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NCAT Affidavit
March 2019

AFFIDAVIT OF TONY LESLIE WICKHAM 30 JANUARY 2020

FILE DETAILS

Tribunal	NSW Civil and Administrative Tribunal
Division	Administrative and Equal Opportunity Division
Case number	

TITLE OF PROCEEDINGS

Applicant	**Port Stephens Council**
Respondent	**Telina Webb**

FILING DETAILS

Filed for	**Port Stephens Council**, Applicant
Legal representative	Carlo Zoppo, Lindsay Taylor Lawyers
Legal representative reference	PSC19003
Contact name and telephone	Matt Harker, (02) 8235 9714
Contact email	matt.harker@lindsaytaylorlawyers.com.au

[on separate page]

AFFIDAVIT

Name	Tony Wickham
Address	116 Adelaide Street, Raymond Terrace NSW 2324
Occupation	Governance Section Manager
Date	30 January 2020

I affirm:

1 I am the Governance Section Manager and Public Officer at Port Stephens Council (**Council**) and have been employed by Council since 2003.

2 Exhibited to my affidavit and marked **TW-1** is a folder of documents. A reference in this affidavit to **[x]** is a reference to page x in Exhibit TW-1.

3 I affirm this affidavit in support of Council's application for an order under s 110 of the *Government Information (Public Access) Act 2009* (**GIPA Act**) to restrain Telina Webb from making further applications for access to information under that Act.

4 I have held my current role since 2018.

5 I also occupy the statutory position of complaints coordinator at Council under the Procedures for the Administration of the Code of Conduct.

6 As part of my role as Governance Section Manager and Public Officer, I am responsible overall for access to information requests.

7 These requests are usually processed under delegated authority by Council's Governance Officer, whom I supervise. I generally undertake any requests for internal review of accessing information determinations made by the Governance Officer.

8 Since 2011, I have either determined or supervised the determination of 50 formal applications for access to information under the GIPA Act which have lodged by Ms Webb.

9 In that time, I have also either determined or supervised the determination of 93 informal applications for access to information under the GIPA Act which have lodged by Ms Webb.

10 I have supervised the determining officer and was the officer who re-determined Mr McEwan's formal access application on 11 November 2016 following mediation in NCAT.

11 On 14 January 2020, I carried out a review of all of Council's records of GIPA applications lodged by Ms Webb. From my review of those records, Ms Webb has lodged:

a. four formal applications for access to information prior to 2016, with all of those applications lodged in either 2011 or 2012;

b. 37 formal applications for access to information between March 2017 and January 2020; and

c. 32 informal applications for access to information between March 2017 and January 2020.

12 A further six informal applications, and two formal applications for access to information have been lodged by Ms Webb's husband, Paul McEwan, since 2012.

Background to access applications

13 As the officer responsible for determining, or supervising the determination of, Ms Webb's applications for access to information, I am familiar with the vast majority of the documents held by Council containing dealings between Ms Webb and Council.

14 On the basis of my previous reviews of that material, I understand that, in about April 2011, Council received a complaint about a privacy screen installed by Ms Webb and her husband, Mr McEwan, on the property they then owned at 3 Sapphire Court, Raymond Terrace.

15 On 15 July 2011, Ms Webb and her husband lodged development application 483/2011 (**DA**) in respect of the privacy screen. Council refused to grant consent to the DA.

16 In about March 2012, Ms Webb applied for a review of Council's determination of the DA under the then s 82A of the *Environmental Planning and Assessment Act 1979* (**EPA Act**). Council again determined to refuse consent to the DA.

17 On 6 June 2012, Council issued an order under the then s 121B of the EPA Act requiring the removal of the privacy fence installed by Ms Webb and Mr McEwan.

18 In about July 2012, Ms Webb and Mr McEwan commenced proceedings in the NSW Land and Environment Court. Those proceedings were a merits appeal against Council's decision to the issue the order requiring demolition.

19 On 29 November 2012, consent orders were entered into resolving the proceedings.

20 In about August 2013, Ms Webb and Mr McEwan sold their property. To the best of my knowledge, Ms Webb and Mr McEwan no longer live in the Port Stephens Local Government Area.

A. RECENT APPLICATIONS WHICH LACK MERIT

GIPA Application No. PSC2018-02398

21 On 27 June 2018, Council received a formal access application under the GIPA Act from Ms Webb: **[970 – 973]**. That application was given identifier PSC2018-02398.

22 On 20 July 2018, Council sent a letter to Ms Webb seeking to clarify the scope of the application: **[974 – 975]**.

23 On 3 August 2018, Council received a letter from Ms Webb: **[976]**.

24 On 18 October 2018, Holly Jamadar, a governance officer at Council, determined to refuse to deal with the application as it would require an unreasonable and substantial diversion of resources: **[977 – 990]**.

GIPA Application No. PSC2018-02577

25 On 20 July 2018, Council received a formal access application under the GIPA Act from Ms Webb: **[991 – 993]**. That application was given identifier PSC2018-02577.

26 In a letter dated 24 July 2018, Council requested that Ms Webb clarify the scope of the application by confirming what she meant by the term 'UCC': **[994]**

27 On 4 August 2018, Council received an email from Ms Webb which attached a letter dated 3 August 2018: **[995 – 997]**.

28 On 8 August 2018, Ms Jamadar determined that the information requested by Ms Webb was not held by Council: **[998 – 1011]**.

GIPA Application No. PSC2019-00108

29 On 14 January 2019, Council received two formal access applications under the GIPA Act from Ms Webb.

30 The first application was given identifier PSC2019-00108: **[1088 – 1091]**.

31 Attached to that application was a copy of an email from Ms Lisa Gowing dated 5 October 2012: **[1091]**.

32 On 12 February 2019, Ms Jamadar determined that the information requested by Ms Webb was not held by Council: **[1092 – 1106]**.

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GIPA Application No. PSC2019-00110

33 The second formal access application received by Council from Ms Webb on 14 January 2019 was given identifier PSC2019-00110: **[1107 - 1109]**.

34 23 On 8 February 2019, Council sent Ms Webb a letter requesting additional information regarding the application: **[1110]**.

35 In an email dated 8 February 2019, Ms Webb responded to Council's request for clarification: **[1111 – 1112]**.

36 On 12 February 2019, Ms Jamadar determined that the information requested by Ms Webb was not held by Council: **[1113 – 1128]**.

B. FURTHER FORMAL GIPA APPLICATIONS

Applications regarding Council's consultation with third parties

37 Of the formal applications lodged by Ms Webb and her husband, 13 relate to Council's consultation with third parties regarding complaints in relation to the privacy screen, objections to the DA, and GIPA applications for access to those complaints or objections.

GIPA Application No. PSC2011-02623

38 On 27 July 2011 Council received an application from Ms Webb (which was mis-dated as 26 July 2010), which was given identifier PSC2011-02623: **[2 – 6]**.

39 On 29 July 2011, Ms Webb advised that the formal application should be placed on hold until an informal application lodged by Mr McEwan (dated 14 July 2011, **[1]**) was determined. On 4 August 2011, Ms Webb advised that she wished to proceed with the formal application: **[8 – 9]**.

40 On 9 August 2011, I determined to refuse to provide Ms Webb with access to the material: **[13 – 19]**.

GIPA Application No. PSC2012-05342

41 On 20 December 2012, Council received three formal access applications under the GIPA Act from Ms Webb.

42 The first of these applications was given identifier PSC2012-05342: **[20 – 21]**.

43 On 7 February 2013, I determined to refuse to grant Ms Webb access to the information: **[22 – 28]**.

GIPA Application No. PSC2012-05343

44 The second formal access application received by Council from Ms Webb on 20 December 2012 was given identifier PSC2012-05343: **[29 – 30]**.

