

# TASMANIAN OMBUDSMAN



## **Freedom of Information Review under s.48 of the *Freedom of Information Act 1991***

**MR C DI FALCO AND KINGBOROUGH COUNCIL**  
**Case Reference: 700-0803013**

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### **REASONS FOR DECISION**

#### **Introduction**

The question in this review is whether the name and address of a person who makes a representation to a planning authority under s 57 (5) of the *Land Use Planning and Approvals Act 1993* (LUPAA) relating to an application for a permit during the period of public consultation (the identifying information) is exempt information within the meaning of s 30 (the exemption for information affecting personal privacy) or s 33 (the exemption for information obtained in confidence) of the *Freedom of Information Act 1991* (the FOI Act). By s 3 of LUPAA a “*planning authority*” means a council.

#### **Background**

The background to the review is as follows. On 18 June 2007 the Tasmanian Practical Shooting Club (the Club) applied to Kingborough Council (the Council) for a planning permit to use certain land for a shooting range. Pursuant to s 57 (3) of LUPAA the Council advertised the application for a permit “*so that any person can make representation to the Council within fourteen (14) days of the Public Notice*”. During the public consultation period the Council received representations from several persons, all of which objected to the shooting range. By letter dated 14 August 2007 the Council advised the Club that the application for a shooting range was refused.

#### **The FOI request**

The applicant in this review is the Vice President of the Club. In January 2008 the applicant wrote to the “*F.O.I. Officer Kingborough Council*” (letter undated) requesting:

*I would like the complete copies of the 21 representations in relation to Development Application for Shooting Range at 1128c Woodbridge Road – File Ref: DA-2007-352.*

*I specifically request the addresses where the respondents claim that the noise from the range has interfered with their amenity.*

*I specifically request a copy of any official complaint made to the Council prior to the application being made, as well as any correspondence from the Council to Tas Police.*

*I also request any noise checks that Mr Doole conducted from these residences, so that he could determine that there was an environmental nuisance occurring.*

*I request all documentation on record in relation to this range excluding the report to the Planning Committee (which I already have).*

*I request the recording of the section of the August Council meeting where this proposal was discussed ”*

### **Decision on the FOI request**

Mr R D Palethorpe, Director Corporate Governance of the Council made the initial decision on the request. By letter dated 18 January 2008 Mr Palethorpe provided the applicant with “*copies of representations received in relation to the application*” and said that the Council had “*no record of lodging any complaint with Tasmania Police regarding the property, nor has Council conducted any acoustic testing on the property*”.

In relation to the identifying information Mr Palethorpe informed the applicant:

*“I have considered your request that you be provided with the names and addresses of those who had submitted representations to the Development Application. I have determined that it is not appropriate to release that information and certain other information contained in those representations that my identify the objector(s). The reason for withholding this information is that in my opinion the application has been determined by Council some time ago, and avenues for appeal are no longer available to the applicant. I do not see that the release of that information will advance or clarify any relevant matter”*

The decision on the request was deficient in two important respects.

First, the decision did not claim that the identifying information was exempt information by virtue of a provision of Part 3 of the FOI Act. Section 7 of the FOI Act provides:

*“A person has a legally enforceable right to be provided, in accordance with this Act, with information contained in records in the possession of an agency or a Minister unless the information is exempt information”* (my emphasis)

Second, the decision did not advise the applicant of the correct authority to which application for review could be made. Mr Palethorpe prematurely advised the applicant that he could “*appeal to the Ombudsman in relation to (his) determination*”. Section 47 (1) of the FOI Act provides:

*“(1) If a decision in respect of a request made to an agency for information has been made on behalf of an agency other than by the responsible Minister or the principal officer of the agency (not being a decision on a review under this section), the applicant*

*may, within 28 days after notice of the decision is given to the applicant in accordance with section 22 or 43, apply to the principal officer of the agency for a review of the decision.*" (my emphasis)

For the purposes of the FOI Act the Mayor is the principal officer of a Council (see the definition of "*principal officer*" contained in s 5 (b) (ii) of the FOI Act) and the authority to which the applicant could apply for a review of Mr Palethorpe's decision. I note s 21 (c) of the FOI Act allows a person authorised by the Mayor to carry out a review.

### **The first application for review**

Presumably acting on Mr Palethorpe's advice, the applicant applied to my office for a review on 29 January 2008.

