DECISION

OMBUDSMAN TASMANIA

Right to Information Act Review **Case Reference:** R2507-037

Names of Parties: M and the Department of Justice

Reasons for decision: s48(3)

Provisions considered: ss30, 36 and 37

Background

1 M owned residential rental properties through a corporate entity.

2 On 2 December 2024, the Department of Justice (the Department) received an application for assessed disclosure pursuant to s13 of the *Right to Information Act 2009* (Tas) (the Act) from a journalist (the original applicant). The application sought access to all information relating to complaints, concerns and disputes involving M and associated corporations.

3 The Consumer, Building and Occupational Services Division of the Department identified records falling within the scope of the request.

4 On 24 January 2025, in accordance with s36(2) of the Act, the Department notified M of the application and invited them to provide their views as to whether the information should be disclosed.

5 On 28 January 2025, M advised the Department of their objection to the release of the information, submitting that the request failed to properly identify the information sought or the relevant corporate entities with the material identified constituting as personal information. M considered that this made the disclosure of this information contrary to the public interest.

6 On 19 March 2025, Ms Natalie Warn, a delegated officer for the Department under the Act, issued a decision to the original applicant and notified M of this decision. The notification advised M the information was to be released to the original applicant, except for personal details including *names, dates of birth, signatures, titles, addresses, phone numbers, email addresses and other identifiable information of third parties including but not limited to* [M] *and their tenants*.

7 On 18 July 2025, M applied to the Department under s43(2) of the Act for an internal review of that decision. Through their lawyers, M submitted the public interest weighed against disclosure of the information and it should be found exempt under s30(1)(f) as information which may prejudice an investigation relating to the enforcement of the law and s36 as personal information.

8 On 25 June 2025, Ms Sarah Nichols, another delegate for the Department under the Act, released an internal review decision. This decision maintained that information which did not include personal details of M or members of the public was not exempt and could be released. Ms Nicols found one other document exempt under s31 as information subject to legal professional privilege. She also addressed M's submissions in relation to s30, finding that the provision was not relevant to the application as there were no ongoing investigations against M or corporations associated with them.

9 On 17 July 2025, M sought an external review of the Department's decision pursuant to s44(1) of the Act. In this application M claimed that the relevant information was also exempt under s37 of the Act as information relating to the business affairs of a third party.

Issues for Determination

10 I must determine whether the relevant information is eligible for exemption under ss30(1)(f), 36 and 37(1) or any other relevant section of the Act.

11 As ss36 and 37 are contained in Division 2 of Part 3 of the Act, my assessment is subject to the public interest test in s33. Therefore, if I determine that the information is prima facie exempt under either provision, I must then determine whether it would be contrary to the public interest to release it. In making this assessment I must have regard to all relevant matters including those contained in Schedule 1 of the Act.

Relevant legislation

12 I include copies of ss30(1)(f), 33, 36 and 37(1) and Schedule 1 of the Act at Attachment A.

Submissions

Applicant

13 M, through their legal representatives, made submissions during the initial consultations with the Department, in their application for an

internal review and when applying for external review. Relevant parts of these submissions are extracted below.

14 In submissions dated 28 January 2025, M contended the Department's correspondence:

> *… fails to properly state the nature of the information applied for, with the result that my client and the proper corporate entity(ies) are unable to form a "view as to whether the information should be provided" for the purposes of s.36 of the Act. 3. In addition, if the information relates to complaints against my client, then the information is exempt information under the Act for the purposes of s.30 of the Act (esp. s.30(1)(f)), and s.36(1) of the Act. That is because my client has not been advised of any complaints against* [M], *and if they exist, they are likely unresolved. If they exist and they are resolved, then they may have been resolved in* [M's] *favour without* [M's] *knowledge. In any case it is not in the public interest that the information be disclosed (s.33). In any case, the information is likely to be personal information for the purposes of s.36(1) because it will at least be reasonably ascertainable from the information that it relates to my client (and/or the corporate entity(ies) the complaints relate to.*

15 In subsequent correspondence, M's lawyers maintained those objections and adopted the earlier submissions on behalf of both M and the associated corporate entity.