45 On 8 January 2013, I determined to refuse to grant Ms Webb access to the information: **[31 – 35]**.

GIPA Application No. PSC2012-05346

46 The third formal access application received by Council from Ms Webb on 20 December 2012 was given identifier PSC2012-05346: **[36 – 37]**.

47 On 7 February 2013, I determined to refuse to grant Ms Webb access to the information: **[38 – 45]**.

GIPA Application No. PSC2016-00216

48 On 20 January 2016, Council received two formal access applications under the GIPA Act from Ms Webb. The first of these applications was given identifier PSC2016-00216: **[46 – 49]**.

49 On 16 February 2016, Courtney Coburn, a governance officer and right to information officer at Council, identified one document falling within the scope of the application and granted Ms Webb full access to that document: **[50 – 62]**.

50 On 4 April 2016, Ms Webb sought review of Council's decision in the Tribunal.

51 In the course of a case conference before the Tribunal, Ms Webb clarified that the scope of her application extended to third party consultation under the GIPA Act. Council was directed to re-determine the application: **[63]**. A further search was carried out, and I determined to release the dates of third party consultations under the GIPA Act to Ms Webb: **[63 – 70]**.

52 Ms Webb pressed her application in the Tribunal. Council's decision was affirmed by the Tribunal at first instance in *Webb v Port Stephens Council* [2017] NSWCATAD 271. It was then affirmed on appeal by the Appeal Panel in *Webb v Port Stephens Council* [2018] NSWCATAP 224.

GIPA Application No. PSC2016-00217

53 The second formal access application received by Council from Ms Webb on 20 January 2016 was given identifier PSC2016-00217: **[71 – 74]**.

54 On 15 February 2016, Ms Coburn determined that Council did not hold the information requested: **[75 – 84]**.

55 On 4 April 2016, Ms Webb sought a review of Council's decision in the Tribunal.

56 On 31 May 2016, following a case conference in the proceedings, Council was directed to re-determine the access application following the receipt of further information from Ms Webb: **[85]**.

57 On 27 June 2016, I determined that Council did not hold the information requested **[85 – 88]**.

58 Council's decision was affirmed by the Tribunal at first instance in *Webb v Port Stephens Council* [2017] NSWCATAD 271. It was then affirmed on appeal by the Appeal Panel in *Webb v Port Stephens Council* [2018] NSWCATAP 224.

GIPA Application No. PSC2016-00709

59 On 3 March 2016, Council received a formal access application from Ms Webb which was given identifier PSC2016-00709: **[125 – 132]**.

60 On 3 May 2016, Ms Coburn identified 47 documents as falling within the scope of the application, and determined to (**[133 – 160]**):

a. grant Ms Webb part access to 12 documents,

b. refuse Ms Webb access to 29 documents, and

c. refuse to deal with Ms Webb's application in respect of six documents.

61 On 15 June 2016, Ms Webb lodged NCAT Application No. 2016/378165 regarding PSC 2016-00709.

62 On 11 November 2016, Council re-determined Ms Webb's application in response to an agreed outcome during an NCAT mediation in the matter: **[165 – 195]**. Council identified 73 documents as falling within the scope of the application and determined to (**[172 – 195]**):

a. grant Ms Webb part access to 23 documents,

b. refuse Ms Webb access to 44 documents, and

c. refuse to deal with the access application in respect of six documents.

63 Ms Webb pressed her application with the Tribunal. The proceedings were the subject of the following decisions of the Tribunal:

a. *Webb v Port Stephens Council* [2017] NSWCATAD 271;

b. *Webb v Port Stephens Council* [2018] NSWCATAP 224; and

c. *Webb v Port Stephens Council* [2019] NSWCATAD 47.

64 On 27 March 2019, the Tribunal remitted the matter to Council for re-determination for the documents in question to be suitably redacted to mask all personal information and all health-related information in relation to:

a. the 44 documents where Council refused to grant Ms Webb access; and

b. the six documents in respect of which Council refused to deal with Ms Webb's application.

65 Between 29 March 2019 and 10 May 2019, Ms Webb sent multiple emails to Council officers and Mr Zoppo in relation to the redetermination: **[197 – 202]**.

66 On 15 May 2019, Ms Webb lodged NCAT Application No. 2019/174496 in relation to the absence of a decision of Council on remittal **[203 – 206]**.

67 The redetermination was made by Notice of Decision dated 28 June 2019: **[207 – 213].**

68 The proceedings remain on foot and are listed for hearing on 24 February 2020 for Ms Webb to show cause as to why it should not be dismissed as frivolous, vexatious, or lacking in substance.

GIPA Application No. PSC2018-02369

69 On 20 June 2018, Council received a formal access application from Ms Webb which was given identifier PSC2018-02369: **[947 – 950]**.

70 On 19 July 2018, Ms Jamadar identified eight documents as falling within the scope of the application and made the following determinations (**[951 – 969]**):

a. two were released in full to Ms Webb as they were documents which had been authored by her; and

b. access to the remaining six documents was refused in full on grounds which included that disclosure would prejudice court proceedings.

71 On 27 July 2018, Ms Webb commenced NCAT proceedings 2018/231127 in relation to Council's decision.

72 After numerous case conferences in the proceedings, the application was withdrawn by Ms Webb on 23 July 2019 without the provision of any further documents.

GIPA Application No. PSC2019-02452

73 On 24 May 2019, Council received a formal access application from Ms Webb which was given identifier PSC2019-02452: **[1604 – 1607]**.

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74 The application concerned Tribunal proceedings 2016/378193, which were commenced by Ms Webb's husband, Mr McEwan, in relation to an access application seeking a copy of objections lodged in relation to the DA. Those proceedings are the subject of the following decisions of the Tribunal:

a. *McEwan v Port Stephens Council* [2017] NSWCATAD 269;

b. *McEwan v Port Stephens Council* [2018] NSWCATAP 211; and

c. *Webb v Port Stephens Council* [2019] NSWCATAD 47.

75 Both documents sought in the application were filed by Council in the Tribunal on a confidential basis.

76 On 24 June 2019, Ms Jamadar determined (**[1608 – 1624]**):

a. to provide Ms Webb with access to the covering letter with the name of the third party the subject of the medical report redacted; and

b. to provide Ms Webb with a copy of the submissions in full.

GIPA Application No. PSC2019-02506

77 On 4 June 2019, Council received a formal access application from Ms Webb which was given the identifier PSC2019-02506: **[1625 – 1627]**.

78 On 3 July 2019, Ms Jamadar refused to provide access to the information the subject of the application: **[1628 – 1643]**.

79 On about 4 July 2019, Ms Webb lodged an application for review with the NSW Information and Privacy Commission (**IPC**) (IPC reference: IPC19/R000429).

80 On 15 October 2019, the IPC determined that Council's decision was not justified: **[1661 – 1668]**.

81 On 5 November 2019, I re-determined the application and determined to refuse access to the information: **[1670 – 1681]** (and as amended at **[1685 – 1696]**).

GIPA Application No. PSC2019-03530

82 On 15 August 2019, Council received a formal access application from Ms Webb which was given the identifier PSC2019-03530: **[1697 – 1700]**.

83 On 26 September 2019, Ms Jamadar determined to grant part access to some information to Ms Webb, delete some information that did not fall within the scope of the application, and that access to the remaining information had already been determined in a previous GIPA request: **[1702 – 1724]**.

