

Mr Philip Charles Walker

MONA VALE NSW 2103

By email: calalkarma@gmail.com

Application for access to government information

Dear Mr Walker

I refer to your application made under the *Government Information (Public Access) Act 2009* (the GIPA Act) to Service NSW dated 3 May 2017, and received by the Department of Premier and Cabinet (the Department) by way of an agency-initiated transfer on 11 May 2017, requesting access to:

“Report by Consultancy KPMG – Analysis & Modelling on Council Mergers”.

Decision about access

I have today decided your application by:

- deciding that the information described in Annexure A is publicly available, pursuant to section 58(1)(c) of the GIPA Act;
- deciding to refuse access to the records described in Annexure B because there is an overriding public interest against disclosure, pursuant to section 58(1)(d) of the GIPA Act; and
- deciding that certain information as described below is not held by the Department, pursuant to section 58(1)(b) of the GIPA Act.

Scope of application

I have interpreted your application as seeking a report by KPMG providing analysis and modelling in relation to the proposed mergers of the New South Wales local councils. Draft documents have been interpreted as outside the scope of your application.

Statement of reasons

There is a presumption in favour of disclosing government information. You have a legally enforceable right to be provided with access to the information sought, unless there is an overriding public interest against disclosure of the information.

In determining whether there is an overriding public interest against disclosure, the Department must apply the public interest test under section 13 of the GIPA Act, which provides that there will only be an overriding public interest against disclosure where public interest considerations in favour of disclosure are, on balance, outweighed by those against disclosure.

Public interest considerations in favour of disclosure

Under section 12(1) of the GIPA Act, there is a general public interest in favour of disclosing government information. Section 12(2) of the GIPA Act sets out some examples of other public interest considerations in favour of disclosure. However, I am not limited to those considerations in deciding your application.

I consider that the public interest considerations in favour of disclosure are that the release of the requested information could reasonably be expected to:

- promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate of issues of public importance (section 12(2)(a)), and
- inform the public about the operations of agencies (section 12(2)(b)).

Public interest considerations against disclosure

Section 14(1) of the GIPA Act provides that it is to be conclusively presumed that there is an overriding public interest against disclosure of any of the government information described in Schedule 1 to the GIPA Act. I have identified clause 2 (Cabinet information) of Schedule 1 to the GIPA Act as being relevant to your application.

Clause 2(1) of Schedule 1 to the GIPA Act provides that it is to be conclusively presumed that there is an overriding public interest against disclosure of Cabinet information. I have identified the following categories of documents as being relevant to your application:

- a document prepared for the dominant purpose of its being submitted to Cabinet for Cabinet's consideration (whether or not the document is actually submitted to Cabinet) (clause 2(1)(b));
- a document prepared before or after Cabinet's deliberation or decision on a matter that reveals or tends to reveal the position that a particular Minister has taken, is taking, will take, is considering taking, or has been recommended to take, on the matter in Cabinet (clause 2(1)(e)); and
- a document that is a preliminary draft of, or a copy of or part of, or contains an extract from, a document referred to in the above paragraphs (clause 2(1)(f)).

Clause 2(4) of Schedule 1 to the GIPA Act provides that information is not Cabinet information to the extent that it consists solely of factual material unless the information would:

- (a) reveal or tend to reveal information concerning any Cabinet decision or determination; or
- (b) reveal or tend to reveal the position that a particular Minister has taken, is taking or will take on a matter in Cabinet.

The particular application of these public interest considerations against disclosure to your application is considered in more detail below.

Independent analysis and modelling by KPMG supporting merger proposals

The NSW Government's local government reforms, including 35 proposed mergers of local councils, were announced on 18 December 2015. As part of this announcement, the Stronger Councils website (formerly the Council Boundary Review website) (<https://www.strongercouncils.nsw.gov.au>) was launched, which included summaries of the impacts of each of the 35 mergers. The Stronger Councils website noted that the mergers were supported by "independent analysis and modelling by KPMG".

