Forensic Audit of Mobile Telephone Records

Final Report

13 March 2017

Commissioner for Privacy and Data Protection

VICTORIA State Government

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Forensic Audit of Mobile Telephone Records

Final Report

13 March 2017

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On 12 January 2017 I issued an interim report regarding a forensic audit of the mobile telephones of certain Victorian politicians and public servants being undertaken at the request or direction of the Premier of Victoria. The audit was in response to the apparent leak of information regarding an increase in police numbers to the radio journalist, Mr Neil Mitchell. The interim report is **Attachment 1**.

In the interim report I advised that my office would continue investigating this matter, despite the Secretary of the Department of Premier and Cabinet (**DPC**) having issued a certificate under s79(3) of the *Privacy and Data Protection Act 2014* (**PDPA**), claiming cabinet confidentiality in the information that I had formally sought from the Premier about the forensic audit. I also urged any person who had information relevant to my inquiries to come forward and contact me.

This final report:

- provides an account of the circumstances as I understand them;
- discusses issues relevant to those circumstances;
- provides relevant documentation for public scrutiny; and
- discusses how legislation permits or encourages me to respond in my role as Commissioner.

In preparing this report, I have had careful regard to the objects of the PDPA, including balancing open access to public sector information with the public interest in protecting its security and to promote:

- awareness of responsible personal information handling practices;
- responsible and transparent handling of personal information; and
- responsible data security practices

in the public sector.

I have also had regard to the right to privacy supported by s. 13 of the *Charter of Human Rights and Responsibilities Act 2006*.

The circumstances

The circumstances have been widely reported. On 13 December 2016, at or immediately after the conclusion of a then recent cabinet meeting, the Premier told those in attendance that a forensic audit of their mobile telephones would take place at his instigation and that this audit would extend to all members of Cabinet.

The purpose of the forensic audit was to determine who had leaked information about a proposed increase in police numbers to Mr Neil Mitchell. The Premier stated that the global consulting firm KPMG would undertake the forensic audit.

The audit would require handing over possession of mobile phones to the KPMG forensic audit team who would then analyse data embodied in them, presumably to identify who had communicated with Mr Mitchell, when the communication took place and the content of the communication.

The audit would also extend to public servants, presumably those involved in developing the proposal to increase police numbers and those who otherwise could have had access to the information as it was processed through government.

Initial analysis

Immediately following the press reports on 13 December 2016 I was contacted regarding the proposed forensic audit. I had already considered the reports and had formed the opinion that there was an appearance that:

- the reports were correct, as there had been no contrary or qualifying report; and
- one or more of the Information Privacy Principles (**IPPs**) would be contravened by the forensic audit.

The immediate impression I gained from the information available to me was that the proposed audit appeared to constitute an investigation that was not supported by the usual legal safeguards relating to intrusion into the human rights of citizens. It is usual when investigative powers are granted to ensure that appropriate checks and balances are in place. This would have been the case for example if the audit were conducted as an investigation managed by Victoria Police. The same would have been true if the Ombudsman or any other usual investigative organisation had commenced an investigation. There was however an appearance that none of those organisations would be able to investigate, as there was no apparent illegal or wrongful behaviour which could be the subject matter of an investigation by them. While this caused me concern, my statutory concern is with issues of privacy and data security.

In this context there was an appearance that almost the entirety of **IPP 1 – Collection** would be contravened. Perhaps of greatest immediate concern was that:

- the collection of personal information may not have been necessary for a function or activity of the collecting party;
- the collection of personal information may not have been lawful or fair, and appeared to be unreasonably intrusive;
- the individuals whose personal information was to be collected may not be given notice of the information set out in IPP 1.3, including the organisation collecting and the purpose of collection; and
- consideration did not appear to have been given to collection from the individual whose information was being collected.

Aside from those whose mobile phones were to be examined, the audit would involve gaining access to the personal information of anyone who had interacted with the politician or public servant being audited. In short, while the number of mobile phones examined may be fewer than 100, a reasonable estimate of the number of people whose personal information would be involved is very significantly greater.

The strong appearance that significant aspects of the IPPs were to be contravened also appeared to constitute a serious or flagrant contravention. This suggested that I might reasonably proceed to issue a compliance notice in relation to the proposed audit.