84 On 27 September 2019, Ms Webb lodged an application for review with the IPC (IPC reference: IPC19/R000650): **[1726 – 1727]**.

85 On 20 December 2019, the IPC concluded that Ms Jamadar's decision was justified: **[1741 – 1746]**.

GIPA Application No. PSC2019-04728

86 On 8 October 2019, Council received a formal access application from Ms Webb which was given identifier PSC2019-04728: **[1747 – 1750]**.

87 On 19 November 2019, Ms Jamadar determined that Council did not hold some of the information requested, and to otherwise released in part the remaining information: **[1752 – 1776]**.

GIPA Application No. PSC2016-01633 (lodged by Mr McEwan)

88 On 2 February 2015, Council received an informal access application from Mr McEwan which was given identifier PSC2015-00347: **[213A-213B].**

89 On 16 February 2015, Ms Coburn determined to refuse access to the information requested: **[213C]**.

90 On 7 June 2016, Council received a formal access application from Mr McEwan which was given identifier PSC 2016-01633: **[214 – 217]**.

91 On 29 June 2016, Ms Coburn decided to refuse access to the information Mr McEwan sought: **[225 – 237]**.

92 On 15 July 2016, Mr McEwan commenced NCAT Proceedings No. 2016/378193 in relation to Ms Coburn's decision.

93 On 11 November 2016, I re-determined Ms Webb's application in response to an agreed outcome during an NCAT mediation in the proceedings: **[253 – 260]**.

94 That decision is the subject of the decisions of the Tribunal identified at paragraph 72 above.

Applications regarding the Privacy Screen

95 In addition to those applications which sought a copy of objections and complaints, Ms Webb has lodged a total of 18 applications relating to the Privacy Screen and the DA.

GIPA Application No. PSC2016-00295

96 On 29 January 2016, Council received a formal access application from Ms Webb which was given identifier PSC2016-00295: **[89 – 92]**.

97 On 18 February 2016, Ms Coburn determined that Council did not hold the requested information: **[93 - 102]**.

98 On 5 April 2016, Ms Webb commenced Tribunal proceedings 2016/378011 in which she sought a review of Council's decision.

99 On 31 May 2016, following a case conference, Council was directed to re-determine the access application following the receipt of further information from Ms Webb.

100 On 27 June 2016, I determined that Council did not hold the requested information: **[103 – 106]**.

101 Council's decision was affirmed by the Tribunal at first instance in *Webb v Port Stephens Council* [2017] NSWCATAD 271. It was then affirmed on appeal by the Appeal Panel dismissed in *Webb v Port Stephens Council* [2018] NSWCATAP 224.

GIPA Application No. PSC2016-03555

102 On 6 December 2016, Council received a formal access application from Ms Webb which was given identifier PSC2016-03555: **[284 – 289]**.

103 On 8 February 2017, Ms Coburn identified three documents as falling within the scope of the application. Each document was a screenshot showing a list of documents held on Council's TRIM records management system.

104 Ms Coburn decided to grant Ms Webb part access to each of the screenshots, with the title of document entries redacted to remove personal information: **[290 – 300]**.

105 On 14 March 2017, Ms Webb applied for a review of this decision with the Tribunal. Those proceedings were given the file number 2017/89313.

106 In *Webb v Port Stephens Council* [2017] NSWCATAD 348, the Tribunal ordered Council to remove the redactions to certain non-personal information, and to release the entries except in so far as they identify non-Council employees.

107 Ms Webb appealed this decision to the Appeal Panel. In *Webb v Port Stephens Council (No 3)* [2018] NSWCATAP 286, the Appeal Panel concluded that the TRIM records were not open access information. Despite this, the Panel remitted the matter to the Tribunal for reconsideration, along with other matters, on account of an error in the Tribunal's approach to open access information.

108 On 14 May 2019, Council released a revised redacted version of the documents the subject of the proceedings to Ms Webb: **[339 – 377C]**.

109 Ms Webb pressed her application. Subsequent to a case conference on 16 July 2019, and by consent, the Tribunal remitted the matter to Council for reconsideration under s 65 of the *Administrative Decisions Review Act 1997*: **[301 – 302]**.

110 On 2 August 2019, I determined not to release any further information to Ms Webb **[303 – 308]**.

111 On 16 August 2019, Ms Webb withdrew her application without the provision of any further information.

GIPA Application No. PSC2017-01772

112 On 16 June 2017, Council received a formal access application from Ms Webb. The application was given identifier PSC2017-01772: **[558 – 561]**.

113 On 6 July 2017, Cherylanne Bailey, a paralegal and right to information officer at Council, identified two documents as falling within the scope of the application, both of which were documents which Ms Webb and her husband had authored, and decided to grant full access to both documents: **[562 – 574]**.

GIPA Application No. PSC2016-03556

114 On 6 December 2016, Council received a second formal access application from Ms Webb which was given identifier PSC2016-03556: **[309 – 314]**.

100 On 17 January 2017, Ms Coburn located 23 records which responded to Ms Webb's application and determined to (**[315 – 328]**):

a. release 16 of those records to Ms Webb in full;

b. grant part access to five other records on the basis of legal professional privilege; disclosure revealing personal information that would contravene the PPIP Act; disclosure revealing health records information that would contravene the *Health Records and Information Privacy Act 2002;* and disclosure revealing information that would expose a person to risk of serious harm, serious harassment or serious intimidation under the *Government Information (Public Access) Act 2009*; and

c. refuse access to one document, being correspondence between Council staff and Council's Legal Services Manager, on the basis of legal professional privilege.

115 On 14 March 2017, Ms Webb commenced NCAT Proceedings No 2017/89311 for review of Council's decision.

116 Following a case conference on 23 May 2017, the Tribunal directed Council to review the searches undertaken: **[402]**.

117 On 8 June 2017, I wrote to the Tribunal in respect of the further searches, which did not reveal any further information: **[400 – 401]**.

118 On 7 July 2017, and upon receipt of the full processing fee for the application, Ms Bailey posted a copy of the Notice of Determination dated 17 January 2007 to Ms Webb.

119 The proceedings were the subject of the following decisions of the Tribunal:

a. *Webb v Port Stephens Council* [2017] NSWCATAD 348;

b. *Webb v Port Stephens Council (No 3)* [2018] NSWCATAP 286.

120 On 14 May 2019, Council provided Ms Webb with a further version of the documents the subject of the proceedings with some redactions removed: **[339 – 377C]**.

121 Ms Webb pressed her application. Subsequent to a case conference on 16 July 2019, and by consent, the Tribunal remitted the matter to Council for reconsideration under s 65 of the *Administrative Decisions Review Act 1997*: **[301 – 302]**.

122 On 2 August 2019, I determined not to release any further information to Ms Webb **[378 – 383]**.

123 On 16 August 2019, Ms Webb withdrew her application.

GIPA Application No. PSC2016-03598

124 On 12 December 2016, Council received a formal access application from Ms Webb which was given identifier PSC2016-03598: **[384 – 388]**.

125 On 24 January 2017, Ms Coburn located three documents which responded to Ms Webb's request and determined to release two of the documents to Ms Webb in full and the other in a redacted form: **[389 – 399]**.

126 On 14 March 2017, Ms Webb commenced NCAT Proceedings No 2017/89292 for review of Council's decision.

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127 Following a case conference on 23 May 2017, the Tribunal directed Council to review the searches undertaken: **[402]**.

128 On 8 June 2017, I wrote to the Tribunal in respect of the further searches, which did not reveal any further information: **[400 – 401]**.