16 M's lawyers also submitted the Department was:

> *…required by section 36 of the Right to Information Act 2009 (the Act) to state the nature of the information that has been applied for and to then seek "the person's" view as to whether "the information" should be provided.*
>
> *In my clients' respectful submission your explanation that you discharged that obligation by simply stating all records related to complaints lodged against you and your property management company (now understood to be* [M] *Pty Ltd).*
>
> *That is insufficient to provide both my clients with a fair opportunity to respond because it is trite the "nature of the information" normally refers to what kind of information it is, what the primary purpose of the collection of the information was, the body or entity collecting the data, its sensitivity, and its categories. This includes whether it is personal, sensitive, or related to law enforcement, amongst other categories.*

Both my clients are separate entities ([M] *Pty Ltd also has two directors, whose reasonable minds may differ with each having fiduciary duties to the corporate entity), accordingly both entities should have been advised which complaint information (including what the assertions are made in those) applies to which entity, and it would be procedurally fair to do so.*

I urge you to provide a substantive explanation so that my client can properly respond otherwise it states again you fail to properly state the nature of the information applied for, with the result that my client and the proper corporate entity are unable to form a "view as to whether the information should be provided" for the purposes of s.36 of the Act.

If you are correct in your analysis, then the relevant information is information that relates to my clients, in which case there was and is no reason not to have provided that information to my clients (as to nature) for its view. That would have been procedurally fair and avoided any doubt.

I refer you to and relevantly extract the following from the Personal Information Protection Act 2004, which are not inconsistent with the Act and which binds the Crown. I make submissions where appropriate.

Public sector body means any of the following:
(a) an Agency as defined in the State Service Act 2000;

The Department of Justice is one. The primary purpose of that Department is not the same as the primary purpose of one statutory enactment, including the Act.

6. Application of personal information protection principles

(1) Clauses 1, 2, 8 and 10 of Schedule 1 apply only in relation to information collected after the commencement of this Act.
(2) Clauses 2, 3, 4, 5, 6 and 9 of Schedule 1 apply in relation to information collected before or after commencement of this Act.

If you were to properly apply these principles in Schedule 1 as follow, rather than the Manual to which you refer (which are of no legal force and a guide only), you would not release that information without more and in fairness.

There are serious consequences if you do without a proper application of the Act and the law that applies, not the guidelines.

[quotation of Personal Information Protection Principles 1-6 omitted]

Public Interest and other grounds

Here again you rely upon the Manual (which you quote verbatim in your later letter), rather than the words of the Act and the law that applies to its interpretation.

The relevant law, a High Court decision, is Hogan v Hinch (2011) 243 CLR 506 where French CJ as he then was stated that when "used in a statute, the term [public interest] derives its content from the subject matter and the scope and purpose of the enactment in which it appears".

Again, with respect, providing information to a journalist of private complaint information (this is not a court proceeding where open justice principles apply) received which is not within the scope and purpose of the recipient, would never likely be in the public interest.

In fact, it undermines the confidence of the public that agencies will treat their sensitive personal matters in confidence within the relevant scope and purpose the information was provided.

You continue to keep my clients in the dark, when there is every warrant to do the opposite as to the nature of information, that is never appropriate in the context of an invitation to provide an informed view.

Accordingly, my clients additionally maintain insofar as the information relates to complaints against my clients, then the information is exempt information under the Act for the purposes of s.30(1)(f), and 2 s.36(1) of the Act. That is because my clients have not been advised of any complaints against them, and if they exist, they are likely unresolved and or be sensitive. If they exist and they are resolved, then they may have been resolved in their favour without their knowledge.

In any case it is not in the public interest that the information be disclosed (s.33). In any further case, the information is likely to be personal information for the purposes of s.36(1) because it will at least be reasonably ascertainable from the information that it relates to my client the complaints relate to. The release of that information is also not in the public interest.

17 In the application for external review dated 18 July 2025, M reiterated all prior submissions and submitted:

the applicant repeats what was said …its solicitor's letter of 28 January 2025 and 12 March 2025 and the other correspondences from …its solicitors to the Dept of Justice in relation to this matter. The Ombudsman should also consider the decision of Forestry

Tasmania v Ombudsman [2010] TASSC 39 in order to make a proper decision. In relation to Schedule 1 of the Act, it should be obvious that it is not in the public interest to release to journalists information about complaints of a particular landlord. The journalist is not asking for disclosure which would provide contextual information to aid in the understanding of government decisions. The journalist requests make the redaction of base information of no utility because the request is specific to [M] *and* [M] *Pty Ltd, and if released must be personal to them. Plainly, to release information about complaints which may or may not be substantiated would harm the business or financial interests of the landlord. The complaints were not heard in open court where evidentiary rules of fairness are enforced. Even if they were, the journalist would be required to offer only a fair report of that evidence, and not provided with the evidence to do with whatever they wish. The request should be refused.*

Department

18 The Department elected not to make specific submissions in response to the external review, relying on the reasoning set out in its decisions dated 19 March 2025 and 25 June 2025. Accordingly, the relevant parts of that reasoning are set out below.