By virtue of s 48 (1) of the FOI Act, a person is not entitled to apply to the Ombudsman for a review of a decision in relation to which s 47 applies unless the person has first made an application to the principal officer of the agency for an internal review and either the person has been informed of the result of the review or 14 days have elapsed since the application was made.

By letter dated 6 February 2008 I advised the applicant to apply to the Council for an internal review and that until he had done that, I had no power to carry out a review.

### **Application for internal review**

By letter dated 20 February 2008 the applicant wrote to Mr Palethorpe saying,

*"I did request all the contents of the letters from the objectors who claimed that they were materially impacted by this range since it appears that at least one person has made multiple representations. It can not be possible for the number of people who claim to live close to the range based on the aerial map. We proceeded with the range due to its isolation.*

*I therefore request the complete contents of the letters as well as the names and addresses. If you cannot provide them to me, I would like to know why they are exempt under the F.O.I. Act.*

The Council treated the applicant's letter as a request for "*further information to that supplied in (Mr Palethorpe's) letter dated 17<sup>th</sup> January 2008*". By letter dated 22 February 2008 Mr Palethorpe informed the applicant:

*"Whilst the Freedom of Information Act has an objective of enabling members of the public to obtain certain information, the Act does contain limitations and enables an authorised officer to exercise discretion in relation to the release of certain information. Section 30 and section 33 of the Act provides justification for my decision, and relate to personal privacy and information obtained in confidence. As I previously advised, you*

*have the right to request the Ombudsman to review my decisions in relation to the excluded information.”*

### **Power to carry out an external review**

The applicant applied to my office for a review on 11 March 2008. This application was accepted for the following reasons:

- I am satisfied that the applicant’s letter to the Council dated 20 January 2008 constituted an application under s 47 of the FOI Act for an internal review
- By virtue of s 48(1)(b)(ii) of the FOI Act a person is entitled to apply to the Ombudsman for a review of a decision in relation to which s 47 (1) applies if 14 days have elapsed since the application was made.

### **External review process**

The application for review falls within s 48 (2) (b) of the FOI Act, which provides that a person who has applied for information in accordance with Part 2 may apply to the Ombudsman for a review of a decision that the information requested is exempt information.

The Ombudsman must necessarily carry out a review on the basis of the material received from the participants during the external review process. By letter dated 18 March 2008 I invited the Council to provide a submission to support the claim that the identifying information was exempt under s 30 or s 33 of the FOI Act.

*Searle Australia Pty Ltd v PIAC* (1992) 108 ALR 163 at 169 is authority for the proposition that an agency bears the onus of establishing that information sought under the FOI Act is exempt from release. Each case must be determined on its own facts.

In all applications for review the starting point is that unless an agency establishes that the information at issue (in this case the identifying information) is exempt from production by virtue of a provision of Part 3 of the FOI Act, s 7 confers a legally enforceable right for the applicant to be provided with the information.

I have taken into account all of the material received during the external review process. I will only repeat any of the material where this is necessary in order to understand these reasons for decision.

### **The information in dispute**

The identifying information is the only information in dispute.

By letter dated 9 April 2008 the Council forwarded to my office edited and unedited versions of 20 representations made to the Council in relation to the application for a permit.

I note that the applicant requested the Council provide “*complete copies of the 21 representations*” made in relation to the shooting range. The decision on the request said that it enclosed “*copies of representations received (by Kingborough Council) in relation to the application. These documents are numbered 1-23, although I now notice that one of these representations has been duplication (sic), presumably when received by fax and later through the mail*” from which the identifying information had been deleted.

I must assume that the Council has provided me with all the representations it received in relation to the application for a planning permit lodged by the Club.

### **Application for planning permit**

It is not in dispute that the application for a planning permit was lodged by the Club pursuant to s 57 of LUPAA, which relevantly provides:

#### *57. Applications for discretionary permits*

*(1) This section applies to an application for a permit in respect of a use or development which, under the provisions of a planning scheme or special planning order –*

*(a) is of a kind specified as being a use or development which a planning authority has a discretion to refuse or permit; or*

*(b) may not proceed as proposed by the applicant unless a planning authority waives, relaxes or modifies a requirement of the scheme or order, or otherwise in its discretion consents to the use or development proceeding.*

*(2) ...*

*(3) Unless the planning authority requires the applicant to give notice, the authority must give notice, as prescribed, of an application for a permit.*

*(4) A notice referred to in subsection (3) is, in addition to any other matters required to be contained in it, to name a place where a copy of the application, and of all plans and other documents submitted with the application, will be open to inspection by the public at all reasonable hours during the period for which representations may be made.*

*(4A) ...*

*(5) Any person may make representations relating to the application during the period of 14 days commencing on the date on which notice of the application is given under subsection (3) or such further period not exceeding 14 days as the planning authority may allow.*

(5AA) ...