129 The proceedings were the subject of the following decisions of the Tribunal:

a. *Webb v Port Stephens Council* [2017] NSWCATAD 348;

b. *Webb v Port Stephens Council (No 3)* [2018] NSWCATAP 286.

130 On 16 July 2019, at a case conference, Ms Webb withdrew her application without any further information being released.

GIPA Application No. PSC2017-00801

131 On 9 March 2017, Ms Webb lodged five formal access applications, each relating to the privacy screen and DA. The first of these applications was given identifier PSC2017-00801: **[406 – 409]**.

132 On 11 April 2017, Ms Bailey granted Ms Webb full access to the information requested: **[410 – 421]**.

GIPA Application No. PSC2017-00802

133 The second formal access application received by Council from Ms Webb on 9 March 2017 was given identifier PSC2017-00802: **[425 – 428]**.

134 On 11 April 2017, Ms Bailey identified seven documents as falling within the scope of Ms Webb's application, but determined that there was an overriding public interest against disclosure of six of those documents because they were identified as being subject to legal professional privilege: **[429 – 439]**. Part access was given to the seventh document.

135 On 12 May 2017, Ms Webb applied to the Tribunal for review of Council's decision. Those proceedings (2017/146399) were the subject of the following decisions of the Tribunal:

a. *Webb v Port Stephens Council* [2017] NSWCATAD 348;

b. *Webb v Port Stephens Council (No 3)* [2018] NSWCATAP 286.

136 On 14 May 2019, Council removed one of the redactions in the seventh document and provided Ms Webb with a copy: **[339 – 377C]**.

137 On 16 July 2019, at a case conference, Ms Webb withdrew her application.

GIPA Application No. PSC2017-00803

138 The third formal access application received by Council from Ms Webb on 9 March 2017 was given identifier PSC2017-00803: **[443 – 446]**.

139 On 11 April 2017, Ms Bailey determined that Council held no information which fell within the scope of the application: **[447 – 455]**.

GIPA Application No. PSC2017-00804

140 The fourth formal access application received by Council from Ms Webb on 9 March 2017 was given identifier PSC2017-00804: **[459 – 462]**.

141 On 11 April 2017, Ms Bailey identified eight documents which respondent to Ms Webb's application and determined to (**[463 – 470]**):

a. grant Ms Webb full access to one document,

b. grant Ms Webb part access to another document;

c. refuse Ms Webb access to the remaining six documents on the basis of legal professional privilege.

142 On 12 May 2017, Ms Webb applied to the Tribunal for review of Council's decision. Those proceedings (2017/146396) were the subject of the following decisions of the Tribunal:

a. *Webb v Port Stephens Council* [2017] NSWCATAD 348;

b. *Webb v Port Stephens Council (No 3)* [2018] NSWCATAP 286.

143 On 14 May 2019, Council provided Ms Webb with a full copy of the document for which part access was granted with the only redaction removed: **[339 – 377C]**.

144 On 16 July 2019, at a case conference, Ms Webb withdrew her application.

GIPA Application No. PSC2017-00805

145 The fifth formal access application received by Council from Ms Webb on 9 March 2017 was given identifier PSC2017-00805: **[480 – 483]**.

146 On 11 April 2017, Ms Bailey identified 3 documents as falling within the scope of the application and decided to (**[484 – 493]**):

a. release two documents to Ms Webb in full; and

b. grant part access to one document.

147 On 12 May 2017, Ms Webb applied to the Tribunal for review of Council's decision. Those proceedings (2017/146393) were the subject of the following decisions of the Tribunal:

a. *Webb v Port Stephens Council* [2017] NSWCATAD 348;

b. *Webb v Port Stephens Council (No 3)* [2018] NSWCATAP 286.

148 On 14 May 2019, Council provided Ms Webb with a full copy of the document for which part access was granted with the only redaction removed: **[339 – 377C]**.

149 On 16 July 2019, at a case conference, Ms Webb withdrew her application.

GIPA Application No. PSC2017-01237

150 On 24 April 2017, Council received two formal access applications from Ms Webb. The first of these applications was given identifier PSC2017-01237: **[494 – 498]**.

151 On 26 May 2017, Ms Bailey granted Ms Webb part access to some of the information requested and refused access to some of the information requested: **[499 – 512]**.

GIPA Application No. PSC2017-01238

152 The second formal access application received by Council from Ms Webb on 24 April 2017 was given identifier PSC2017-01238: **[513 – 517]**.

153 On 26 May 2017, Ms Bailey granted Ms Webb part access to the some of the information requested and determined that Council did not hold some of the information requested: **[518 – 531]**.

GIPA Application No. PSC2017-02557

154 On 18 August 2017, Council received a formal access application from Ms Webb which was given identifier PSC 2017-02557: **[575 – 578]**.

155 On 13 September 2017, Ms Jamadar determined to provide Ms Webb access to some of the information requested and determined that some of the information requested was not held by Council: **[579 – 599]**.

156 On 29 September 2017, Ms Jamadar wrote to Ms Webb to advise that additional information had been located and provided a revised notice of decision including a detailed explanation about the additional information that was found after the initial date of determination: **[600 – 620]**.

GIPA Application No. PSC2017-03166

157 On 1 November 2017, Council received a formal access application from Ms Webb which was given identifier PSC2017-03166: **[678 – 680]**.

158 On 7 December 2017, Ms Jamadar determined to provide Ms Webb full access to the information requested: **[681 – 698]**.

159 On 16 January 2018, Ms Webb applied to the Tribunal for review of Council's decision. The proceedings were resolved at a telephone preliminary hearing on jurisdiction held on 30 April 2018, during which Ms Webb withdrew her application

GIPA Application No. PSC2017-03368

160 On 6 December 2017, Council received a formal access application from Ms Webb which was given identifier PSC2017-03368: **[699 – 704]**.

161 On 10 January 2018, Ms Jamadar determined to provide Ms Webb full access to the information requested: **[705 – 727]**.

162 On 16 January 2018, Ms Webb applied to the Tribunal for review of Council's decision. The proceedings were resolved at a preliminary hearing on jurisdiction held on 30 April 2018, during which Ms Webb withdrew her application.

GIPA Application No. PSC2018-00656

163 On 1 March 2018, Council received a formal access application from Ms Webb which was given identifier PSC2018-00656: **[774 – 777]**.

164 On 20 March 2018, Ms Jamadar emailed Ms Webb, attaching a letter dated 13 March 2018, seeking to clarify the scope of Ms Webb's application: **[778]**.

165 On 20 March 2018, Ms Webb responded to Ms Jamadar's letter: **[779 – 780]**.

166 On 6 April 2018, Ms Jamadar (**[781 – 799]**):

a. identified nine documents as falling within the scope of Ms Webb's application but that some of the information requested was not held by Council;

b. in relation to the nine documents she had identified, Ms Jamadar decided to:

i. release two documents to Ms Webb in full;

ii. release one document to Ms Webb in part; and

iii. refuse access to the remaining six documents.

167 On 16 April 2018, Ms Webb applied to the Tribunal for review of Council's decision.

168 On 3 July 2018, Council's solicitor, Carlo Zoppo, wrote to Ms Webb and provided her with an unredacted copy of the single document which had previously been released in part, and an unredacted copy of one document for which Ms Jamadar had refused access: **[773A-773D]**.

169 Ms Webb pressed her application. Those proceedings (2018/119922) are presently before the Tribunal. The hearing has been concluded and the Tribunal's decision is reserved.

GIPA Application No. PSC2019-00276

170 On 5 February 2019, Council received a formal access application from Ms Webb which was given identifier PSC2019-00276: **[1291 – 1294]**.