I am advised that KPMG was contracted by the NSW Government to undertake analysis and modelling in support of 35 local council merger proposals.

I am advised that the process and documents used in KPMG's analysis and modelling are as described below:

- a) *The modelling assumptions used by KPMG were published on the Stronger Councils website on 20 January 2016 in the document titled 'Outline of Financial Modelling Assumptions for Local Government Merger Proposals – Technical Paper' dated 19 January 2015 (Item 1 in Annexure A).*

The Technical Paper is available on the Department's Disclosure Log, on pages 5-14 of document reference number DPC16/00072. I have therefore determined, pursuant to section 58(1)(c) of the GIPA Act, that this information is publicly available.

- b) *The data inputs processed in the KPMG model were sourced from: publicly available data on each council's website; and from council-produced data provided to KPMG by the NSW Government. Item 2 in Annexure A, a table listing the publicly available data sources used by KPMG, is available at the Department's Disclosure Log, on pages 15-17 of document reference number DPC16/00072.*

As the table listing the publicly available data sources is available on the Department's Disclosure Log, I have determined pursuant to section 58(1)(c) that this information is publicly available. I am advised that, as KPMG used 2013-14 data for their modelling, some of these data sources may no longer be available on council websites as some councils may have replaced this data with updated reports. You may wish to seek the sources referred to in the table from the relevant council.

- c) *The assumptions (see (a) above) and data inputs (see (b) above) were fed into KPMG's proprietary model to produce modelling outputs and analysis for each of the 35 proposed mergers. I am advised that the spreadsheets and formulas used to model assumptions against inputs are held by KPMG and that the Department does not hold these spreadsheets or underlying documents.*

I have therefore determined pursuant to section 58(1)(b) of the GIPA Act that the Department does not hold these KPMG spreadsheets and formulas used by KPMG in its proprietary model in preparation of the modelling outputs and analysis.

- d) *KPMG's modelling outputs and analysis for each proposed merger were outlined in the 35 Merger Proposal documents published on the Stronger Councils website on 6 January 2016. I am advised that KPMG did not prepare a different analysis and modelling report for each merger in addition to these 35 Merger Proposal reports. I am advised that the final modelling and analysis undertaken by KPMG for each merger was incorporated into each of the 35 publicly available Merger Proposals.*

The 35 Merger Proposals were published on the Stronger Councils website on 6 January 2016. I note that, as a number of councils submitted their own alternate Merger Proposals in addition to the 35 proposals from the Minister for Local Government, the total number of Merger Proposals is now 48. These additional Proposals also include the final analysis and modelling undertaken by KPMG for those mergers, and are available on the Stronger Councils website. I have determined, pursuant to section 58(1)(c) of the GIPA Act, that this information is publicly available. The Proposals, and the address of the website where they can be found, are set out at items 5-52 of Annexure A.

Item 3 described in Annexure A is a spreadsheet produced by KPMG outlining KPMG's final outputs for each of the original 35 merger proposals. It is available at the Department's Disclosure Log, on pages 18-20 of document reference number DPC16/00072. Therefore, I have determined pursuant to section 58(1)(c) of the GIPA act that the information is publicly

available. I am advised that the data in item 3 is also contained in each of the 35 published Merger Proposal documents.

- e) *KPMG also produced the 'Local Government Reform: Merger Impacts and Analysis' Report, also containing analysis and outputs prepared by KMPG in relation to the proposed mergers, published on the Stronger Councils website on 18 December 2015. This report summarises the costs and benefits of the 35 proposed mergers and the broader context for the Government's reforms.*

The 'Local Government Reform: Merger Impacts and Analysis' Report, item 4 in Annexure A, is available on the Stronger Councils website, and the address of the website is provided in Annexure A. I have determined, pursuant to section 58(1)(c) of the GIPA Act, that the Report is publicly available.