19 Ms Nichols' internal review decision stated:

> Personal information of a person
>
> *I consider that part of the documentation contains information which is considered personal information as prescribed in section 36 of the Act.*
>
> *… In my view, information such as your client's name, date of birth, email addresses, phone numbers, residential and postal addresses, addresses of tenanted properties, signatures, bank account details, and the company name are exempt from disclosure under section 36 of the Act.*
>
> *In addition, the names, residential addresses (including municipalities), email addresses, phone numbers, pictures of members of the public and direct phone numbers of department officers are also exempt from disclosure under section 36 of the Act.*
>
> *Section 36 is subject to the public interest test in section 33 of the Act.*

…

As a consequence of the above, I am of the opinion that the factors favouring disclosure are outweighed by those by those against disclosure and it would not be in the public interest to provide the personal information as described above of your client and other members of the public.

Information relating to the enforcement of law

I have considered your submission in relation to section 30(1)(f) of the Act.

Section 30(1)(f) of the Act provides that:

(1) Information is exempt information if its disclosure under this Act would, or would be reasonably likely to –

… (f) Hinder, delay, or prejudice an investigation of a breach or possible breach of the law which is not yet complete.

Having reviewed the information, I do not consider that this section of the Act is relevant to consider in respect to not disclosing any of the identified information.

In forming this opinion, I have considered that part of the material contains information which provides that [M] *has been made aware of relevant complaints where necessary. Specifically, correspondence has been sent from office of the Residential Tenancy Commissioner to* [M] *– please refer to the attached Schedule of Documents.*

I note that section 30(1) of the Act is not subject to the public interest test.

…

The balance of information

The balance of information I plan to release – i.e. the nature of the complaints and associated correspondence. In making this decision, I have considered your correspondence and will make the following comments in respect to the public interest test.

Schedule 1 factors in favour of disclosure I consider that the following factors weigh in favour of disclosure:

(a) the general public need for government information to be accessible.

This Schedule 1 factor is always relevant as it is essentially a restatement of the object of the Act and I am of the opinion is it weighs heavily in favour of disclosure.

(b) whether the disclosure would contribute to or hinder debate on a matter of public interest;

(c) whether the disclosure would inform a person about the reasons for a decision;

(d) whether the disclosure would provide the contextual information to aid in the understanding of government decisions;

(e) whether the disclosure would inform the public about the rules and practices of government in dealing with the public;

(f) whether the disclosure would enhance scrutiny of government decision-making processes and thereby improve accountability and participation; and

(g) whether the disclosure would enhance scrutiny of government administrative processes.

These Schedule 1 factors all hold equal relevance as the disclosure of the information will inform and provide context to members of the public of their rights and entitlements when raising a concern or complaint to the Residential Tenancy Commissioner. The disclosure of information will also aid members of the public in developing their understanding of how decisions are made by government agencies, and the practices that the Residential Tenancy Commissioner and their office undertake to administer their obligations under relevant legislation. I am of the opinion that these factors all weigh heavily in favour of disclosure.

(m) whether the disclosure would promote or harm the interests of an individual or group of individuals.

This Schedule 1 factor holds relevance and weighs both in favour of and against disclosure. In relation to weighing for the disclosure of information, I consider that the disclosure will promote the interests of a group of individuals, being individuals who are tenants. The information will provide greater understanding and awareness of the role of the Residential Tenancy Commissioner and the legislative entitlements that tenants hold.

Schedule 1 factors against disclosure

I consider that the following factors weighs against disclosure:

(h) whether the disclosure would promote or harm the administration of justice, including affording procedural fairness and the enforcement of the law.

This Schedule 1 factor holds relevance, and I have considered if the disclosure of the information would harm the administration of justice to your client. After assessing the information, I have determined that there is no ongoing regulatory action being undertaken by the Residential Tenancy Commissioner in respect to the complaints that have been received. Consequently, procedural fairness has already been afforded to your client. I also note that it is my intention to not release any personal information under section 36 of the Act. I am of the opinion that, while there is the potential for this Schedule 1 factor to hold relevance against disclosure, after deliberating, it holds no relevance.

(m) whether the disclosure would promote or harm the interests of an individual or group of individuals.

This Schedule 1 factor holds relevance and weighs both in favour of and against disclosure. I consider that the disclosure of information may harm the interests of an individual and a group of individuals to whom the information relates to – i.e. respectively your client and other members of the public. I acknowledge that the applicant, who is a journalist, has sought information specifically in relation to your client. I infer that even in the absence of your client's personal information being disclosed, the applicant may still be able to ascertain the identity of your client. As aforementioned, I am intending to not disclose the personal information of your client and members of the public and this Schedule 1 factor weighs heavily against disclosure.

(n) whether the disclosure would prejudice the ability to obtain similar information in the future.