171 On 19 March 2019, Ms Jamadar determined to provide Ms Webb with part access to the information requested: **[1295 – 1318]**.

GIPA Application No. PSC2019-02375

172 On 16 May 2019, Council received a formal access application from Ms Webb which was given identifier PSC2019-02375: **[1495 – 1497]**.

173 On 28 June 2019, Ms Jamadar determined to provide access to the information requested with redactions being made in respect of the signatures of third parties: **[1498 – 1515]**.

174 On 4 July 2019, Ms Webb sought an external review of the decision with the IPC (IPC reference: IPC19/R000426): **[1516 – 1518]**.

175 On 18 September 2019, the IPC recommended that Council make a new decision in relation to the processing charge by way of internal review **[1561 – 1566]**.

176 On 10 October 2019, Council determined that the processing charge would remain the same: **[1568 – 1576]**.

177 On 11 October 2019, Ms Webb sought a review of the internal review decision with the IPC (IPC reference: IPC19/R000650): **[1577 – 1578]**.

178 On 19 December 2019, the IPC determined that Council's decision to impose a processing charge was justified: **[1599 – 1603]**.

Applications for material tied to NCAT Proceedings

179 In addition to applications PSC2018-02369 and PSC2019-02452 which sought material disclosed to the Tribunal in closed session, Ms Webb has lodged a further four access applications seeking material connected with proceedings before the Tribunal.

GIPA Application No. PSC2017-02787

180 On 13 September 2017, Council received a formal access application from Ms Webb which was given identifier PSC2017-02787: **[649 – 651]**.

181 On 12 October 2017, Ms Jamadar determined to provide Ms Webb full access to the information requested: **[659 – 677]**.

182 On 13 November 2017, Ms Webb applied to the Tribunal for review of Council's decision. Those proceedings (2017/00343768 were withdrawn by Ms Webb after a case conference.

GIPA Application No. PSC2018-03608

183 On 24 October 2018, Council received a formal access application from Ms Webb which was given identifier PSC2018-03608: **[1012 – 1014]**.

184 On 8 November 2018, Ms Jamadar determined to grant Ms Webb full access to the information requested: **[1015 – 1030]**.

185 Between 27 November 2018 and 19 December 2018, Ms Webb and Ms Jamadar engaged in further email correspondence in relation to this application: **[1031 – 1036]**.

GIPA Application No. PSC2018-03897

186 On 27 November 2018, Council received a formal access application from Ms Webb which was given identifier PSC2018-03897: **[1037 – 1040]**.

187 On 7 January 2019, Ms Jamadar determined to grant Ms Webb part access to the information requested: **[1041 – 1058]**.

GIPA Application No. PSC2019-00702

188 On 19 March 2019, Council received a formal access application from Ms Webb which was given identifier PSC2019-00702: **[1319 – 1322]**.

189 On 16 April 2019, Ms Jamadar determined that the application was invalid: **[1331 – 1339]**.

Applications regarding alleged restriction of services

GIPA Application No. 2016-00708

190 On 3 March 2016, Council received a formal access application from Ms Webb which was given identifier PSC2016-00708: **[107 – 111]**.

Lea Marshall

191 On 26 April 2016, Ms Coburn decided that some of the information requested was not held by Council and to grant part access to the information which was held by Council: **[112 – 124]**.

GIPA Application No. PSC2016-01972

192 On 4 July 2016, Council received a formal access application from Ms Webb which was given identifier PSC2016-01972: **[261 – 265]**.

193 On 8 August 2016, Ms Coburn decided to grant Ms Webb part access to the information requested: **[266 – 282]**.

194 On 16 August 2016, Ms Webb requested an internal review of the decision with Council. No payment of an internal review application fee was made and the matter did not progress.

Other Applications

195 The remaining ten applications lodged by Ms Webb and her husband relate to other issues pertaining to secondary employment code of conduct complaints, Council's information technology and records systems, background information in relation to development applications called up to Council for determination and correspondence in relation to the NSW Ombudsman's enquiries of Council.

GIPA Application No. PSC2017-01699

196 On 8 June 2017, Council received a formal access application from Ms Webb which was given identifier PSC2017-01699: **[532 – 538]**.

197 On 6 July 2017, Ms Bailey determined to grant Ms Webb part access to the information requested: **[539 – 557]**.

GIPA Application No. PSC2017-02640

198 On 29 August 2017, Council received a formal access application from Ms Webb which was given identifier PSC2017-02640: **[621 – 625]**.

199 On 29 September 2017, Ms Jamadar determined to grant Ms Webb full access to some of the information requested and part access to the remaining information requested: **[626 – 648]**.

GIPA Application No. PSC2018-00250

200 On 31 January 2018, Council received a formal access application from Ms Webb which was given identifier PSC2018-00250: **[728 – 731]**.

201 On 23 February 2018, Ms Jamadar determined to grant Ms Webb access to some of the information requested and to refuse access to some of the information requested: **[732 – 773]**.

202 On 16 April 2018, Ms Webb applied to the Tribunal for review of Council's decision.

203 On 3 July 2018, Council's solicitor, Carlo Zoppo, wrote to Ms Webb and provided her with an unredacted copy of all of the documents the subject of the application: **[773A-773D].**

204 Ms Webb pressed her application. The proceedings (2018/119930) are presently before the Tribunal. The hearing has been concluded and the Tribunal's decision is reserved.

GIPA Application No. PSC2018-01475

205 On 9 May 2018, Council received a formal access application from Ms Webb which was given identifier PSC2018-01475: **[800 – 803]**.

206 On 6 June 2018, Ms Jamadar determined that some of the information requested was not held by Council, and to grant Ms Webb full access to the information which was held by Council: **[804 – 823]**.

GIPA Application No. PSC2018-02026

207 On 8 June 2018, Council received a formal access application from Ms Webb which was given identifier PSC2018-02026: **[824 – 828]**.

208 On 27 June 2018, Ms Jamadar wrote to Ms Webb and requested that she refine the scope of her application: **[829 – 837]**.

209 On 27 July 2018, Ms Webb applied to the Tribunal for review of Council's decision. Those proceedings (2018/00231075) concerned Council's decision to require her to pay an advance deposit in order for PSC2018-02026 to continue to progress.

210 On 4 September 2018, Ms Webb sought to modify her access application: **[838 – 851].**

211 On 11 September 2018, Ms Jamadar wrote to Ms Webb: **[852 – 853].**

212 On 2 October 2018, the Tribunal made directions by consent in the proceedings: **[854 – 855]**.

213 On 9 October 2018, Ms Webb modified the scope of her application: **[856 – 857]**.

214 On 18 October 2018, Ms Jamadar wrote to Ms Webb: **[858 – 859]**.

215 On 21 December 2018, Ms Jamadar issued a part notice of decision to Ms Webb: **[866 – 884]**. Ms Jamadar determined to provide Ms Webb part access to the information requested.

216 On 5 June 2019, Senior Member Hamilton affirmed Council's decision regarding the advance deposit: *Webb v Post Stephens Council* [2019] NSWCATAD 107.

217 On 11 June 2019, Ms Jamadar wrote to Ms Webb about the advance deposit: **[885]**.

218 On 12 June 2019, Ms Webb replied to Ms Jamadar by email: **[886 – 887]**.

219 On 12 June 2019, Lisa Marshall, Council's Manager Legal Services, wrote to Ms Webb: **[888]**.

220 On 9 August 2019, Ms Jamadar issued a notice of decision to Ms Webb: **[889 – 912]**. Ms Jamadar determined to provide access to the information requested with the exception of signatures being redacted and that for some applications, no information was held by Council.

