmg.com.au>
Sent: Tuesday, 7 March 2017 8:56 AM
To: CMTEDD FOI
Cc: Thompson, Corinne
Subject: HPRM: RE: Notice of Consultation on Freedom of CMTEDD 5 [SEC=UNCLASSIFIED]
Attachments: Microsoft Word - 49042511_2.pdf

Dear Colleagues

Please refer to the **attached** correspondence.

Regards

Spencer Hulme

Manager - Legal Counsel
Office of General Counsel

KPMG
International Towers Sydney 3
300 Barangaroo Avenue
Sydney NSW 2000 Australia

Tel +61 2 9335 8626
shulme@kpmg.com.au

kpmg.com.au



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Sent: Wednesday, 22 February 2017 2:45 PM
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Please note that the letter seeks a response from you by **7 March 2016**. If additional time is required to respond to the letter, please contact me as soon as possible to discuss.

Thank you.

Regards

Corinne Thompson | **Project Officer** | Governance

Corporate Management | **Phone:** +61 2 6207 3743 | **Email:** corinne.thompson@act.gov.au

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Peter Murray
 Executive Director
 Chief Minister, Treasury and Economic
 Development Directorate
 GPO Box 158
 Canberra ACT 2601

Your ref CMTEDD 53/16-17

Our ref 49042511_1

By email

CMTEDDFOI@act.gov.au

7 March 2017

Dear Mr Murray

Request for Documents under the Freedom of Information Act 1989 - Australia Forum

We refer to your letter to Mr Peter Ball of KPMG dated 21 February 2017 informing KPMG that the Chief Minister, Treasury and Economic Development Directorate (**CMTEDD**) has received an application under the *Freedom of Information Act 1989* (ACT) (the **Act**) for:

“access to advice provided to the Directorate by KPMG, specifically concerning infrastructure advisory services for Australia Forum” (the **Application**).

Your letter identified one document provided by KPMG which CMTEDD considered to fall within the scope of the Application: the “Australia Forum Strategic and Delivery Options Analysis” final report March 2016 (the **Final Report**). KPMG was invited to inform CMTEDD whether it objected to the release of this document.

KPMG objects to the disclosure of the Final Report to the extent that:

- (a) it contains information concerning KPMG’s business affairs and disclosure would adversely affect KPMG’s commercial affairs; and
- (b) it contains commercially valuable information.

Objection under section 43 of the Act – documents relating to business affairs

Data Provided by the National Convention Centre Canberra (NCCC)

KPMG objects to the disclosure of the Final Report under section 43(1)(c) of the Act as it would unreasonably and adversely affect KPMG’s business affairs if disclosed. Specifically, the disclosure of the following sections of the Final Report (**NCCC Data Sections**) would expose KPMG unreasonably to a disadvantage to its business, commercial and financial affairs:

- (1) Chapter 3 “Market and Demand Analysis” and;
- (2) Chapter 5.1 “Financial Analysis”.

KPMG notes that:

- (a) the analysis contained within the NCCC Data Sections is based on information that was provided directly to KPMG and is not publicly available; and
- (b) the information contained in the NCCC Data Sections is of commercial value to KPMG and its competitors. The disclosure of the information contained in the NCCC Data Sections could give KPMG’s competitors a competitive advantage.

KPMG objects to the disclosure of the NCCC Data Sections by reference to public interest considerations on the basis that any factors in favour of access are not outweighed by the adverse effect upon KPMG. KPMG submits that the unreasonable effect on its business affairs through disclosure of the NCCC Data Sections supports non-disclosure under section 43(1)(c) of the Act.

If CMTEDD is minded to disclose the Final Report, KPMG submits that the NCCC Data Sections should be redacted in accordance with section 21 of the Act.

Methodology

KPMG objects to the disclosure of the Final Report under section 43(1)(b) of the Act to the extent that it contains information having commercial value that would be significantly diminished if disclosed. Specifically, the following sections (**Methodology Sections**) of the Final Report contain KPMG’s commercially valuable methodology, disclosure of which would destroy or diminish the value in that information if disclosed:

- (1) Chapter 4 “Governance and Delivery Models” and the associated Appendix C; and
- (2) Chapter 5.3 “Risk Analysis” and the associated Appendix B.

The Methodology Sections contain information relating to KPMG’s methodologies and specialist industry knowledge. The Methodology Sections set out KPMG’s analysis, details of issues considered to be material by KPMG in reaching conclusions and details of how KPMG reached those conclusions. KPMG considers that there is significant commercial value to KPMG in retaining sole knowledge of:

- (a) the methodologies and approaches it adopts; and
- (b) the analysis and research it utilises, collates or conducts.