*(5A) A person may, by notice in writing to a planning authority, withdraw a representation made under subsection (5) at any time before the planning authority grants or refuses to grant a permit under subsection (6).*

*(5B) If a person withdraws a representation under subsection (5A), that person is taken not to have made a representation under subsection (5).*

(6) ...

(6A) ...

*(7) If a planning authority, on an application for a permit to which this section applies, grants or refuses to grant the permit, it must, within 7 days of granting or refusing to grant the permit, serve notice of its decision –*

*(a) on the applicant; and*

*(b) if representations have been made in relation to the application in accordance with this section, on all persons who made representations.*

*(c)...*

(8) ...

By s 3 of LUPAA a “representation” means:

*“ “representation”, in relation to a draft planning scheme, a draft amendment of a planning scheme or an application for a permit, includes a written statement of facts or reasons in support of or in opposition to the draft scheme, draft amendment or application”*

So far as I have been able to find, there is nothing in LUPAA or in regulations made under LUPAA which prescribes the form in which a representation must be made or the information which must be included in a representation. I see no reason why a valid representation could not be made to a planning authority anonymously.

Section 57A (2) of LUPAA provides that the applicant for a permit or any person who has made a representation can notify the planning authority that mediation is required.

Section 61 (5) of LUPAA provides that if a planning authority grants a permit, any person who has made a representation may appeal against the grant of the permit.

A person who has made a representation in relation to an application for a permit must also be notified by the planning authority in the event that, the permit having been granted, the planning authority later amends it under s 56. This leads to a right of appeal against the amendment under s 61(3A).

Parallel rights are given to representors in relation to the combined permit and planning scheme amendment process under Division 2A of Part 3 of the LUPA Act, but I do not stay to discuss those here.

I cannot find any provision in the LUPA Act or elsewhere that expressly imposes an obligation on councils to provide (or allows them to refuse) access to representations. However, regulation 9 of the *Local Government (Meeting Procedures) Regulations 2005* provides that the general manager of a council is to make available to members of the public free of charge a copy of the agenda of a meeting of the council or a council committee (r 9 (1)) and copies of any associated reports and documents (r 9 (2)). Where the council or committee is acting as a planning authority and determining an application for a permit, this should (or at the very least, potentially could) include copies of representations made with respect to the application. It is also relevant that r 15(3) of the *Regulations* requires that where a council or council committee is acting as a planning authority, it may only close the meeting if it is to consider any matter relating to actual or possible legal action taken by, or involving, the council. There is therefore the potential for details in relation to a representation to be openly discussed in public.

### **The exemption provisions relied on by the Council**

The Council claims that the identifying information is exempt under s 30 or s 33 of the FOI Act.

Section 30 (1) of the FOI Act provides:

*“Information is exempt information if its disclosure under this Act would involve the unreasonable disclosure of information relating to the personal affairs of a person”*

The test for whether information qualifies for exemption under s 30 (1) of the FOI Act is in two parts. First, would disclosure of the information at issue disclose information that can be properly characterised as information concerning the personal affairs of a person? Secondly, if the information does relate to the personal affairs of a person, would disclosure of the information be unreasonable?

Section 33 (1) of the FOI Act provides that information is exempt information if its disclosure under the FOI Act would divulge information communicated in confidence by or on behalf of a person or a government to an agency and the information would be exempt information if it were generated by an agency, or the disclosure of the information would be contrary to the public interest because disclosure would be reasonably likely to impair (i.e. damage) the ability of an agency to obtain similar information in the future.

I can quickly deal with the application of s 33 of the FOI Act.

### **Application of s 33 of the FOI Act**

It is first necessary for the Council to establish that the representations were communicated in confidence. Whether information was communicated in confidence is fact sensitive. The Council asserts, without explaining the basis for the assertion, that “*the representations were made with the reasonable confidence that personal details (but not the grounds for the representation) would be kept confidential*”.