This Schedule 1 factor holds relevance, and I have considered if the disclosure of the information would prejudice the ability for the Residential Tenancy Commissioner and their office to receive concerns or complaints from members of the public in the future. I consider that by disclosing the nature of the complaints and the proceeding action taken by this office, as well as not disclosing the personal information of your client and other members of the public, that there is a reasonably small chance that a member of the public would be apprehensive to disclose any matters in the future of a similar nature. Consequently, I am of the opinion that *while there is the potential for this Schedule 1 to hold relevance against disclosure, after deliberating, it holds no relevance.*

(u) whether the information is wrong or inaccurate.

This Schedule 1 factor holds some relevance, and I have considered if the information may be wrong or inaccurate such as the nature of the complaints that members of the public have submitted to the Residential Tenancy Commissioner. However, I have also considered that members of the public must feel free to raise their concerns or complaints from their own perspective to an appropriate regulatory body. Consequently, I am of the opinion that this Schedule 1 factor holds no relevance against disclosure.

(s) whether the disclosure would harm the business or financial interests of a public authority or any other person or organisation; and

(w) whether the information is information related to the business affairs of a person which if released would cause harm to the competitive position of that person; and

(x) whether the information is information related to the business affairs of a person which is generally available to the competitors of that person; and

(y) whether the information is information related to the business affairs of a person, other than a public authority, which if it were information of a public authority would be exempt information.

These Schedule 1 factors all hold equal relevance as the disclosure of the information may harm the business interests and affairs your client. However, as aforementioned, it is not my intention to release the personal information of your client. Any other information contained within the documentation, such as weekly rental amounts and tenancy agreements, may be found through an online search with relative ease. I also consider that if this information was held by a public authority, it would likely to be assessed in a similar manner. Consequently, I am of the opinion that these Schedule 1 factors hold some relevance and weigh against disclosure.

Due to this, I am satisfied that, on balance, it would not be contrary to the public interest to release the information I found to be prima facie exempt under s36. It is not exempt under s36 and should be released to the original applicant. I do not consider that the balance of the Schedule 1 factors is [sic] *relevant to take into consideration.*

Analysis

20 This external review is restricted to information being proposed to be released by the Department, so does not relate to the names, dates of birth, signatures, titles, addresses, phone numbers, email addresses and other identifiable information of M and third parties which the Department found to be exempt under s36 of the Act or the information found to be exempt under s31 of the Act.

21 The above submissions of M's legal representatives contended that the entirety of the remaining information should be exempt under ss30, 36 and 37 of the Act.

Section 30 - Information relating to enforcement of the law

22 Section 30(1)(f) provides that information may be exempt if it would, or would be reasonably likely to, hinder, delay or prejudice an investigation of a breach or possible breach of the law which is not yet complete.

23 M's lawyers submitted their clients had not been advised of any complaints against them and, if the complaints did exist, the complaints are likely to be unresolved and/or be sensitive. If the complainants exist and they are resolved, then they may have been resolved in the clients' favour without their knowledge. The Department's internal review decision addressed this point, stating that the relevant documents included correspondence from the Office of the Residential Tenancy Commissioner to M which confirmed they had been made aware of complaints made against them.

24 I have reviewed the information contained within the schedule of documents and considered both parties' submissions. I conclude the information which relates to the original applicant's request does not refer to any ongoing regulatory action being undertaken by the Residential Tenancy Commissioner in respect to the complaints it has received. As such, it is my determination section 30(1)(f) of the Act is not relevant to this decision as it is not reasonably likely the release of the information in question would hinder, delay or prejudice any unfinalised investigation.

Section 36 – Personal Information of Person

25 Section 36(1) of the Act provides that information is eligible for exemption if it consists of the personal information of a person other than the applicant. It must then be assessed as to whether the release would be contrary to the public interest under s33 of the Act.

26 M submitted that, to the extent the records relate to complaints against him or associated corporate entities, disclosure would involve the release of personal information and would not be in the public interest. M

further contended the Department's correspondence did not sufficiently identify the entity concerned, preventing an informed view about disclosure and that any information concerning unresolved or unknown complaints would be exempt. While framed partly as a procedural objection, I consider these submissions to raise the application of the personal information exemption under s36.

27 The Department did not propose to release any identifying information such as names, contact details, residential and postal addresses, property addresses, signatures, financial details and company information relating to M and members of the public. It found this information exempt but did not consider that the balance of the information contained personal information or would be exempt under s36.

28 Having reviewed the material, I am satisfied it does not include identifiable personal information when the information the Department has found to be exempt is removed. The question is whether the entirety of the information identifies M and associated entities, as the request for information solely related to complaints relating to them and their property management.

29 I agree with the parties that M's identity would be reasonably ascertainable by the original applicant and is prima facie exempt under s36. Accordingly, it is appropriate to assess the public interest test in relation to this information.