KPMG seeks to protect the value in the above information through confidentiality obligations and restrictions on the distribution of its reports, including the Final Report. Those obligations and restrictions seek to protect KPMG’s commercially valuable information in the Final Report.

Further, KPMG does not have the benefit of access to its competitors’ reports for such engagements, which are also of a confidential nature. Disclosure of the Methodology Sections could assist KPMG’s competitors to structure or improve their service offerings, or permit

competitors to utilise information collated by KPMG or methodologies applied by KPMG by reference to the Methodology Sections. Disclosure in this way would significantly diminish the commercial value of the information. That, in turn, would likely prejudice KPMG's ability to bid competitively for future engagements of this nature and unreasonably affect KPMG's business.

If CMTEDD is minded to disclose the Final Report, KPMG submits that the Methodology Sections should be redacted in accordance with section 21 of the Act.

Public Interest

A significant public interest factor against disclosure is that should CMTEDD in the future agree to a process that involves third parties, such as KPMG or the other large professional services firms, those third parties may be reticent to agree to assist if a document such as the Final Report may be disclosed. If the Final Report were disclosed in entirety, such third parties may be concerned, legitimately, that their commercially valuable information and methodologies will not receive appropriate protection. The implications of disclosure may restrict CMTEDD's ability to perform its role.

KPMG maintains that the disclosure of the NCCC Data Sections and the Methodology Sections is not justified by reference to public interest considerations on the basis that any factors in favour of access are not outweighed by the public interest factors against disclosure and the adverse effect upon KPMG. KPMG submits that the unreasonable effect on its business affairs through disclosure of the NCCC Data Sections and the Methodology Sections supports non-disclosure under section 43 of the Act.

If you have any questions regarding KPMG's position please contact Spencer Hulme on (02) 9335 8626.

Yours sincerely



James McClelland
Deputy General Counsel,
Disputes

Thompson, Corinne

From: OBrien, Deidre on behalf of CMTEDD FOI
Sent: Tuesday, 7 March 2017 9:32 AM
To: Hulme, Spencer
Subject: HPRM: RE: Notice of Consultation on Freedom of CMTEDD 5 [SEC=UNCLASSIFIED]

Good morning Mr Hulme

I have passed your correspondence on to the decision maker for this FOI request for consideration.
 Kind regards

Deidre O'Brien

Project Manager, Governance
 Freedom of Information and Privacy Contact Officer
 Phone 02 620 78175 | Fax 02 620 75886
 Corporate Management | Chief Minister, Treasury and Economic Development Directorate | ACT Government
 Level 2, Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

From: Hulme, Spencer [mailto:shulme@kpmg.com.au]
Sent: Tuesday, 7 March 2017 8:56 AM
To: CMTEDD FOI
Cc: Thompson, Corinne
Subject: RE: Notice of Consultation on Freedom of CMTEDD 5 [SEC=UNCLASSIFIED]

Dear Colleagues

Please refer to the **attached** correspondence.

Regards

Spencer Hulme
 Manager - Legal Counsel
 Office of General Counsel

KPMG
 International Towers Sydney 3
 300 Barangaroo Avenue
 Sydney NSW 2000 Australia

Tel +61 2 9335 8626
shulme@kpmg.com.au

kpmg.com.au



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Sent: Wednesday, 22 February 2017 2:45 PM
To: Ball, Peter G <pball@kpmg.com.au>
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From: Thompson, Corinne on behalf of CMTEDD FOI
Sent: Wednesday, 22 March 2017 4:15 PM
To: Hulme, Spencer
Subject: HPRM: Further advice - Notice of Consultation on Freedom of CMTEDD 53/16-17 [SEC=UNCLASSIFIED]
Attachments: Document - AusForum - KPMG Report Strategic and Delivery Options Analysis (Sections 1 and 2).pdf

Dear Mr Hulme

With reference to your email below, I am writing to advise that Mr Murray considered KPMG's response to his Notice of Consultation on a Freedom of Information request (FOI) received by the Directorate. He decided to release the attached extract from the Australia Forum report to the FOI applicant.

Regards

Corinne Thompson | **Project Officer** | Governance

Corporate Management | Phone: +61 2 6207 3743 | Email: corinne.thompson@act.gov.au

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Spencer Hulme

Manager - Legal Counsel
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