221 On about 12 August 2019, Ms Webb applied for a review by the IPC (IPC Reference: IPC19/R000507): **[913 – 918]**.

222 On 6 December 2019, the IPC determined that Council's decisions were justified in relation to the reasonableness of searches but were not justified in relation to the decision to impose a processing charge: **[934 – 945]**.

GIPA Application No. PSC2019-00160

223 On 18 January 2019, Council received a formal access application from Ms Webb which was given identifier PSC2019-00160: **[1129 – 1132]**.

224 On 11 March 2019, Ms Jamadar determined to provide Ms Webb access to some of the information requested and to refuse to provide access to some of the information: **[1133 – 1154]**.

225 On 30 April 2019, Ms Webb lodged an application for review with the IPC (IPC reference: IPC19/R000277): **[1155 – 1156]**.

226 On 19 June 2019, The IPC recommend that Council conduct an internal review: **[1186 – 1256]**.

227 On 23 July 2019, I determined to release released some additional records and reduce the processing charges by 0.50 hours: **[1272 – 1290]**.

GIPA Application No. PSC2019-01056

L Marshall

228 On 3 May 2019, Council received a formal access application from Ms Webb which was given identifier PSC2019-01056: **[1340 – 1342]**.

229 On 27 May 2019, Ms Jamadar determined to provide Ms Webb access to some of the information and to refuse to provide access to some of the information: **[1343 – 1359]**.

GIPA Application No. PSC2019-02283

230 On 8 May 2019, Council received a formal access application from Ms Webb which was given identifier PSC2019-02283: **[1362 – 1365]**.

231 On 17 May 2019, Ms Jamadar and Ms Bailey determined to provide Ms Webb with full access to the information requested: **[1366 – 1389]** and **[1390 – 1403]**.

232 On 4 July 2019, Ms Webb lodged an application for review with the IPC (IPC reference: IPC19/R000425): **[1404 – 1405]**.

233 On 18 September 2019, the IPC recommended Council make a new decision in relation to the processing charge by way of internal review: **[1452 – 1467]**.

234 On 10 October 2019, I reduced the processing charges by 40 minutes: **[1469 – 1478]**.

235 On 11 October 2019, Ms Webb applied to the IPC for a review of the internal review decision (IPC reference: IPC19/R000649): **[1479 – 1480]**. The IPC found that Council's decision was justified: **[1490 – 1494]**.

GIPA Application No. PSC2019-04987 (lodged by Mr McEwan)

236 On 28 October 2019, Council received a formal access application from Mr McEwan which was given identifier PSC2019-04987 **[1777 – 1778]**.

237 On 15 January 2020, Ms Jamadar determined to grant part access to 101 documents, and full access to one document **[1779 – 1810]**.

GIPA Application No. PSC2020-00026

238 On 6 January 2020, Council received two formal access applications from Ms Webb. The first was given identifier PSC2020-00026 **[1811 – 1813]**.

239 At the time of affirming this affidavit, that application is still to be determined.

GIPA Application No. PSC2020-00028

240 The second formal access application received from Ms Webb on 6 January 2020 was given identifier PSC2020-00028 **[1814 – 1816]**.

241 At the time of affirming this affidavit, that application is still to be determined.

Lee Marshall

C. USE OF COUNCIL'S RESOURCES

242 From my review of Council's records, between March 2017 and January 2020:

a. Council received 37 formal applications from Ms Webb for access to information under the GIPA Act;

b. Council officers spent a total of 327.75 hours processing those applications lodged by Ms Webb;

c. the total number of formal applications lodged with Council by members of the public, including Ms Webb, was 93; and

d. Council officers spent a total of 607.25 hours processing formal GIPA applications, including those lodged by Ms Webb.

243 The number of hours spent processing formal GIPA applications was calculated by aggregating the processing times for each application lodged within the period from March 2017 to January 2020. Those times are entered by Council officers in the GIPA Register.

244 On the basis of these figures, I calculate that between March 2017 and January 2020:

a. 39.78 per cent of all formal applications received by Council were from Ms Webb; and

b. 53.97 per cent of the time spent by Council officers in processing GIPA applications was spent in processing applications lodged by Ms Webb.

245 Council has allocated 50% of one full-time role to GIPA compliance, with the other 50% allocated to other functions. Due to the impacts of the large number of applications received from Ms Webb, and the breadth of the applications, the officer's ability to work on other GIPA applications and perform the other functions of the role was dramatically affected. Another officer was required to assist the officer in carrying out the other functions of the role.

246 As part of Council's evidence in Tribunal proceedings 2019/174496 and 2019/174490, Council filed a schedule containing the costs it has incurred in relation to each application brought by Ms Webb before the Tribunal for a review of a decision made by officers of Council under the GIPA Act. I have reviewed Council's records, and on the basis of that review, Council incurred $125,216.90 (excluding GST) on external legal representation up to 2 August 2019. In those matters in which Council did not brief external lawyers, Council officers spent 351 hours defending applications brought by Ms Webb before the Tribunal.

Sean Macdonell

D. FURTHER DEALINGS OF MS WEBB CONCERNING COUNCIL

Code of Conduct complaints

247 Council is required to adopt a Code of Conduct under the LG Act.

248 Under the Procedures for the Administration of that Code, Council is required to appoint a complaints coordinator. The main function of the complaints coordinator is to coordinate the management of complaints made under the code.

249 I am the complaints coordinator for Council. Ms Marshall is the alternate.

250 As complaints coordinator, I manage all code of conduct complaints except those which concern me. Any complaints regarding me are managed by Ms Marshall or Council's Human Resources Section at the direction of the General Manager.

251 Since 2012, Council has received 20 complaints from Ms Webb and her husband alleging breaches of Council's Code of Conduct. Those complaints have been lodged against:

a. Council staff involved in the determination of GIPA applications;

b. Council staff involved in investigating Code of Conduct complaints; and

c. Council's external legal solicitor in relation to proceedings before NCAT.

252 15 of these complaints were lodged between May 2017 and May 2019.

253 Council determined to take no action in respect of each of the complaints. Each complaint was determined to be unfounded.

254 A copy of each complaint of which I have personal knowledge and its outcome is included in Exhibit TW-1 as follows:

a. complaint of 22 November 2015 in respect of Ms Coburn (**[1819 – 1838]**), determined on 3 December 2015 (**[1839 – 1850]**);

b. Complaint of 22 November 2015 in respect of Ms Marshall (**[1852 – 1883]**), determined on 3 December 2015 (**[1884 – 1890]**);

c. complaint of 22 November 2015, in respect of Mr Wayne Wallis, Council's General Manager (**[1896 - 1921]**), determined on 22 March 2016 (**[1922 – 1926]**);

d. complaint of 30 May 2017 in respect of Ms Marshall (**[1930 – 1940]**), determined on 13 July 2017 (**[1941 – 1943]**);

e. complaint of 5 June 2017 in respect of Ms Marshall (**[1946 – 1957]**), determined on 13 July 2017 (**[1958 – 1960]**);



f. complaint of 15 August 2018 in respect of Ms Jamadar (**[1962 – 1968]**), determined on 7 February 2019 (**[1969 – 1970]**);

g. complaint of 15 August 2018 in respect of Ms Marshall **[1992 – 2005]**, determined on 5 February 2019 (**[2006]**);

h. complaint of 15 August 2018 in respect of Mr Zoppo (**[1975 –1986]**), determined on 7 February 2019 (**[1987 – 1988]**);