Taking action to require the Premier, as the leader of the government of Victoria, to undertake his privacy obligations in a manner required by the law is a significant step. I was inclined to seek an explanation from the Premier or from others involved before taking this step in the hope that the appearance I have described was mistaken or that interferences with privacy could be avoided. This would be consistent with the objects of the PDPA and the nature of a compliance notice as an educational tool for developing a compliance culture in the public sector.

Under the PDPA, I do not have a full range of investigative powers. Rather I have limited formal means of obtaining information and documents. As a result, I have few means of making enquiries such as

were required. In this context I decided to issue a relatively informal request for information (rather than documents) and frame the request in the style of a notice under s. 79 of the PDPA.

A request for information rather than documents also had the virtue of permitting the Premier to comment on the course of action intended and so perhaps provide an opportunity for me to be reassured about the manner in which any process would proceed, so as to comply with privacy requirements. In this sense, the request for information functioned as a notice to show cause why further action should not be taken.

What information was sought from the Premier?

A notice under s. 79(1) of the PDPA was dated and served on the Premier of Victoria on 16 December 2016 and is **Attachment 2** (the **notice to the Premier**).

The notice to the Premier sought information about the basis of the Premier's authority to undertake a forensic audit of information embodied in the mobile telephones of Ministers of the Crown and public servants. It did not explicitly or implicitly seek information about cabinet material, deliberations or discussions.

The questions addressed to the Premier focused on the requirements for collecting personal information under IPP 1. They were designed to elicit information about the Premier's understanding of his legal authority to collect personal information for the purposes of the forensic audit.

The response – conclusive certificate issued by the Secretary, DPC

On 23 December 2016, I received a certificate under s. 79(3) of the PDPA from the Secretary, DPC dated 23 December 2016 (**Attachment 3**).

The Secretary certified that the provision of the information sought in the notice to the Premier 'would involve the disclosure of information which, if included in a document of the agency or an official document of the Minister, would cause the document to be an exempt document of a kind referred to in section 28(1) of the *Freedom of Information Act 1982*.' The effect of the certificate was to claim cabinet confidentiality in respect of all the information sought from the Premier.

Analysis in light of that certificate

This response heightened the appearance of contravention. There was no suggestion in the response either that the forensic audit would not proceed or that if it proceeded it would not involve any contravention.

The certification of cabinet confidentiality in respect of the entire request is worthy of comment. My statutory powers do not permit me to investigate a certificate or to question whether information referred to in a certificate is cabinet in confidence material. If I am inclined to seek a review of a certificate I must apply to the courts or to the Victorian Civil and Administrative Tribunal under ss. 73(3) and 76 of the PDPA. Nevertheless I am entitled to take account of the effect a certificate has on the appearance of the circumstances which are the focus of my enquiries.

The request did not seek any material related to cabinet proceedings. The certificate in response did not suggest that any attempt had been made to separate materials that were cabinet in confidence from other materials relevant to the audit. This appeared to be an unsophisticated and unhelpful response which adopted the wording of s. 79(3) by reiteration in an apparently indiscriminate manner

so as to claim a complete exemption. In short the response did nothing to create an appearance of compliance, rather the reverse.

Confronted with this response, I decided that I could not conclude my enquiries at that point and decided to seek information from a source that was clearly outside the boundaries of cabinet confidentiality. I sought information from KPMG as the contractor apparently performing forensic audit activities.

What information was sought from KPMG?

Notices under s. 79(1) of the PDPA were dated and served on each of the Chief Executive Officer and the Victorian Chairman of KPMG on 5 January 2017 and are **Attachments 4 and 5** (KPMG notices).

The KPMG notices were designed to ascertain whether KPMG had been instructed to undertake the forensic audit and, if so, the scope of work it had been engaged to perform.

KPMG's response

For some time, no response was received from KPMG. On 12 January 2017 I published the interim report regarding my enquiries. The following day I received correspondence from KPMG seeking a further copy of the notices and stating that their office had been closed until 3 days prior to the day that the notice was served and that each of the addressees of a notice were on annual leave. I provided that copy and in the meantime, KPMG located the notice that had been served earlier.

On 16 January 2017 I received correspondence from KPMG stating that 'KPMG has no documents to produce in response to the Notice'. This response was not entirely unambiguous. As a result I arranged for a discussion to occur, confirming that KPMG held no documents of the description set out in the notice.

Analysis in light of that response

The response from KPMG had, at most, a neutral effect on the appearance of the circumstances. The previous appearance remained unchanged and further action was warranted.