On examination the representations are not marked as being “*confidential*”, and the individuals concerned did not ask the Council to keep their identities secret.

Even if I was satisfied that the representations were communicated to the Council in confidence (which I am not), the second requirement of s 33 is that the disclosure of the information would be contrary to the public interest because either the information would be exempt information if it were generated by an agency or the disclosure of the information would be reasonably likely to impair the ability of an agency to obtain similar information in the future.

The first limb of this second requirement cannot apply in this situation, because the information is not of a character that might be generated by a council. As for the second limb, there is no evidence, and nor do I believe that there could be, that the disclosure of the identifying information might in future impair the Council’s ability to obtain the name and address of any person making a representation to the Council under s 57 (5) of LUPAA.

The real issue in this review concerns the application of s 30 of the FOI Act.

### **The exemption under s 30 of the FOI Act**

The purpose of the personal affairs exemption is to allow the public interest in personal privacy to be balanced against the public interest in people having open access to information held by government.

The term “*personal affairs*” is not defined in the FOI Act and the cases make it clear that it cannot be precisely or exhaustively defined. In several cases it has been given its ordinary dictionary meaning, that is, “*matters of private concern to an individual*” (see *Re Williams and Registrar of Federal Court of Australia* (1985) 8 ALD 219 per Beaumont J at 221-222; *Young v Wicks* (1986) 13 FCR 85 per Beaumont J at 89.) In *Commissioner of Police v District Court of New South Wales (Perrin's Case)* (1993) 31 NSWLR 606 a decision of the Court of Appeal Kirby P noted at 625 that it has been suggested that the ordinary dictionary meaning might be too narrow. He there held that, “*In its context, the words ‘personal affairs’ mean the composite collection of activities personal to the individual concerned.*” I have adopted this definition in considering the meaning of the phrase in this case.

It is a question of fact to be decided in every case as to whether information relates to the personal affairs of a person. The prime question to be determined in this review is whether in the context of s 57 (5) of LUPAA the name and address of a person making a representation to a planning authority can properly be characterised as information relating to the “*personal affairs*” of a person.

### **The position of Kingborough Council**

The reasons Mr Palethorpe gave the applicant for refusing access to the identifying information (letters dated 18 January 2008 and 22 February 2008) were:

- *The application has been determined by Council some time ago, and avenues for appeal are no longer available to the applicant*
- *The release of the information will not advance or clarify any relevant matter*
- *The representations were made with the reasonable confidence that personal details (but not the grounds for the representation) would be kept confidential*
- *Council has already made a determination in relation to the development application*
- *The time has already expired within which an appeal can be lodged against Council’s determination*

In response to my invitation to the Council to provide a submission, by letter dated 9 April 2008 Mr Palethorpe advised:

- “ Council does not wish to make any further submission in relation to this matter, except to draw (my) attention to the circumstances relating to the matter in question:*
- *Council refused the objection on a number of grounds and did not necessarily rely upon representations to arrive at that position.*
  - *The timeframe in which the applicant could appeal Council’s decision had already expired prior to (the applicant’s) initial request.”*

### **The position of the applicant**

In summary, the applicant seeks access to the identifying information to assess the merits of the representations objecting to the proposed shooting range. I note that because s 7 of the FOI Act gives a person a legally enforceable right to be provided with information, the motivation or purpose for which a person wants the information is not relevant to the lodging of a request.

### **Preliminary determination**

A preliminary determination on the identifying information was made on 24 July 2008 and provided to the Council. An opportunity to make submissions was provided to the Council in relation to any matter raised in the preliminary reasons and to correct errors of fact. Mr Palethorpe responded on behalf of the Council, by letter dated 5 August 2008.