Other documents held by the Department

The documents described at Annexure B to this decision were held by the Department at the time of your application and include information concerning the analysis and modelling of KPMG considered by the Government in the development and consideration of the proposed local government reforms.

For the reasons set out below, I have decided to refuse access to the records described in Annexure B because there is an overriding public interest against disclosure, pursuant to section 58(1)(d) of the GIPA Act.

Records 1–25: Cabinet information

I am advised that Records 21 and 22 as described in Annexure B were prepared for the dominant purpose of submission to Cabinet, and submitted to Cabinet, in relation to proposed local government reforms. I am satisfied that these records are Cabinet information for the purposes of clause 2(1)(b) of Schedule 1 to the GIPA Act. Accordingly, I consider that there is a conclusive presumption that there is an overriding public interest against disclosure of the information, and access to that information is refused.

Records 1-20 and 25 are documents concerning potential local government reforms, release of which would: reveal Cabinet information in Records 21 and 22 (Clause 2(1)(f) of Schedule 1 to the GIPA Act); and reveal the position a Minister has taken or has been recommended to take on a matter in Cabinet (clause 2(1)(e) of Schedule 1 to the GIPA Act). Accordingly, I consider that there is a conclusive presumption that there is an overriding public interest against disclosure of the information and access to that information is refused.

Records 23 and 24 are documents concerning potential local government reform, release of which would reveal Cabinet information in Records 21 and 22 (clause 2(1)(f) of Schedule 1 to the GIPA Act). Accordingly, I consider that there is a conclusive presumption that there is an overriding public interest against disclosure of the information and access to that information is refused.

In relation to documents containing Cabinet information where I have determined to refuse access to the entire document, I am satisfied that where the records contain factual information, the information contained could reveal Cabinet decisions or the position that a Minister has taken on a matter in Cabinet.

Fees and charges

I have decided that no further charges should be imposed for this application.

Rights of review

These decisions are reviewable decisions under section 80(d), 80(e) and 80(f) of the GIPA Act. If you are aggrieved by my decisions, you may seek review under Part 5 of the GIPA Act.

There are three forms of review:

- internal review by a senior officer of the Department;
- external review by the Information Commissioner; or
- external review by the NSW Civil and Administrative Tribunal.

Your review rights are summarised in the enclosed fact sheet. You have 20 working days after the date of this letter to apply for an internal review, and 40 working days to apply for an external review.

Inquiries

Please contact Pip Jones, Senior Project Officer, Legal Branch, Cabinet and Legal on telephone (02) 9228 5871 if you have any questions in relation to your application.

Yours sincerely



Matt Richards

Director

7 June 2017

No.	Description of information	Location at which publicly available	Overriding public interest against disclosure?
1	KPMG Technical Paper: Outline of Financial Modelling Assumptions for Local Government Merger Proposals	Available at DPC's Disclosure Log: http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0019/178210/DPC16-00072.pdf	No
2	Publicly available KPMG Data sources	Available at DPC's Disclosure Log: http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0019/178210/DPC16-00072.pdf	No
3	KPMG modelling outputs spreadsheet	Available at DPC's Disclosure Log: http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0019/178210/DPC16-00072.pdf	No
4	Local Government Reform: Merger Impacts and Analysis Report	Available at https://www.strongercouncils.nsw.gov.au/	No
5	Merger Proposal: Armidale Dumaresq and Guyra Shire councils	Available at https://www.strongercouncils.nsw.gov.au/	No
6	Merger Proposal: Auburn City, Holroyd City and Parramatta City councils	Available at https://www.strongercouncils.nsw.gov.au/	No
7	Merger Proposal: Ashfield, Leichardt Municipal and Marrickville councils	Available at https://www.strongercouncils.nsw.gov.au/	No
8	Merger Proposal: Bombala, Cooma Monaro Shire and Snowy River Shire councils	Available at https://www.strongercouncils.nsw.gov.au/	No
9	Merger Proposal: Boorowa, Harden Shire and Young Shire councils	Available at https://www.strongercouncils.nsw.gov.au/	No
10	Merger Proposal: Bankstown City and Canterbury City councils	Available at https://www.strongercouncils.nsw.gov.au/	No
11	Merger Proposal: City of Botany Bay and Rockdale City council	Available at https://www.strongercouncils.nsw.gov.au/	No
12	Merger Proposal: Conargo Shire and Deliliquin councils	Available at https://www.strongercouncils.nsw.gov.au/	No
13	Merger Proposal: Corowa Shire, Urana Shire councils	Available at https://www.strongercouncils.nsw.gov.au/	No
14	Merger Proposal: Cootamundra Shire and Gundagai Shire councils	Available at https://www.strongercouncils.nsw.gov.au/	No