Section 33 - Public interest test

30 The information arises in the context of complaints made to a regulatory authority. It is not information generated in the course of public officers performing routine duties in a way ordinarily open to public scrutiny; rather, it concerns private individuals engaging with a complaint handling process. I consider this context is important when weighing the competing public interest factors.

31 The Department identified Schedule 1 matter (a) - *the general public need for government information to be accessible* - as weighing in favour of disclosure. The Department characterised this factor as reflecting the objects of the Act and the principle of transparency in public administration. M's legal representatives did not dispute this factor is engaged but submitted the public interest in transparency is outweighed by the privacy interests of the individuals concerned. I agree with the Department that this factor carries significant weight in favour of disclosure. There is a legitimate public interest in the public understanding how complaints are handled by a statutory regulator.

32 The Department also relied on Schedule 1 matters (b) - (g), namely whether disclosure would contribute to debate on a matter of public interest, inform a person about the reasons for decisions, provide contextual understanding of government processes, inform the public about the rules and practices of government and enhance scrutiny of administrative decision-making. The Department considered these factors to weigh heavily in favour of disclosure. M's legal representatives submitted that disclosure of complaint material relating to a private individual would not meaningfully contribute to public debate and would instead operate primarily as an intrusion into private affairs. I accept these factors are engaged and weigh in favour of disclosure. I consider the removal of specific identifying details by the Department achieves the purpose of illustrating regulatory processes without disclosing significant personal information.

33 In relation to Schedule 1 matter (m) - *whether the disclosure would promote or harm the interests of an individual or group of individuals* - both M and the Department agreed this factor is relevant. The Department concluded disclosure would be detrimental to the interests of M but would promote the interests of tenants. M's legal representatives strongly agreed in relation to M's interests and submitted that disclosure would unfairly damage personal and reputational interests and undermine confidence in complaint processes.

34 I consider the removal of specific identifying details significantly reduces the weight of this factor against disclosure. While the harm to M's interests may be arguably higher due to them being identifiable to the original applicant, their name is not included in the information to be released and the information relates to their business activities as a landlord. Tenants are in a more vulnerable position in negotiations and disputes with landlords and I consider the weighting of their interests should be slightly higher due to this. Accordingly, matter (m) becomes a neutral consideration with the interests of tenants and M being of equal weight in this assessment.

35 The Department considered Schedule 1 matter (h) - *whether the disclosure would promote or hinder equity and fair treatment of persons or corporations in their dealings with government* - and concluded it ultimately carried no weight because there was no ongoing regulatory action. M's legal representatives contended disclosure of complaint material could nevertheless undermine procedural fairness and public confidence in regulatory processes. I consider, in the absence of an active investigation or proceeding and the removal of specifically identifying information, this factor does not weigh against disclosure.

36 In relation to Schedule 1 matter (n) - *whether disclosure would prejudice the ability to obtain similar information in the future* - the Department concluded this factor held no relevance because personal information would not be disclosed. M submitted disclosure may discourage future complainants. I agree with the Department's assessment. The release of sufficiently de-identified details of this type of complaint does not seem likely to deter future complainants regarding tenancy disputes. Accordingly, I do not consider this factor weighs against disclosure.

37 Overall, I do not consider it would be contrary to the public interest to release the information in question. Once de-identified, it provides context and information about government administrative processes in relation to complaint handling and advances the interests of tenants. The risk of harm to M's interests is outweighed by the factors favouring disclosure, especially as M's name or that of associated corporate entities does not appear anywhere in the material to be released.

38 The information in question is not exempt under s36 and should be provided to the original applicant.

Section 37 – information relating to business affairs of a third party

39 M claimed that the information should also be exempt under s37 of the Act. Section 37(1) provides for information to be exempt if it is related to the business affairs of a third party, when a public authority obtains that information from a person or organisation other than the person making the application for assessed disclosure, if either:

- the information relates to trade secrets; or
- the disclosure of the information would be likely to expose the third party to competitive disadvantage.

40 There is no suggestion that trade secrets are involved, so I will confine my analysis to the issue of competitive disadvantage.

41 In relation to likely competitive disadvantage, when considering the equivalent provision in the now repealed *Freedom of Information Act 1991* (Tas), the Supreme Court of Tasmania in *Forestry Tasmania v Ombudsman*[1] held at [52] that:

> *For information to be exempt, its disclosure needs to be likely to expose the undertaking or agency not to any disadvantage, but a disadvantage which relates to or is characterised by competition. The requirements in ss31 and 32 of the Act that the disadvantage relate to competition may have the preservation of the competitive process as a broad ultimate goal, but primarily*

[1] [2010] TASSC 39

the provisions are concerned with the potential impact on the undertaking or agency acting as a competitor in a market…

42 The court further held at paragraph 55 that:

> *… In my view, what the provisions refer to as competitive disadvantage is something which affects one entity to the extent that it may not be able to generate as high a level of profit relative to its competitive rivals as would be expected, if all else being equal, the particular entity did not face the reason or circumstance. A competitive disadvantage will not necessarily be something which, in strict terms, impacts on an actual ability to compete, and the level of competition…*

43 At paragraph 59, Porter J added:

> *The application of the correct approach involves an assessment of the facts, and findings as to likely exposure to the relevant disadvantage…*

44 At paragraph 41, the Court interpreted 'likely' to mean that there must be a real or remote chance or possibility, rather than more probable than not.

