

MR PAUL MCEWAN
PO BOX 8030
MARKS POINT NSW 2280

draftcom@bigpond.com

Dear Mr McEwan

**Re: McEWAN V PORT STEPHENS COUNCIL
NCAT MATTER NO 2016/00378193 (PREVIOUS CASE NO. 1610429)**

Please find enclosed copy of Statement of Tony Wickham and Respondent's Outline of Submissions which have been filed with NCAT.

Yours sincerely,



Lisa Marshall
Manager Legal Services

31 January 2017

Telephone enquiries
(02) 4980 0377
Please quote file no: PSC2016-02130

Cc: NCAT Administrative & Equal Opportunity Division



REGISTRY
ADMINISTRATIVE AND EQUAL OPPORTUNITY DIVISION
NSW CIVIL & ADMINISTRATIVE TRIBUNAL
DX 11539 SYDNEY DOWNTOWN

Dear Sir/Madam

Re: PAUL McEWAN v PORT STEPHENS COUNCIL (Matter no: 2016/00378193)

We refer to Order 2 made by the Tribunal on 20 December 2016.

Please find enclosed for filing Statement of Tony Wickham and Respondent's Outline of Submissions.

A copy of the documents will be served on the Applicant as directed by the Tribunal.

Yours sincerely,



Lisa Marshall
Manager Legal Services

25 January 2017

Telephone enquiries
(02) 4980 0377
Please quote file no: PSC2016-02130

Cc: Paul McEwan

STATEMENT of TONY WICKHAM

IN THE MATTER OF PAUL McEWAN V PORT STEPHENS COUNCIL

NSW CIVIL AND ADMINISTRATIVE TRIBUNAL MATTER NO: 2016/00378193

(Previous Case Number: 1610429)

I, Tony Wickham, of 116 Adelaide Street, Raymond Terrace in the State of New South Wales, state:

1. This statement made by me accurately sets out the evidence that I would be prepared, if necessary, to give in court as a witness. The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I will be liable to prosecution if I have wilfully stated in it anything that I know to be false or do not believe to be true.
2. I am 46 years of age.
3. I am the Governance Manager and Public Officer at Port Stephens Council (**Council**) and have been employed by Port Stephens Council since 2003.
4. As part of my role at Council, I am responsible overall for access to information requests. 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.
5. On 7 June 2016 Council received from the Applicant a formal request under the Government Information (Public Access) Act 2009 for access to a "full and unedited copy of all the objecting submissions and attachments for the DA NO: 483/2011, including the original DA and subsequent 82a Requests for Review". The DA was for privacy screens at the property at 3 Sapphire Court, Raymond Terrace.
6. Council's Notice of Decision dated 29 June 2016 indicated a search had been undertaken of Council's physical and electronic records including archived files.
7. Access to the information sought was refused on the basis there was an overriding public interest against disclosure. In particular it was determined, pursuant to section 14 Table 3(a), (b) and (f) of the *Government Information (Public Access) Act 2009* (**GIPA**), that disclosure of the information could reasonably be expected to:
 - reveal an individual's personal information; and/or
 - contravene an information protection principle under the *Privacy and Personal Information Protection Act 1998* (**PPIPA**) or a Health Privacy Principle under the *Health Records and Information Privacy Act 2002* (**HRIPA**); and/or
 - expose a person to a risk of harm or of serious harassment or serious intimidation.

Pursuant to s55(1)(a), (b) and s55(6) of GIPA, application of the public interest test was subject to consideration of the personal factors of the formal application. The decision to refuse access was in accordance with responses to third party consultation with the authors

of the submissions, these responses having been received in relation to two prior applications for the same information.