i. complaint of 3 December 2018 in respect of Ms Marshall (**[2009 – 2012]**), determined on 17 December 2018 (**[2013 – 2015]**);

j. complaint of 3 January 2019 in respect of Mr Zoppo (**[2017 – 2020]**), determined on 9 January 2019 (**[2021 – 2022]**);

k. complaint of 8 January 2019 in respect of Ms Marshall (**[2024 – 2030]**), determined on 17 December 2018 (**[2031 – 2032]**);

l. complaint of 8 January 2019, in respect of Mr Wallis (**[2036 – 2044]**), determined on 12 February 2019 (**[2045 –2047]**);

m. complaint of 8 January 2019 in respect of Councillor Ryan Palmer, Council's current Mayor (**[2049 – 2053]**), determined on (**[2054 – 2055]**);

n. complaint of 14 January 2019 in respect of Ms Jamadar (**[2057 – 2062]**), determined on 18 January 2019 (**[2063 – 2064]**);

o. complaint of 21 January 2019 in respect of Ms Jamadar (**[2065 – 2069]**), determined on 25 January 2019 (**[2070 – 2073]**).

255 I understand that six complaints have been made concerning me. I understand that the complaints will be provided to the Tribunal by way of a separate bundle.

256 Ms Webb has sent code of conduct complaints in relation to Council officers directly to Councillors on 19 occasions.

257 Ms Webb has also sent emails to Councillors commenting on the outcome of Council's investigation of code of conduct complaints lodged by her on five occasions: **[2915 – 2966]**.

258 On 15 August 2018, Ms Webb lodged a code of conduct complaint against Ms Jamadar. The substance of that complaint was based on a witness statement from Ms Jamadar which had been filed in Tribunal proceedings 2018/119930.

259 On 27 August 2018, Council's solicitors wrote to Ms Webb in relation to her use of material which had been filed in the proceedings: **[2822 – 2824]**.

260 On 27 August 2018, Ms Webb sent an email to the Councillors: **[2825]**.

Lee Marshall

261 On 28 August 2018, Ms Webb sent a letter to Council's solicitors: **[2826 – 2829]**.

262 The proceedings were listed for directions on 10 September 2018 in part to address Ms Webb's use of material filed in the Tribunal for other purposes. I am informed by Carlo Zoppo, and verily believe, that at that directions hearing, Senior Member Montgomery explained to Ms Webb the concept of an implied undertaking, and Ms Webb gave a formal undertaking not to use evidence filed in the proceedings for a purpose other than the proceedings. Pursuant to that directions hearing, Senior Member Montgomery made orders, including noting Ms Webb's undertaking: **[2830]**.

263 On 11 September 2018, Ms Webb wrote to the Tribunal and indicated that she withdrew that undertaking: **[2831 – 2832]**.

Report to NSW Police

264 On 23 March 2018, Council was notified by telephone by a Detective at Raymond Terrace Police Station that a report had been made to the effect that both Ms Marshall and I had misled the Tribunal and sought to pervert the course of justice during proceedings that had been commenced by Ms Webb seeking review of Council's decision in relation to her access applications.

265 Ms Marshall subsequently made an email file note regarding the conversation: **[2653]**.

266 To my knowledge, no action has been taken by the NSW Police in relation to the allegations.

Complaints to legal oversight bodies

267 On 30 May 2017 and 5 June 2017, Ms Webb and her husband, Mr McEwan lodged a formal complaint with the Office of the Legal Services Commissioner (**OLSC**) in relation to alleged conduct of Ms Marshall in proceedings before this Tribunal. The OLSC referred the matter to the Law Society of NSW. The Law Society took no action in relation to that complaint: **[2653A-2653G]**.

268 On 15 August 2018, Ms Webb lodged a complaint with the Legal Services Commissioner against Council's external legal representative, Carlo Zoppo: **[2654 – 2660]**. The Legal Services Commissioner found that the complaint was misconceived or lacking in substance: **[2661 – 2663].**

Complaints to the Information and Privacy Commission

269 Between 2015 and 2019, Ms Webb lodged a total of ten complaints to the IPC about Council's handling of access applications she had lodged.

L Marshall

270 A copy of the outcome of each complaint is included in Exhibit TW-1 as follows:

a. complaints of 14 and 28 September 2015, determined on 30 October 2015: **[2074 – 2076]**;

b. complaint of 10 November 2015, determined on 26 November 2015: **[2077 – 2085]**;

c. complaint of 10 April 2017, determined on 30 June 2017: [**2086 – 2117**];

d. complaint of 20 June 2017, determined on 21 August 2017: [**2118 – 2157**];

e. complaint of 31 January 2018, determined on 2 November 2018: **[2158 – 2167]**;

f. complaint of 6 April 2018, determined in about November 2018: **[2168 – 2191]**;

g. complaint of 4 July 2018, determined on 15 October 2018: **[2192 – 2204]**;

h. complaint of 13 August 2018, determined on 30 January 2019: **[2205 – 2223]**;

i. complaint of about January 2019, determined on 27 February 2019: **[2224 – 2239]**.

Complaint under the *Privacy and Personal Information Protection Act 1998*

271 On 31 May 2017, Ms Webb lodged a request for internal review under Part 5 of the *Privacy and Personal Information Protection Act 1998*: **[2582 – 2587]**.

272 On 24 July 2017, Ms Michelle Gilliver-Smith, Council's then Organisation Development Section Manager, determined that the request was made out of time: **[2611 – 2612]**.

Contempt proceedings

273 Ms Webb has commenced two sets of proceedings in the Tribunal accusing the Council and its officers of contempt.

Proceedings 2018/262624

274 The first of those proceedings was commenced on 27 August 2018 against Mr Zoppo, Ms Marshall and me: **[2847 – 2855]**.

275 In her application, Ms Webb alleged there had been an unlawful internal review by Council's conduct in deciding to release further information to Ms Webb in an attempt to resolve Tribunal proceedings 2019/119922 and 2018/119930. That information was released on 3 July 2018: **[773A-773D]**. Ms Marshall and I were not involved in the release of that information.

Lee Marshall

276 I am informed by Carlo Zoppo, and verily believe, that at the hearing of proceedings 2019/119922 and 2018/119930, words were said to the following effect:

Senior Member Dinnen:	*I just don't see it as being anything unlawful for the Respondent to go ahead and provide additional documents after it has given a decision.*
Ms Webb:	*I wasn't saying and I do apologise if I gave that impression… I was just referring to it as my interpretation of the provision of the documents as being unlawfully done.*

277 On 14 November 2018, Council's solicitors sent a letter to Ms Webb: **[2856 – 2858]**.

278 On 4 December 2018:

a. Ms Webb wrote to Council's solicitors: **[2859 – 2861]**; and

b. sent a letter to the Tribunal withdrawing her application: **[2862 – 2863]**.

279 I am informed by Matt Harker, solicitor for Council in the contempt proceedings, and verily believe, that:

a. a copy of Ms Webb's letter to the Tribunal (at **[2862 – 2863]**) was not sent by Ms Webb to Council's solicitors; and

b. Mr Harker obtained the letter directly from the Tribunal on 10 December 2019 after the matter had been listed for dismissal.

Proceedings 2019/174490

280 On 15 May 2019, Ms Webb commenced the second contempt proceedings against Council: **[2864 – 2874]**.

281 These proceedings concerned Council's reconsideration of the application the decision of Senior Member Hamilton in *Webb v Port Stephens Council* [2019] NSWCATAD 47. That decision was handed down on 27 March 2019.

