

## Request for draft report on Department of Labour internal controls prepared by KPMG

<b>Legislation</b>	Official Information Act 1982, s 9(2)(g)(i)
<b>Agency</b>	Department of Labour
<b>Ombudsman</b>	Beverley Wakem
<b>Case number(s)</b>	175782
<b>Date</b>	August 2007

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*Document labelled ‘draft’ really a final—author was a consultant who would not be deterred from expressing free and frank opinions in future—s 9(2)(g)(i) does not apply*

The former Department of Labour’s 2005/06 annual report noted that:

*An external review of internal controls was commissioned and completed in 2005/06. The results contributed to the development of an internal assurance and risk management framework.*

A requester sought a copy of the ‘external review’, and complained to the Ombudsman when it was withheld under section 9(2)(g)(i). The Department described the information as a draft report prepared by KPMG in 2006. It said the report was expressed in blunt terms, identifying gaps and recommendations for improvement.

The Ombudsman noted the document was indeed marked ‘draft’, but this characterisation was inconsistent with the entry in the Department’s annual report which referred it as a ‘commissioned and completed’ report that had been acted upon by the end of the 2005/06 year.

The Ombudsman ascertained that the report was completed by KPMG more than a year before. As far as KPMG was concerned it was finished. To that extent, the annual report was correct when it described the report as having been ‘completed’.

Even if the report was a ‘draft’, that was not what this case turned on: ‘No special status is given under the [OIA] to “draft” documents in terms of ability to withhold’. Nor is it sufficient

that the report was expressed in ‘blunt’ terms: *‘the test for the application of section 9(2)(g)(i) ... is not whether the information itself consists of “free and frank expression of opinions”, but whether disclosure would inhibit such expression in the future’.*

In this case, KPMG was commissioned and prepared the report under contract. The Ombudsman did not consider that disclosure of the report would prevent KPMG (or any similar contractor) from preparing a similar report in the future if one was commissioned. Professional persons are expected to be frank and robust in their work, and state their opinions to the best of their ability. While the report contained some comments that were critical of the Department, the fact that information might cause embarrassment is not a reason for withholding it.

The Ombudsman formed the provisional opinion that section 9(2)(g)(i) did not apply to the report. The Department agreed to release the report and the complaint was resolved.

*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman’s view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*