8. Council has processed two prior access applications involving the same information as requested in the formal application the subject of these proceedings - the first in 2012 and the second earlier this year. Both applications were submitted by the Applicant's partner, Telina Webb, who also resided at the property the subject of DA 483/2011. Third party consultation was undertaken on both occasions.
9. While Council recognises the Applicant and his partner have separate rights of application for access to information under GIPA, given the information requested was the same, Council decided not to undertake third party consultation in relation to the Applicant's formal application. Council instead relied on the responses provided in 2012 and again earlier this year to help inform its decision not to disclose the information sought by the Applicant.
10. Council has also had recourse to a number of further documents detailing alleged threats and inducements made by the Applicant against those making the subject submissions.
11. Following the Notice of Decision for the GIPA application the subject of these proceedings, Council did not receive an application for internal review. On 12 July 2016 the Applicant filed an Administrative Review Application with the NSW Civil & Administrative Tribunal (**NCAT**).
12. At mediation in this matter held 14 October 2016, it was agreed that NCAT matters 2016/00377987 (previous case number 1610211), 2016/00378010 (previous case number 1610235), 2016/00378011 (previous case number 1610236) and 2016/00378165 (previous case number 1610401) be joined with this matter and heard together.
13. It was also agreed that the GIPA application the subject of this matter be redetermined following provision of further information by the Applicant..
14. The redetermination was made on 11 November 2016. Access to the information sought by Mr McEwan was again refused.

Signed: 

Dated: 25 January 2017

Witnessed:


Dated: 25 January 2017

RESPONDENT'S OUTLINE OF SUBMISSIONS

DETAILS

Jurisdiction	NSW Civil And Administrative Tribunal
Division	Administrative & Equal Opportunity
Case number	2016/00378193 (previous case number: 1610429)

TITLE OF PROCEEDINGS

Applicant	Paul McEwan
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Respondent	Port Stephens Council
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FILING DETAILS

Filed for	Port Stephens Council Respondent
Legal representative	Lisa Helene Marshall, Port Stephens Council
Legal representative reference	PSC2016-02130
Contact name and telephone	Lisa Marshall 02 49800377
Contact email	lisa.marshall@portstephens.nsw.gov.au

OUTLINE OF SUBMISSIONS

- 1 The Applicant seeks access to a "full and unedited copy of all the objecting submissions and attachments for the DA NO: 483/2011, including the original DA and subsequent 82a Requests for Review".
- 2 In its Notice of Decision, Council refused access to the information sought on the basis there was an overriding public interest against disclosure. In particular it was determined, pursuant to section 14 Table 3(a), (b) and (f) of the Government Information (Public Access) Act 2009 (GIPA), that disclosure of the information could reasonably be expected to:
 - reveal an individual's personal information; and/or
 - contravene an information protection principle under the Privacy and Personal Information Protection Act 1998 (PPIPA) or a Health Privacy Principle under the Health Records and Information Privacy Act 2002 (HRIPA); and/or
 - expose a person to a risk of harm or of serious harassment or serious intimidation.
- 3 Pursuant to s55(1)(a), (b) and s55(6) of GIPA, application of the public interest test was subject to consideration of the personal factors of the formal application.
- 4 The decision to refuse access was in accordance with the responses received to prior third party consultation with the authors of the submissions sought.
- 5 Council submits that the information withheld is personal information for the purposes of GIPA and that disclosure of that information would contravene an information protection principle under the Privacy and Personal Information Protection Act 1998. It also submits that disclosure would contravene its obligations under the Health Records and Information Privacy Act 2002 given some of the documents contain details about the health of an individual.
- 6 In *AEZ v Commissioner of Police NSW Police Force* [2013] NSWADT 90 at paragraph [85] Judicial Member Molony in considering Table clause 3 (f) stated:

"In the context of s14 of the GIPA Act I am inclined to the view the meaning of harm should be confined to a real and substantial detrimental effect on a person... A detrimental effect may be to a person's physical, psychological or emotional wellbeing."
- 7 The Judicial Member then went on to say (at paragraph [94]):

"importantly the intimidation or harassment referred to in point 4(f) (sic) is required to be serious intimidation or serious harassment, requiring that the decisionmaker be satisfied that release of the information could reasonably expose a person to

intimidation or harassment that is heavy, weighty or grave, and not trifling or transient."

- 8 Council also submits that it is well founded in withholding the information on the basis disclosure may expose a person to a risk of harm or of serious harassment or serious intimidation. There are numerous documents held by Council which demonstrate the risk of harm or of serious harassment or intimidation is neither trifling nor transient.
- 9 At Hearing, Council will be seeking to make oral submissions and provide documentation to the Tribunal on a confidential basis.

SIGNATURE

Signature of legal representative



Capacity

Solicitor

Date of signature