45 Although the balance of information does not contain identifiable information relating to M, their properties and tenants, as the primary applicant requested information related to M I have accepted that they are identifiable in the information. Accordingly, any relevant information could be likely to cause a disadvantage which relates to or is characterised by competition. M operates their business in the competitive real estate rental market. Reputational damage has a real and not remote chance of causing harm to M's business, however when this results from alleged poor conduct by a business there is some question as to whether this is a disadvantage characterised by competition. While competitors may gain an advantage by default, this is effectively due to self-inflicted reputational damage by the business rather than the release of information which would not normally be available to competitors.

46 However, while marginal, I am satisfied there is a real and not remote chance of competitive disadvantage through reputational damage if there is inaccurate or out of context reporting of information about complaints made. While s37 of the Act is not intended to be a mechanism to supress negative publicity or reporting of factual information regarding concerns raised about a business, the threshold for information being prima facie exempt under s37 is low and I am satisfied it has been reached.

Section 33 – Public Interest Test

47 I now turn my attention to the mandatory public interest test under s33 and to assessing whether, after considering all relevant matters and at least those in Schedule 1, it would be contrary to the public interest to disclose the information I have found to be prima facie exempt.

48 In considering matters (a)–(g), I note these factors were addressed in my public interest test assessment in relation to s36. The considerations relevant to those matters are materially the same in relation to s37. The public interest in transparency, informed public debate, contextual understanding of government processes and scrutiny of administrative decision-making has already been recognised. For the reasons set out at paragraphs 32–33 above, I accept that matters (a)–(g) are engaged and weigh in favour of disclosure.

49 Disclosure of the nature of complaints and associated regulatory correspondence would contribute to public understanding of how the Residential Tenancy Commissioner exercises statutory functions, inform members of the public about complaint handling processes and enhance scrutiny of administrative practices. As under the s36 analysis, I attribute moderate weight to these factors.

50 I now turn to matters (s) – *whether the disclosure would harm the business or financial interests of a public authority or any other person or organisation*, (w) – *whether the information is information related to the business affairs of a person which if released would cause harm to the competitive position of that person,* (x) – *whether the information is information related to the business affairs of a person which is generally available to the competitors of that person*. These factors all concern harm to business or competitive interests and therefore assume greater relevance in the context of s37. However, the assessment of those matters must be undertaken because personal identifiers and sensitive particulars have been redacted. The information proposed to be released is confined to the nature of complaints and associated correspondence, without names, contact details, property addresses or other identifying particulars.

51 In relation to matter (s), while disclosure of complaint material may have some reputational implications for M, I do not consider the redacted material would cause significant harm to the business or financial interests of M. The material reflects the existence of complaints and regulatory engagement rather than findings of misconduct or formal disciplinary outcomes.

52 In relation to matter (w), I accept M operates within a competitive rental market. However, the relevant information has the potential to cause

reputational harm but is not the type of information usually under consideration under s37 such as trade secrets, pricing strategies, commercial methodologies or proprietary information. Accordingly, I consider this factor weighs only slightly against release due to the risk of inaccurate reporting.

53 Matter (x) concerns whether the information is generally available to competitors. While complaint material is not ordinarily published, the relevant information does not disclose commercially sensitive data beyond the fact that complaints were received and addressed. Its release would not provide competitors with operational or strategic insight into M's business. I do not consider this matter weighs against release.

54 Considering all relevant matters together, I am satisfied that although matters (s) and (w) weigh against release to some extent, they do not outweigh the transparency considerations reflected in matters (a)–(g). The public interest in understanding how complaints are handled by a statutory regulator carries greater weight than the limited and speculative competitive harm identified. Caution must also be exercised to ensure s37 is not used as a shield for alleged poor conduct on the grounds that the release of such information would cause competitive disadvantage to a business or public authority or harm its reputation. This is not the intent of this provision or the right to information scheme, which clearly articulates that it favours transparency and that discretions conferred should be exercised to release the maximum amount of information.

55 Accordingly, I determine this information is not exempt under s37 and its release would not be contrary to the public interest.