No.	Description of information	Location at which publicly available	Overriding public interest against disclosure?
15	Merger Proposal: Dubbo City and Wellington councils	Available at https://www.strongercouncils.nsw.gov.au/	No
16	Merger Proposal: Gosford City and Wyong Shire councils	Available at https://www.strongercouncils.nsw.gov.au/	No
17	Merger Proposal: Gloucester Shire, Great Lakes and Greater Taree councils	Available at https://www.strongercouncils.nsw.gov.au/	No
18	Merger Proposal: Hurstville City and Kogarah City council	Available at https://www.strongercouncils.nsw.gov.au/	No
19	Merger Proposal: Jerilderie Shire and Murrumbidgee Shire councils	Available at https://www.strongercouncils.nsw.gov.au/	No
20	Merger Proposal: Many, Pittwater and Warringah councils	Available at https://www.strongercouncils.nsw.gov.au/	No
21	Merger Proposal: Murray Shire and Wakool Shire councils	Available at https://www.strongercouncils.nsw.gov.au/	No
22	Merger Proposal: Parramatta City, Auburn City, The Hills Shire, Holroyd City and Hornsby Shire councils	Available at https://www.strongercouncils.nsw.gov.au/	No
23	Merger Proposal: Palerang and Queanbeyan City councils	Available at https://www.strongercouncils.nsw.gov.au/	No
24	Merger Proposal: Tumbarumba Shire and Tumut Shire councils	Available at https://www.strongercouncils.nsw.gov.au/	No
25	Merger Proposal: Burwood, City of Canada Bay and Strathfield Municipal councils	Available at https://www.strongercouncils.nsw.gov.au/	No
26	Merger Proposal: Hornsby Shire and Kuring-gai council	Available at https://www.strongercouncils.nsw.gov.au/	No
27	Merger Proposal: Hunter's Hill, Lane Cove and City of Ryde council	Available at https://www.strongercouncils.nsw.gov.au/	No
28	Merger Proposal: Mosman Municipal, North Sydney and Willoughby councils	Available at https://www.strongercouncils.nsw.gov.au/	No