It appeared that of those who might have an administrative role related to the audit and which was not the subject of cabinet in confidence restrictions, it was likely to be the Secretary of DPC.

Request for information from the Secretary, DPC

A notice under s. 79(1) of the PDPA was dated and served on the Secretary, DPC on 13 January 2017 and is **Attachment 6**. The notice sought information relating to the engagement of any contractor outside the Victorian public sector to undertake the audit and the scope of any such engagement.

The response – letter from the Acting General Counsel, DPC dated 20 January 2017 and conclusive certificate issued by the Secretary, DPC, dated 20 January 2017.

On 20 January 2017, I received:

- a letter from the Acting General Counsel of DPC marked 'Confidential' (**Attachment 7**), enclosing;
- a certificate under s. 79(3) of the PDPA from the Secretary, Department of Premier and Cabinet (**Attachment 8**).

The letter marked 'Confidential' noted the secrecy provisions set out in s. 120 of the Act. It stated that 'DPC does not consent to you disclosing or communicating this response'. I understood that that notification of non-consent was provided in the context of that provision. The effect of the reference to s 120 of the PDPA was to assert a secrecy claim in relation to the claim of cabinet in confidence.

Analysis in light of that response

That response was evasive, non-cooperative and misleading. It heightened the pre-existing appearance of wrongdoing.

The response was misleading in that dealings between executive government and private sector contractors are universally accepted as not being within the boundaries of cabinet confidentiality. I would also expect that in a context where government has made a number of recent announcements regarding the improvement of privacy governance, the same government would seek to cooperate with and learn from an initiative taken by a regulator, such as myself, pursuing the same goals. When the only response to the initiative is an attempt to avoid scrutiny, this gives an appearance of wrongdoing.

Transmission of the response

I should also deal with the manner in which the response from the Department of Premier and Cabinet was framed and delivered. The letter from the Acting General Counsel of 20 January 2017 was endorsed "Confidential' and by making reference to s. 120 of the PDPA expressly sought to ensure that both the letter and the certificate it transmitted would not be published.

In a Victorian government context, a claim of confidentiality should comply with the Victorian Protective Data Security Framework (VPDSF). The VPDSF permits a document to be protectively marked as 'Confidential' if disclosure of the content of the document could be expected to cause significant harm or damage to government operations, organisations and individuals. Such a marking asserts a business impact level of 'Very High.' There is only one higher category – 'Extreme.'

It is difficult to imagine how the letter could reasonably be considered as falling within the claimed category. Even if this assessment is mistaken, the context in which this claim is made is mistaken, as will be examined more closely later in this discussion. The VPDSF includes explicit warnings about the inappropriate use of protective markings. It states that:

> *Official information should only be protectively marked where there is a clear and justifiable need to do so.*

> *In no case should official information be protectively marked to:*
>
> - *hide violations of the law...*
> - *prevent embarrassment to an individual, organisation or agency*

There is at least an appearance that the letter was protectively marked as 'Confidential' for either or both of these reasons and that the warnings set out in the VPDSF have been disregarded.

As noted above, the letter also referred to s 120 of the Act. Section 120 is a secrecy provision. It prevents me from communicating or disclosing information obtained or received in the course of performing my functions or exercising my powers under the PDPA except as permitted by s120(3).

Section 120(3) states:

> A person to whom this section applies may make a record, disclosure or communication referred to in subsection (2) if—
>
> a) it is necessary to do so for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act or a former Act; or
>
> b) the individual or organisation to whom the information relates gives written consent to the making of the record, disclosure or communication.

So far as is relevant to the current circumstances, s.120 of the PDPA is designed to prevent the use of official material other than for the necessary purpose of the performance of the functions or duties or the exercise of a power under the PDPA, that is render that material secret, except with the consent of the person or organisation to whom the information relates. In my opinion it is necessary for those purposes to publish the documents attached to this report.

Finally, the letter can be construed as a threat. Under s.121 of the PDPA it is an offence for me to disclose or communicate any information given to me 'pursuant to a prescribed requirement' unless I notify the person who provided the information of any proposal to disclose or communicate the information and give that person a reasonable opportunity to object.

However, the information I have received or obtained from DPC was not given to me pursuant to a prescribed requirement as defined in the PDPA. It follows that these are not circumstances in which the notice requirements of s. 121 of the PDPA apply.

It is inconceivable that the Acting General Counsel was unaware of this straightforward legal issue. There seems to be no substantive reason for him to provide advice to me about whether or not DPC consented to the disclosure of material other than to send a clear signal that the relevant material should not be published.