Preliminary Conclusion

56 In accordance with the reasons set out above, I affirm the Department's decision. The relevant information should be released to the original applicant.

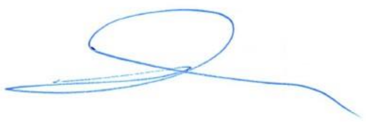
Conclusion

57 The preliminary decision was made available to the Department and M on 21 July 2026 to seek their input prior to finalisation pursuant to s48(1)(b) of the Act.

58 Both parties advised that they would not provide submissions or input.

59 Accordingly, for the reasons set out above, I affirm the Department's decision. The relevant information should be released to the original applicant.

Dated: 17 August 2026



Dr Grant Davies
OMBUDSMAN

Attachment 1 – Relevant Legislation

30. Information relating to enforcement of the law

(1) Information is exempt information if its disclosure under this Act would, or would be reasonably likely to –

(a) prejudice –

(i) the investigation of a breach or possible breach of the law; or

(ii) the enforcement or proper administration of the law in a particular instance; or

(iii) the fair trial of a person; or

(iv) the impartial adjudication of a particular case; or

(b) disclose, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law; or

(c) disclose methods or procedures for preventing, detecting or investigating, or dealing with matters arising out of, breaches or evasions of the law, the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or

(d) endanger the life or physical, emotional or psychological safety of a person, or increase the likelihood of harassment or discrimination of a person; or

(e) disclose information gathered, collated or created for intelligence, including but not limited to databases of criminal intelligence, forensic testing or anonymous information from the public; or

(f) hinder, delay or prejudice an investigation of a breach or possible breach of the law which is not yet complete.

(2) Subsection (1) includes information that –

(a) reveals that the scope of a law enforcement investigation has exceeded a limit imposed by law; or

(b) reveals the use of an illegal method or procedure for preventing, detecting or investigating, or dealing with a matter arising out of, a breach or evasion of the law; or

(c) contains a general outline of the structure of a program adopted by a public authority for investigating breaches of or enforcing or administering the law; or

(d) is a report on the degree of success achieved in a program adopted by a public authority for investigating breaches of or enforcing or administering the law; or

(e) is a report prepared in the course of a routine law enforcement inspection or investigation by a public authority with the function of enforcing and regulating compliance with a particular law other than the criminal law if the inspection or investigation is complete; or

(f) is a report on a law enforcement investigation, if the substance of the report has been disclosed to the person or the body that is the subject of the investigation if it is contrary to the public interest that the information should be given under this Act.

(3) The matters which must be considered in deciding if the disclosure of information under subsection (2) is contrary to the public interest are specified in Schedule 1 but are not limited to those matters.

(4) The matters specified in Schedule 2 are matters that are irrelevant in deciding if the disclosure of information under subsection (2) is contrary to the public interest.

Section 36 – Personal information of person

(1) Information is exempt information if its disclosure under this Act would involve the disclosure of the personal information of a person other than the person making an application under section 13.

(2) If –

(a) an application is made for information under this Act; and

(b) the information was provided to a public authority or Minister by a third party; and

(c) the principal officer or Minister decides that disclosure of the information concerned may be reasonably expected to be of concern to the third party –

the principal officer or Minister is to, if practicable and before deciding whether the disclosure of the information under this Act should occur, by notice in writing to the third party –

(d) notify that person that the public authority or Minister has received an application for the information; and

(e) state the nature of the information that has been applied for; and

(f) request that, within 15 working days from the date of the notice, the person provide his or her view as to whether the information should be provided.

(3) If a public authority or Minister, after receipt of a person's view referred to in subsection (2)(f) , decides to provide the information, the

public authority or Minister must, by notice in writing given to that person, notify that person of the decision.

(4) A notice under subsection (3) is to –

(a) state the nature of the information to be provided; and

(b) if the decision was made on behalf of a public authority or Minister, state the name and designation of the person who made the decision; and

(c) inform the person to whom the notice is addressed of –

(i) that person'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 must be made.

(5) A public authority or Minister must not provide the information referred to in a notice given to a person under subsection (3) –

(a) until 10 working days have elapsed after the date of notification of that person; or

(b) if during those 10 working days the person applies under section 43 for a review of the decision, until that review determines that the information should be provided; or

(c) until 20 working days after notification of an adverse decision under section 43; or

(d) if during those 20 workings days the person applies for a review of the decision under section 44, until that review determines that the information should be provided; or

(e) if the information is information to which a decision referred to in section 45(1A) relates –

(i) during 20 working days after the notification of the decision; or

(ii) where the person applies for a review of the decision under section 45(1A) – until that review determines the information should be provided.