Mr Palethorpe's letter included three submissions which are set out below-

- *Not being aware of the prior discussions between Mr Di Falco and your office, and in the absence of any direct reference to an internal review, we had taken Mr Di Falco's subsequent correspondence as a request for clarification of Council's position, rather than a request for an internal review. Our actions reflect the provision of further information, rather than being construed, as may be inferred in your preliminary determination, as a decision to deny Mr Di Falco the opportunity to appeal to the 'principal officer' for a review. Any breach of the appeal mechanisms afforded by the Act was unintended.*
- *In considering the relevant legislation, you have made reference to the application of both the Land Use Planning & Approvals Act 1993 (LUPPA) and the Local Government (Meeting Procedures) Regulations 2005. The representations made by members of the public in relation to the proposed development application were made pursuant to LUPAA. It is our understanding that on lodging of an appeal to the Appeal Tribunal pursuant to s 61, an applicant may be given access to the full contents (including personal details) of representations received by a planning authority in relation to an application, however that 'window of opportunity' must be exercised within 14 days of the applicant being advised of the decision of the planning authority. Council refused the application on 14<sup>th</sup> August 2007, and Mr Di Falco lodged the Freedom of Information request on 11<sup>th</sup> January 2008. An appeal to the LUPAA Appeal Tribunal was therefore not possible at that time.*
- *In relation to the Meeting Procedure Regulations which make available to the public the agenda of meetings, together with any associated reports and documents, the preamble to your preliminary determination states:*

*"Where the council or committee is acting as a planning authority and determining an application for a permit, this should include copies of all representations made with respect to the application."*

*That is not the position, and whilst the Officer's report in relation to an application will make reference to any valid representations received, and will provide advice for Council's consideration in that regard, the representations themselves do not form part of the report or documentation available at that meeting. The Officer's report is therefore available to the public and forms part of the agenda, but the representations are not.*

*We have checked Council's procedures regarding the availability of representations at Council and Committee Meetings, with those of other Tasmanian councils, and find that of those approached; the majority adopt a similar position.*

For completeness, I note Mr Palethorpe also raised an issue concerning "how the request can be complied with in relation to the competing purpose of the Personal Information

*Protection Act 2004*". The answer to this lies in s 4 of the *Personal Information Protection Act 2004* (the PIPA Act), which states:

*4. Relationship of Act to other laws*

*If a provision of this Act is inconsistent with a provision made by or under any other Act –*

*(a) that other provision prevails; and*

*(b) the provision of this Act has no effect to the extent of the inconsistency.*

The operation of s 4 of the PIPA Act results in there being no "*competing purpose*" and the provisions contained in Part 2 of the FOI Act (right to information) prevail.

I can also quickly deal with the first submission made by Mr Palethorpe on behalf of the Council. What went wrong in dealing with the request was the failure to give the applicant a notice which complied with s 22 (2) of the FOI Act. Relevantly, s 22 provides:

*22. Reasons, &c., to be given*

*(1) If, in relation to a request for information made to an agency or a Minister, a decision is made –*

*(a) that the applicant is not entitled to the information in accordance with the request; or*

*(b) ...*

*(c) ...*

*the agency or Minister shall give the applicant written notice of the decision.*

*(2) Notice given under subsection (1) shall –*

*(a) state the finding on any material question of fact, referring to the material on which that finding was based, and the reasons for the decision; and*

*(b) if the decision was made on behalf of an agency – state the name and designation of the person who made the decision; and*

*(c) inform the applicant of –*

*(i) the applicant's right to apply for a review of the decision; and*

*(ii) the authority to which the application for review can be made; and*

*(iii) the time within which the application for review must be made; and*

*(d) if the decision involves or relies upon consideration of the public interest in the application of a provision of this Act – state the public interest considerations on which that decision was based.*

*(3) ...*

*(4) ...*

In making a decision on a request a decision maker needs to carefully consider each of the matters set out in s 22 (2) to avoid the problems that arose in this matter and to assist the external review process.

I deal with the second and third of Mr Palethorpe's submissions in the next section of these reasons.

### **Consideration**

On the material provided I am not satisfied that the name and address of a person making a representation to a planning authority under s 57 (5) of LUPAA is information relating to the "*personal affairs of a person*" in the sense required by s 30 of the FOI Act so as to be eligible for protection. My reasons are as follows.

In *University of Melbourne v Robinson* [1993] 2 VR 177 Eames J of the Supreme Court of Victoria stated at p.187 [concerning s 33 (1) being the personal affairs exemption of the *Freedom of Information Act 1982* (Vic)]:

*"The reference to the 'personal affairs of any person' suggests to me that a distinction has been drawn by the legislature between those aspects of an individual's life which might be said to be of a private character and those relating to or arising from any position, office or public activity with which the person occupies his or her time."*

*Re Stewart and Department of Transport* (1993) 1 QAR 227 is authority for the proposition that the phrase "*personal affairs*" does not capture all of the affairs of an individual, and is clearly distinct from a person's business or employment affairs, or other activities of a public kind. At paragraphs 112-114 the Information Commissioner stated that information which concerns a matter of public policy, public administration, or public regulation does not become information concerning the personal affairs of an individual because that subject matter is causing personal concern, anxiety or hardship to an affected individual. The Information Commissioner at p.256 (paragraph 76) said:

*"76. When dealing with matters that fall into the grey area, I think it is legitimate to draw on the privacy material discussed earlier, for assistance. I think it is legitimate to resort for a guiding principle to a variant, appropriate to the context, of the fallback test to which the law frequently resorts in areas which substantially call for the making of value judgments reflecting current community standards, i.e. the reasonable person test. In my opinion, an appropriate guiding principle when difficult and marginal cases are encountered in the grey area should be that the phrase "personal affairs of a person" extends to the kinds of information concerning the affairs of a person which a notional reasonable bystander, applying the current community standards of persons of ordinary sensibilities, would regard as information the dissemination of which the person (whose affairs the information concerns) ought to be entitled to control, and hence, which should be capable of being claimed to be exempt for mandatory disclosure under the FOI Act"*

In *Monks and Logan City Council* (unreported decision of the Queensland Information Commissioner, Number L9/96, dated 16 November 1999) the Information Commissioner decided that information consisting of "*completed comment sheets distributed by a consultant to the Council, to gauge community opinion on the issue of whether the*

*Council should introduce a development Control Plan” concerned the “personal affairs” of the individuals concerned. At paragraph 33-34 the Information Commissioner said:*

*“...I consider (applying the test suggested in paragraph 76 of Re Stewart - see paragraph 30 above) that information as to the identity of the individuals who completed comment sheets is information which a notional reasonable bystander, applying the current community standards of persons of ordinary sensibilities, would regard as information the dissemination of which those individuals ought to be entitled to control. The choice of whether or not to make a comment to a consultant on a preliminary proposal was, in my view, sufficiently connected to the private aspects of the lives of the relevant individual that disclosure of the matter in issue would disclose information that is properly to be characterised as information concerning their personal affairs...*

*As is probably evident from the foregoing discussion, I regard this as a difficult, if not borderline, case, and had I been considering the names of individuals who made written submissions in relation to a draft DCP, as part of the statutory process prescribed in the P & E Act, the outcome of the exercise of characterising that matter (for the purposes of applying s.44(1) of the FOI Act) may well have been different.”*

I have already noted that r 9 of the *Local Government (Meeting Procedures) Regulations* gives the public the right to inspect all documents and reports which are to be considered at a meeting of a council or council committee which is acting as a planning authority, and that such a meeting must be held in public other than in very confined circumstances. As a consequence, in my view, a person who makes a representation in relation to an application for a permit and who does not do so anonymously therefore assumes a risk, which is out of their control once the representation is submitted, that the contents of their representation, including the name and address given, will be disclosed to people involved in the planning process.

This is as it should be.

The consideration by a planning authority of an application for a discretionary permit in respect of a use or development is a public process, and a person making a representation engages in a public consultation process. They thereby obtain significant rights - to have their views considered and evaluated, to be given notice of decisions taken, to require mediation to be held, and to appeal against decisions made. In this setting they should in my view be taken to have given up any entitlement to control the dissemination of any name and address that they include in their representation, such that the name and address should not in this setting be regarded as information relating to their personal affairs.

This reasoning makes it irrelevant whether a planning appeal did or did not arise in relation to the development application to which the representations in this case related. The facts of the instant case are irrelevant; it is a matter of looking at the character of s 57(5) representations generally within the legislative scheme. For the reasons I have given, I take the view that the identifying information in such representations is not information relating to the personal affairs of the representor.

It is also immaterial that some councils do not include copies of s 57(5) representations in the agenda papers that are provided to members of a meeting of a council or council committee which is acting as a planning authority. It is sufficient that such representations may be so included - as indeed ought to be the case if they are to be given due weight in the planning process. I note in passing, although it is unnecessary to this reasoning, the implication in Mr Palethorpe's letter of 5 August, by reference to what the majority of Tasmanian councils do, that some councils do include representations in the agenda papers.

**Determination**

I determine that the identifying information does not qualify for exemption under s 30 or s 33 of the FOI Act. Kingborough Council should now implement this decision in accordance with s 48 (7) of the FOI Act, by providing the application with the identifying information.

Dated: 25 August 2008

.....  
**SIMON ALLSTON**  
**OMBUDSMAN**