282 At the time of affirming this affidavit, the proceedings are listed for a hearing on 24 February 2020 for Ms Webb to show cause as to why the proceedings should not be dismissed as frivolous, vexatious, or lacking in substance.

NSW Ombudsman

283 In about November 2014, Ms Webb and Mr McEwan lodged a complaint with the NSW Ombudsman in relation to the conduct of Council and some of its staff in relation to the DA and privacy screen.

284 On 3 November 2014, Margo Barton, a Senior Investigation Officer in the Ombudsman's office, wrote to Wayne Wallis, Council's General Manager: **[2551 – 2554]**.

285 On 1 December 2014, Mr Wallis responded to Ms Barton.

286 To the best of my knowledge, Council has received no further correspondence from the NSW Ombudsman in relation to this matter.

Local Court proceedings

287 On 11 June 2019, Ms Webb filed statement of liquidated claim in the Local Court Small Claims Division seeking $3,961.50 from Council for the cost of her formal GIPA applications lodged with Council from August 2011 and NCAT filing fees for some of her applications to the Tribunal for administrative review: **[2877 – 2889]**.

288 Council has filed a Notice of Motion to dismiss the proceedings for want of jurisdiction or, in the alternative, to transfer the matter to the General Division of the Local Court: **[2890 – 2908]**.

289 The Notice of Motion is scheduled for hearing in Newcastle Local Court on 31 January 2020.

Access application lodged with Office of Local Government

290 On 26 September 2018, Council received a letter from the Office of Local Government (**OLG**) as part of its third party consultation in relation to a formal access application that Ms Webb had lodged with the OLG on 3 September 2018: **[2664 – 2670]**.

291 On 28 September 2018, Council informed the OLG that it did not object to the release of the single document falling within the scope of the application: **[2671 – 2672]**.

Allegations against, and impact upon, Council staff

292 Throughout the course of the above access applications, and her broader dealings with Council, Ms Webb has made numerous allegations against me and other Council staff.

293 Those allegations include statements to the following effect:

a. in respect of a junior Council officer, Ms Coburn, that '*the lack of experience coupled with somewhat of a God complex might go some distance to explain why Courtney Coburn is making such poor and improper decisions which*

L Marshall

amount to breaking the law on several counts…': 22 November 2015 Code of Conduct complaint at **[1826]**;

b. that Ms Marshall and I deliberately abuse confidential sessions of the Tribunal to influence the Tribunal: submissions in Appeal Panel proceedings AP18/02138 **[2722 – 2761]**, at paragraph 47, and submissions in NCAT Proceedings No 2018/119922 **[2776 – 2821]** at paragraphs 96-97;

c. that Ms Marshall and I deliberately misled the Tribunal: submissions in Appeal Panel proceedings AP17/42809 and AP17/42900 **[2673 – 2721]** at paragraph 160; and submissions in Appeal Panel Proceedings AP18/02138 **[2722 – 2761]** at paragraphs 34 and 80-82;

d. that Council staff '*at all levels*', gave false and misleading advice to deliberately prevent the grant of development consent and '*orchestrate*' proceedings brought by Ms Webb and her husband before the Land and Environment Court: submissions in NCAT Proceedings No 2018/119922 **[2776 – 2821]** at paragraphs 69-87;

e. that Ms Marshall and I deliberately coached Council officer Melissa Rodway to dismiss a code of conduct complaint lodged by Ms Webb: closing submissions in NCAT Proceedings No 2018/119922 and 2018/119930 **[2833 - 2846]** at paragraph 62.8;

f. that Ms Marshall deliberately withheld information relevant to a code of conduct investigation: 8 January 2019 Code of Conduct complaint **[2024 – 2030]** at **[2025]**;

g. that I conducted a baseless attack against Ms Webb and her husband by allegedly referring to apprehended violence orders in an email to the Information and Privacy Commissioner dated 17 March 2015 when no such reference was made: closing submissions in NCAT Proceedings No 2018/119922 and 2018/119930 **[2833 – 2846]** at paragraph 84; and

h. that I always have a '*hidden agenda*' and '*do not support the principles of Open Access information unless it suits [me], and [my] actions show [I] resents the GIPA Act*': submissions in NCAT Proceedings No 2018/119922 **[2776 - 2821]** at paragraphs 53-54.

294 Each of these allegations are baseless and false.

295 In my dealings with Ms Webb, she has sent me repeated correspondence concerning the same subject matter within short periods of time. That correspondence has at times made me feel insulted, harassed, and anxious that



whatever response I provided would have consequences (even if the actions were appropriate). As a consequence, more time is diverted to my dealing with matters concerning Ms Webb and away from other parts of my role.

296 Ms Webb has made repeated reference to the Code of Conduct in her correspondence with me. This heightens my anxiety about responding to Ms Webb, as I have interpreted the references to mean that Ms Webb would lodge a Code of Conduct complaint against me, as she has done in the past.

297 An example of the above is the correspondence sent by Ms Webb to Ms Jamadar and me in relation to the determination of PSC2018-03897: **[1061 – 1087]**. The constant email correspondence and references to the Code of Conduct made me feel intimidated and harassed. I felt that it was designed in part to intimidate me to disclose, in part, confidential discussion from an NCAT hearing.

Restrictions on Access

298 Council has imposed upon Ms Webb and Mr McEwan a formal restriction upon access to Council services in 2011 to September 2013, and warned Ms Webb that it would do so again in June and July 2019.

2011 restriction

299 On 3 November 2011, Council wrote to Ms Webb and her husband, Mr McEwan, in relation to complaints lodged by her: **[2383 – 2385]**. In that letter, Council advised that Ms Webb and her husband should correspond with Council only in writing and through Council officers Matthew Brown and me.

300 At the time, Council had refused consent to the DA in relation to the privacy screen.

301 Between the date of that letter and a further letter from Council on 14 February 2012, Ms Webb and her husband sent a considerable amount of correspondence to officers other than me and Mr Brown: **[2240 – 2424]**.

302 By letter dated 14 February 2012, Council restricted Ms Webb and her husband to sending two items of correspondence to Council each month: **[2423 – 2424]**.

2019 restriction

303 On 27 May 2019, Ms Webb sent an email to myself and Ms Jamadar in relation to Ms Jamadar's decision concerning Ms Webb's access application PSC2019-01056: **[2429 – 2432]**.

304 On 13 June 2019, Mr Wallis, wrote to Ms Webb warning that Council would consider issuing a formal restriction of service should she continue the conduct outlined in that letter: **[2425 – 2428]**.

L Marshall

305 On 1 July 2019, Mr Wallis sent Ms Webb a further warning letter: **[2511 – 2530]**.

306 I understand that Mr Wallis has not received a response from Ms Webb to either the 13 June 2019 or 1 July 2019 letters. Since those letters, Council officers have continued to receive correspondence on an ongoing basis from Ms Webb.

SWORN at RAYMOND TERRACE

Signature of deponent

Name of witness LISA MARSHALL

Address of witness 116 ADELAIDE ST RAYMOND TERRACE

Capacity of witness Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

1 I saw the face of the deponent. [OR, delete whichever option is inapplicable]

~~#I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.*~~

2 I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]

~~#I have confirmed the deponent's identity using the following identification document:~~

Identification document relied on (may be original or certified copy)†

Signature of witness

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[† "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011 or refer to the guidelines in the NSW Department of Attorney General and Justice's "Justices of the Peace Handbook" section 2.3 "Witnessing an affidavit" at the following address: http://www.jp.nsw.gov.au/Documents/jp%20handbook%202014.pdf]