37. Information relating to business affairs of third party

(1) Information is exempt information if its disclosure under this Act would disclose information related to business affairs acquired by a public authority or Minister from a person or organisation other than the person making an application under section 13 (the "third party") and –

(a) the information relates to trade secrets; or

(b) the disclosure of the information under this Act would be likely to expose the third party to competitive disadvantage.

(2) If –

(a) an application is made for information under this Act; and

(b) the information was provided to a public authority or Minister by a third party; and

(c) the principal officer or Minister decides that disclosure of the information concerned may be reasonably expected to be of substantial concern to the third party –

the principal officer or Minister must, before deciding whether the disclosure of the information under this Act would be likely to expose the third party that provided the information to substantial harm to the third party's competitive position, by notice in writing given to the third party –

(d) notify the third party that the public authority or Minister has received an application for the information; and

(e) state the nature of the information applied for; and

(f) request that, within 15 working days from the date of the notice, the third party provide the third party's view as to whether the information should be provided.

(3) If a public authority or Minister, after receipt of a third party's view referred to in subsection (2)(f) , decides to disclose the information, the public authority or Minister must, by notice in writing given to the third party, notify the third party of the decision.

(4) A notice under subsection (3) is to –

(a) state the nature of the information to be provided; and

(b) if the decision was made on behalf of a public authority, state the name and designation of the person who made the decision; and

(c) inform the third party of –

(i) its 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 must be made.

(5) A public authority or Minister must not provide the information referred to in a notice given to a third party under subsection (3) –

(a) until 10 working days have elapsed after the date of notification of the third party; or

(b) if during those 10 working days the third party applies for a review of the decision under section 43 , until that review determines that the information should be provided; or

(c) until 20 working days after notification of an adverse decision under section 43 ; or

(d) if during those 20 workings days the person applies for a review of the decision under section 44 , until that review determines that the information should be provided; or

(e) if the information is information to which a decision referred to in section 45(1A) relates –

(i) during 20 working days after the notification of the decision; or

(ii) where the third party applies for a review of the decision under section 45(1A) – until that review determines the information should be provided.

Section 33 – Public interest test

(1) In this Division, information is exempt information if the principal officer of the public authority or Minister considers, after taking into account all relevant matters, that it is contrary to the public interest to disclose the information.

(2) The matters which must be considered in deciding if the disclosure of the information is contrary to the public interest are specified in Schedule 1 but are not limited to those matters.

(3) The matters specified in Schedule 2 are matters that are irrelevant in deciding if the disclosure of the information is contrary to the public interest.

SCHEDULE 1 – Matters Relevant to Assessment of Public Interest

1. The following matters are the matters to be considered when assessing if disclosure of particular information would be contrary to the public interest:

(a) the general public need for government information to be accessible;

(b) whether the disclosure would contribute to or hinder debate on a matter of public interest;

(c) whether the disclosure would inform a person about the reasons for a decision;

(d) whether the disclosure would provide the contextual information to aid in the understanding of government decisions;

(e) whether the disclosure would inform the public about the rules and practices of government in dealing with the public;

(f) whether the disclosure would enhance scrutiny of government decision-making processes and thereby improve accountability and participation;

(g) whether the disclosure would enhance scrutiny of government administrative processes;

(h) whether the disclosure would promote or hinder equity and fair treatment of persons or corporations in their dealings with government;

(i) whether the disclosure would promote or harm public health or safety or both public health and safety;

(j) whether the disclosure would promote or harm the administration of justice, including affording procedural fairness and the enforcement of the law;

(k) whether the disclosure would promote or harm the economic development of the State;

(l) whether the disclosure would promote or harm the environment and or ecology of the State;

(m) whether the disclosure would promote or harm the interests of an individual or group of individuals;

(n) whether the disclosure would prejudice the ability to obtain similar information in the future;

(o) whether the disclosure would prejudice the objects of, or effectiveness of a method or procedure of, tests, examinations, assessments or audits conducted by or for a public authority;

(p) whether the disclosure would have a substantial adverse effect on the management or performance assessment by a public authority of the public authority's staff;

(q) whether the disclosure would have a substantial adverse effect on the industrial relations of a public authority;

(r) whether the disclosure would be contrary to the security or good order of a prison or detention facility;

(s) whether the disclosure would harm the business or financial interests of a public authority or any other person or organisation;

(t) whether the applicant is resident in Australia;

(u) whether the information is wrong or inaccurate;

(v) whether the information is extraneous or additional information provided by an external party that was not required to be provided;

(w) whether the information is information related to the business affairs of a person which if released would cause harm to the competitive position of that person;

(x) whether the information is information related to the business affairs of a person which is generally available to the competitors of that person;

(y) whether the information is information related to the business affairs of a person, other than a public authority, which if it were information of a public authority would be exempt information.