In the current circumstances, the claims of confidentiality and secrecy are inappropriate in respect of both the certificate and the correspondence under cover of which it was transmitted. A certificate created under s. 79 of the PDPA is in the nature of a legislative instrument made under power delegated by legislation to the Secretary of the Department of Premier and Cabinet. It is not a document that is either necessary or desirable to hide from scrutiny. The same is true for the dealings surrounding a certificate. I consider that disclosure of the documents published with this report is necessary in pursuit of the objects of the PDPA.

Options

The options for further action in relation to these issues, assuming that no more cooperative or compliance focussed communication occurs, are to:

- issue a compliance notice to relevant persons regarding the conduct of any audit of mobile phone records; or
- seek formal legal review of the information and documents in respect of which the two certificates given in response to notices discussed in this report with a view to seeking to have some or all of that material released to me; or
- seek a declaration that those certificates were wrongly given and that they are ineffective.

Future action

My investigation of these circumstances has now concluded, at least for the present. The outcome leads to a decision as to the further action – outside the investigative process – that should follow. The decision-making process about future action is not a matter for this report and will be apparent from the public record once a decision is made.

Adjunct Professor David Watts
Commissioner for Privacy and Data Protection
13 March 2017

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Appendix 1

Commissioner for Privacy and Data Protection

Forensic Audit of Mobile Phone Records

Interim Report – 12 January 2017

On 16 December 2016 I issued a statement regarding an alleged forensic audit of the mobile telephone records of Victorian politicians and public servants. In the statement I advised that I had written to the Premier of Victoria seeking further information about the forensic audit under s 79(1) of the *Privacy and Data Protection Act 2014* (PDPA).

This interim report provides an account of developments since then.

On 23 December 2016 I received a response to my request for information, from the Department of Premier and Cabinet. The response attached a certificate also dated 23 December 2016, issued by the Secretary of the Department of Premier and Cabinet under s 79(3) of the PDPA. The effect of the certificate was to claim cabinet confidentiality in respect of all the information I had requested from the Premier.

On 5 January 2017, I issued and served notices under s 79(1) of the PDPA on the Chairman in Victoria and Chief Executive Officer for Australia of KPMG, the organisation alleged to have been engaged by or on behalf of government to undertake the forensic audit. The notices, which were in identical terms, sought details of communications regarding the alleged forensic audit, including engagement terms and the scope of the audit.

The notices required a response by 4pm on Tuesday, 10 January 2017.

Neither the Chair nor the CEO of KPMG, or anyone on behalf of KPMG, responded to the notice in the time specified and no response has been received as at the time of publishing this interim report.

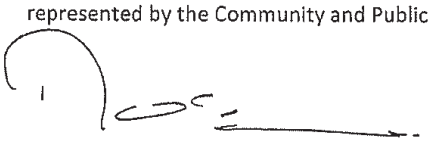
My office is continuing to inquire into this matter. We are actively considering the options available to us to address the allegations that have been made about the forensic audit.

In the meantime, I would urge any parliamentarian, member of the Victorian public service or member of the public who has any relevant information to contact my office or to lodge a privacy complaint. Information about lodging a complaint can be found at https://www.cpdp.vic.gov.au/menu-privacy/privacy-public/privacy-public-make-complaint

Commissioner for Privacy and Data Protection
PO BOX 24014, MELBOURNE VIC 3001 T +61 3 8684 1650 W cpdp.vic.gov.au E enquiries@cpdp.vic.gov.au

VICTORIA State Government

Victorian public sector employees who may be affected by the forensic audit might also consider contacting their Union representatives. Most of the Victorian public sector is represented by the Community and Public Sector Union.



Adjunct Professor David Watts
Commissioner for Privacy and Data Protection
12 January 2017

Appendix 2

Commissioner for Privacy and Data Protection

16 DEC 2016

The Hon. Daniel Andrews MP
Premier
Level 1, 1 Treasury Place
East Melbourne VIC 3002

By Hand

Dear Premier

Request pursuant to s 79 *Privacy and Data Protection Act 2014* (the Act)

My attention has been drawn to a number of media reports to the effect that you have authorised a forensic audit by external consultants of the mobile phones of Victorian Ministers and public sector employees.

Based on those reports, I understand that the reason for this is so as to determine responsibility for the unauthorised disclosure of matters discussed within government, in particular a leak of information concerning police numbers to a radio journalist.