No.	Description of information	Location at which publicly available	Overriding public interest against disclosure?
29	Merger Proposal: Randwick City, Waverley and Woollahra Municipal councils	Available at https://www.strongercouncils.nsw.gov.au/	No
30	Merger Proposal: Armidale Dumaresq, Guyra Shire, Uralla Shire and Walcha councils	Available at https://www.strongercouncils.nsw.gov.au/	No
31	Merger Proposal: Bathurst Regional and Oberon councils	Available at https://www.strongercouncils.nsw.gov.au/	No
32	Merger Proposal: Blayney Shire, Cabonne and Orange City councils	Available at https://www.strongercouncils.nsw.gov.au/	No
33	Merger Proposal: Dungog Shire and Maitland City councils	Available at https://www.strongercouncils.nsw.gov.au/	No
34	Merger Proposal: Newcastle City and Port Stephens councils	Available at https://www.strongercouncils.nsw.gov.au/	No
35	Merger Proposal: Shellharbour City and Wollongong City Councils	Available at https://www.strongercouncils.nsw.gov.au/	No
36	Merger Proposal: Port Stephens and Dungog Shire councils	Available at https://www.strongercouncils.nsw.gov.au/	No
37	Merger Proposal: Berrigan Shire and Jerilderie Shire councils	Available at https://www.strongercouncils.nsw.gov.au/	No
38	Merger Proposal: Boorowa and Young Shire councils	Available at https://www.strongercouncils.nsw.gov.au/	No
39	Merger Proposal: Cootamundra Shire, Gundagai Shire and Harden Shire councils	Available at https://www.strongercouncils.nsw.gov.au/	No
40	Merger Proposal: Corowa Shire, Lockhart Shire, Urana Shire councils	Available at https://www.strongercouncils.nsw.gov.au/	No
41	Merger Proposal: Dungog Shire and Gloucester Shire councils	Available at https://www.strongercouncils.nsw.gov.au/	No
42	Merger Proposal: Goulburn Mulwaree and Palerang councils	Available at https://www.strongercouncils.nsw.gov.au/	No

No.	Description of information	Location at which publicly available	Overriding public interest against disclosure?
43	Merger Proposal: Hawkesbury City and The Hills Shire councils	Available at https://www.strongercouncils.nsw.gov.au/	No
44	Merger Proposal: Jerilderie Shire and Murrumbidgee Shire councils	Available at https://www.strongercouncils.nsw.gov.au/	No
45	Merger Proposal: Kiama Municipal and Shoalhaven City Councils	Available at https://www.strongercouncils.nsw.gov.au/	No
46	Merger Proposal: Manly, Mosman Municipal and Warringah councils	Available at https://www.strongercouncils.nsw.gov.au/	No
47	Merger Proposal: North Sydney and Willoughby City councils	Available at https://www.strongercouncils.nsw.gov.au/	No
48	Merger Proposal: Palerang and Queanbeyan City councils	Available at https://www.strongercouncils.nsw.gov.au/	No
49	Merger Proposal: Pittwater and Warringah councils	Available at https://www.strongercouncils.nsw.gov.au/	No
50	Merger Proposal: Tamworth Regional and Walcha Councils	Available at https://www.strongercouncils.nsw.gov.au/	No
51	Merger Proposal: City of Botany Bay, City of Sydney, Marrickville, Randwick City and Rockdale City councils	Available at https://www.strongercouncils.nsw.gov.au/	No
52	Merger Proposal: Kogorah, Hurstville and Rockdale City Councils	Available at https://www.strongercouncils.nsw.gov.au/	No

No.	Description of record	Location of record in Department	Overriding public interest against disclosure?	GIPA Act section references
1	KPMG - Options analysis	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act
2	KPMG - Options analysis	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act
3	KPMG - Options analysis	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act
4	KPMG - Options analysis	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act
5	KPMG - Options analysis	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act
6	KPMG - Options analysis	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act
7	KPMG - Options analysis	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act
8	KPMG - Options analysis	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act
9	KPMG - Options analysis	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act
10	KPMG - Options analysis	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act
11	KPMG - Options analysis	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act
12	KPMG - Options analysis	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act
13	KPMG - Options analysis	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act
14	KPMG - Options analysis	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act
15	KPMG - Options analysis	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act

No.	Description of record	Location of record in Department	Overriding public interest against disclosure?	GIPA Act section references
16	KPMG - Options analysis	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act
17	KPMG - Options analysis	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act
18	KPMG - Options analysis	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act
19	KPMG - Options analysis	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act
20	KPMG - Options analysis	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act
21	Business Case	LGR	Yes	Clause 2(1)(b) of Schedule 1 to the GIPA Act
22	Local Government Reform: Merger Impacts and Analysis Report	LGR	Yes	Clause 2(1)(b) of Schedule 1 to the GIPA Act
23	Summary – metro options	LGR	Yes	Clause 2(1)(f) of Schedule 1 to the GIPA Act
24	Summary – regional options	LGR	Yes	Clause 2(1)(f) of Schedule 1 to the GIPA Act
25	KPMG – Model Design Methodology Paper	LGR	Yes	Clause 2(1)(e) and 2(1)(f) of Schedule 1 to the GIPA Act



Your review rights under the GIPA Act

Fact sheet

June 2014

The right to information system in NSW aims to foster responsible and representative government that is open, fair and effective.

You have the right to request a review of certain decisions made by government agencies about the release of information under the *Government Information (Public Access) Act 2009* (GIPA Act):

- a) a decision that an application is not a valid access application
- b) a decision to transfer an access application to another agency, as an agency-initiated transfer
- c) a decision to refuse to deal with an access application (including such a decision that is deemed to have been made)
- d) a decision to provide access or to refuse to provide access to information in response to an access application
- e) a decision that government information is not held by the agency
- f) a decision that information applied for is already available to the applicant
- g) a decision to refuse to confirm or deny that information is held by the agency
- h) a decision to defer the provision of access to information in response to an access application
- i) a decision to provide access to information in a particular way in response to an access application (or a decision not to provide access in the way requested by the applicant)
- j) a decision to impose a processing charge or to require an advance deposit,
- k) a decision to refuse a reduction in a processing charge
- l) a decision to refuse to deal further with an access application because an applicant has failed to pay an advance deposit within the time required for payment
- m) a decision to include information in a disclosure log despite an objection by the authorised objector (or a decision that the authorised objector was not entitled to object).

You generally have three review options.

1. Internal review

You have **20 working days** after the notice of a decision has been posted to you to ask for an internal review by the agency that made the decision.

If a Minister or their personal staff, or the principal officer of an agency made the decision, you cannot ask for an internal review, but you can ask for an external review (see below).

The review must be carried out by an officer who is no less senior than the person who made the original decision. The review decision must be made as if it was a fresh application.

There is a \$40 fee for an internal review application. No fee applies for an internal review if the decision is a 'deemed refusal' because the agency did not process your application in time or the internal review is conducted because the Information Commissioner has recommended the agency reconsider its decision under section 93 of the GIPA Act. In this case, you cannot be charged any review fee.

The agency must acknowledge your application within **five** working days of receiving it. The agency must decide the internal review within **15** working days (this can be extended by **10** working days if the agency has to consult with a third party, or by agreement with you).

2. External review by the Information Commissioner

If you disagree with any of the decisions listed above, you can ask for a review by the Information Commissioner.

If you are the person applying for access to information, you do **not** have to have an internal review of the decision before asking the Information Commissioner to review it.

If you are not the access applicant, you must seek an internal review before applying for review by the Information Commissioner. However, if an internal review cannot be sought (if a Minister or their personal staff, or the principal officer of an agency made the decision), you can seek a review by the Information Commissioner.

You have **40 working days** from being notified of the decision to ask for a review by the Information Commissioner.

On reviewing the decision, the Information Commissioner can make recommendations about the decision to the agency.

Note: You cannot ask the Information Commissioner to review a decision that has already been reviewed by the NSW Civil and Administrative Tribunal (NCAT).

3. External review by the NSW Civil and Administrative Tribunal (NCAT)

If you disagree with any of the decisions listed above, you can ask for a review by NCAT. You do not have to have the decision reviewed internally, or by the Information Commissioner before applying for review by NCAT.

You have **40 working days** from being notified of the decision to apply to NCAT for review. However, if you have applied for review by the Information Commissioner, you have **20 working days** from being notified of the Information Commission's review outcome to apply to NCAT.

For more information

Contact the Information and Privacy Commission NSW (IPC):

Freecall: 1800 472 679
Email: ipcinfo@ipc.nsw.gov.au
Website: www.ipc.nsw.gov.au