Mobile phones embody significant quantities of personal and sensitive information. The Act applies to such information whether or not the mobile phone or device is owned by government or whether the telephony or carriage service used is supplied by or paid for by government.

The reports, if true, may give rise to information privacy and security matters that are governed by the Act.

In order to assist me to properly consider these matters, I request, under s 79 of the Act, that you provide me by no later than 5pm on Friday, 23 December 2016 with a written statement signed by you that answers the following questions:

- Do you consider that the request or direction for Ministers and public servants to provide information for the purposes of the forensic audit is a request that is necessary for one or more of your functions or activities?
- If so, what functions or activities are involved and what is the legal basis of those functions or activities?
- Do you consider that the collection of that information is lawful, is made by fair means and is not unreasonably intrusive and if so, what is the basis of that opinion?

Commissioner for Privacy and Data Protection
PO BOX 24014, MELBOURNE VIC 3001 T +61 3 8684 1660 W cpdp.vic.gov.au E enquiries@cpdp.vic.gov.au

VICTORIA State Government

- The apparent allegation in the relevant media reports and other communications is that the request or direction specifically seeks sensitive information (as that term is used in the Information Privacy Principles). In this context, do you consider that:
    - each of the individuals to whom the request or direction has been or will be addressed has consented to disclosure; or
    - collection of that sensitive information is either required under law or is necessary for the establishment, exercise or defence of a legal or equitable claim?
- If so, what is the basis of that opinion?

Yours sincerely,

Adjunct Professor David Watts
Commissioner for Privacy and Data Protection

Appendix 3

Department of
Premier and Cabinet

1 Treasury Place
Melbourne, Victoria 3002 Australia
Telephone: 03 9651 5111
dpc.vic.gov.au

D16/236060

Mr David Watts
Commissioner for Privacy and Data Protection
121 Exhibition Street
MELBOURNE VIC 3000

23 DEC 2016

Dear Commissioner

I refer to your letter to the Premier dated 16 December 2016. I am responding on his behalf.

In response to your request for information, I enclose a certificate under section 79 of the *Privacy and Data Protection Act 2014*.

Yours sincerely

Chris Miller
General Counsel
Department of Premier and Cabinet

Your details will be dealt with in accordance with the *Public Records Act 1973* and the *Privacy and Data Protection Act 2014*. Should you have any queries or wish to gain access to your personal information held by this department please contact our Privacy Officer at the above address.

VICTORIA State Government

Department of
Premier and Cabinet

1 Treasury Place
Melbourne, Victoria 3002 Australia
Telephone: 03 9651 5111
dpc.vic.gov.au

CERTIFICATE PURSUANT TO SECTION 79(3) OF THE *PRIVACY AND DATA PROTECTION ACT 2014*

I, Chris Eccles, Secretary of the Department of Premier and Cabinet, certify that the giving of the information requested in a letter to the Hon Daniel Andrews MP, Premier, from Mr David Watts, Commissioner for Privacy and Data Protection, dated 16 December 2016, would involve the disclosure of information which, if included in a document of the agency or an official document of the Minister, would cause the document to be an exempt document of a kind referred to in section 28(1) of the *Freedom of Information Act 1982*.

Signed:

Chris Eccles
Secretary of the Department of Premier and Cabinet

Date: 22/12/16.

VICTORIA

Appendix 4

Commissioner for Privacy and Data Protection

5 January 2017

Gary Wingrove
CEO
KPMG Australia
Tower Two, Collins Square
727 Collins Street
DOCKLANDS VIC 3008

Dear Mr Wingrove

Notice under section 79 of the Privacy and Data Protection Act 2014

I enclose by way of service a notice under section 79 of the Privacy and Data Protection Act 2014 for your attention.

Yours sincerely,

Adjunct Professor David Watts
Commissioner for Privacy and Data Protection

Commissioner for Privacy and Data Protection
PO BOX 24014, MELBOURNE VIC 3001 T +61 3 8684 1660 W cpdp.vic.gov.au E enquiries@cpdp.vic.gov.au

VICTORIA State Government

Notice under section 79 of the
Privacy and Data Protection Act 2014

I, Adjunct Professor David Geoffrey Watts, **Commissioner for Privacy and Data Protection** have reason to believe that each of:

Gary Wingrove CEO KPMG Australia Tower Two, Collins Square, 727 Collins St, Docklands VIC 3008	and	Rob Bazzani Victorian Chairman KPMG Australia Tower Two, Collins Square, 727 Collins St, Docklands VIC 3008

by reason of their involvement in the management of the firm KPMG Australia has the following documents relevant to a decision to serve a compliance notice under section 78(1) of the *Privacy and Data Protection Act 2014* (**Act**), being:

1. any letter, email or other correspondence received by KPMG between 24 October 2016 and the date of this notice from any of:
   a. the office of the Premier of Victoria;
   b. the Department of Premier and Cabinet of Victoria; or
   c. any other 'organisation' (as that term is used in the Act)

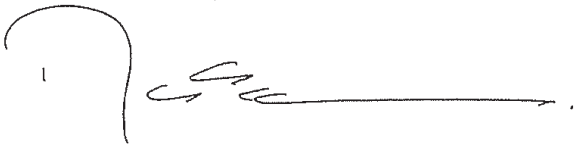
   relating to any of:
   d. a suspected leak of information to the radio station 3AW or to the radio announcer Neil Mitchell, being information concerning a proposal to recruit a substantial number of additional police officers in the State of Victoria; or
   e. any proposed reaction to that leak, including any proposal to audit or otherwise examine the telephone or telephone records of any member of Parliament, 'public sector employee' (as that term is used in the *Public Administration Act 2004*) or any other person;
2. any letter, email or other correspondence sent in response to any such email letter or other correspondence;
3. any engagement terms, documentation defining the scope of work proposed to be performed or agreed to be performed by KPMG or other business documents relating to any such reaction; or
4. any report, record of advice or other document which has either been delivered or records the delivery of verbal advice as part of or incidental to any engagement of KPMG by any such organisation in relation to any such reaction

and hereby require that each of the said Gary Wingrove and Rob Bazzani, produce each of those documents to me at:

121 Exhibition Street
Melbourne VIC 3000

by not later than 4pm on 10 January 2017.

signed on 5 January 2017



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Appendix 5

Commissioner for Privacy and Data Protection

5 January 2017

Rob Bazzani
Victorian Chairman
KPMG Australia
Tower Two, Collins Square
727 Collins Street
DOCKLANDS VIC 3008

Dear Mr Bazzani

Notice under section 79 of the Privacy and Data Protection Act 2014

I enclose by way of service a notice under section 79 of the Privacy and Data Protection Act 2014 for your attention.

Yours sincerely,

Adjunct Professor David Watts
Commissioner for Privacy and Data Protection

Commissioner for Privacy and Data Protection
PO BOX 24014, MELBOURNE VIC 3001 T +61 3 8684 1660 W cpdp.vic.gov.au E enquiries@cpdp.vic.gov.au

VICTORIA State Government

Notice under section 79 of the
Privacy and Data Protection Act 2014

I, Adjunct Professor David Geoffrey Watts, **Commissioner for Privacy and Data Protection** have reason to believe that each of:

Gary Wingrove CEO KPMG Australia Tower Two, Collins Square, 727 Collins St, Docklands VIC 3008	and	Rob Bazzani Victorian Chairman KPMG Australia Tower Two, Collins Square, 727 Collins St, Docklands VIC 3008

by reason of their involvement in the management of the firm KPMG Australia has the following documents relevant to a decision to serve a compliance notice under section 78(1) of the *Privacy and Data Protection Act 2014* (**Act**), being:

1. any letter, email or other correspondence received by KPMG between 24 October 2016 and the date of this notice from any of:
   a. the office of the Premier of Victoria;
   b. the Department of Premier and Cabinet of Victoria; or
   c. any other 'organisation' (as that term is used in the Act)

   relating to any of:
   d. a suspected leak of information to the radio station 3AW or to the radio announcer Neil Mitchell, being information concerning a proposal to recruit a substantial number of additional police officers in the State of Victoria; or
   e. any proposed reaction to that leak, including any proposal to audit or otherwise examine the telephone or telephone records of any member of Parliament, 'public sector employee' (as that term is used in the *Public Administration Act 2004*) or any other person;
2. any letter, email or other correspondence sent in response to any such email letter or other correspondence;
3. any engagement terms, documentation defining the scope of work proposed to be performed or agreed to be performed by KPMG or other business documents relating to any such reaction; or
4. any report, record of advice or other document which has either been delivered or records the delivery of verbal advice as part of or incidental to any engagement of KPMG by any such organisation in relation to any such reaction

and hereby require that each of the said Gary Wingrove and Rob Bazzani, produce each of those documents to me at:

121 Exhibition Street
Melbourne VIC 3000

by not later than 4pm on 10 January 2017.

signed on 5 January 2017

.....

Appendix 6

Commissioner for Privacy and Data Protection

13 January 2017

Mr Chris Eccles
Secretary
Department of Premier and Cabinet
1 Treasury Place
East Melbourne VIC 3002

Hand Delivered

Dear Mr Eccles

Notice under s79 of the Privacy and Data Protection Act 2014

I enclose by way of service a notice under s79 of the *Privacy and Data Protection Act 2014* dated 13 January 2017.

Yours sincerely,

Adjunct Professor David Watts
Commissioner for Privacy and Data Protection

Commissioner for Privacy and Data Protection
PO BOX 24014, MELBOURNE VIC 3001 T +61 3 8684 1660 W cpdp.vic.gov.au E enquiries@cpdp.vic.gov.au

VICTORIA State Government

Notice under section 79 of the
Privacy and Data Protection Act 2014

I, Adjunct Professor David Geoffrey Watts, **Commissioner for Privacy and Data Protection** have reason to believe that Chris Eccles, Secretary of the Department of Premier and Cabinet for the State of Victoria (the **Secretary**) has the following documents relevant to a decision to serve a compliance notice under section 78(1) of the *Privacy and Data Protection Act 2014* (**Act**), being:

1. any letter, email or other correspondence despatched by the Secretary or by any employee (for the purposes of the *Public Administration Act 2004* (**PAA**)) in respect of whom the Secretary is the public service body head (for the purposes of the PAA) between 24 October 2016 and the date of this notice which proposed or discussed the engagement of any of:
   a. the firm KPMG; or
   b. any other person not being an employee (for the purposes of the PAA)

   to assist with or conduct a forensic audit, investigation, enquiry or analysis (**enquiry**) of telephone records;
2. any letter, email or other correspondence received in response to any such letter, email or other correspondence;
3. any engagement terms, documentation defining the scope of work proposed to be performed or agreed to be performed in relation to any such enquiry; or
4. any report, record of advice or other document which has either been received as a result of any such enquiry

and hereby require that the Secretary produce each of those documents to me at:

121 Exhibition Street
Melbourne VIC 3000

by not later than 4pm on 20 January 2017.

signed on 13 January 2017

.....

Unclassified

Appendix 7

Department of Premier and Cabinet

RECEIVED
20 JAN 2017
Commissioner for Privacy & Data Protection
2:35pm

1 Treasury Place
Melbourne, Victoria 3002 Australia
Telephone: 03 9651 5111
dpc.vic.gov.au

D17/12763

20 JAN 2017

Confidential

Mr David Watts
Commissioner for Privacy and Data Protection
121 Exhibition Street
MELBOURNE VIC 3000

Dear Commissioner

I refer to your letter to the Secretary to the Department of Premier and Cabinet dated 13 January 2017 and notice to produce under section 79 of the *Privacy and Data Protection Act 2014* (the Act).

On behalf of the Secretary, I enclose a certificate under section 79 of the Act.

DPC notes the secrecy provisions in section 120 of the Act. To avoid doubt, DPC does not consent to you disclosing or communicating this response.

Yours sincerely

Samuel Porter
A/General Counsel
Department of Premier and Cabinet

VICTORIA

Unclassified

Appendix 8

Department of
Premier and Cabinet

RECEIVED
20 JAN 2017
Commissioner
for Privacy & Data Protection
2.35pm

1 Treasury Place
Melbourne, Victoria 3002 Australia
Telephone: 03 9651 5111
dpc.vic.gov.au

CERTIFICATE PURSUANT TO SECTION 79(3) OF THE *PRIVACY AND DATA PROTECTION ACT 2014*

I, Chris Eccles, Secretary of the Department of Premier and Cabinet, certify that the giving of the information requested in a letter to me dated 13 January 2017, would involve the disclosure of information which, if included in a document of the agency or an official document of the Minister, would cause the document to be an exempt document of a kind referred to in section 28(1) of the *Freedom of Information Act 1982*.

Signed:

Chris Eccles
Secretary of the Department of Premier and Cabinet

Date: 20/1/17

VICTORIA

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Commissioner
for Privacy and
Data Protection

VICTORIA
State
Government