

OMBUDSMAN TASMANIA
DECISION



Right to Information Act Review

Case Reference: R2507-051

Names of Parties: Sabrina Evans and Clarence City Council

Reasons for Decision: s48(3)

Provisions Considered: s19, s36, s37

Background

- 1 The applicant in this matter, Ms Sabrina Evans, is a Tasmanian artist and co-founder of Hobart's Dark Fringe festival. She was working with the Clarence City Council (Council) to put on an art installation entitled *The Walled Garden* at Alma's Activities Centre on Alma Street, Bellerive in June 2025 (the Project). The Project was cancelled by the Council in April 2025.
- 2 The applicant's representative in this matter stated that Ms Evans was given five reasons for the cancellation of the Project, those being:
 - the importance of good relations with neighbours;
 - the proximity of childcare centre;
 - that the Council was working through its budget and that bad press or bad relationships could impact the Council's budget;
 - that at the time the Mayor was running for election in Franklin; and
 - historical relationships and friction points between Ms Evans and some of the Council's partners.
- 3 On 23 April 2025, Ms Evans submitted an assessed disclosure application under the *Right to Information Act 2009* (Tas) (the Act) to the Council which sought documents and internal communications informing Council's decision to cancel the Project.
- 4 After negotiations between the Council and Ms Evans, the agreed scope of Ms Evan's request was as follows:
 1. *All external communication between DarkLab Pty Ltd and Clarence City Council between 10 February 2025 and 30 April 2025 inclusive, specifically emails or letters. SMS, instant messages, social media messages, photos, videos*

or audio recordings and metadata, sent to or received from DarkLab Pty Ltd referencing:

- *The Walled Garden*
- *Sabio Evans*
- *David Male*
- *Dark Fringe*
- *Dark Mofo or "Dark"*
- *Art, History, stakeholders or partners*
- *Leigh Carmichael and/or Chris Twite*
- *Brendan Blomeley and/or other councillors of Clarence City Council specifically related to the Walled Garden, Sabio or David Male*
- *Locations such as Bellerive, Rosny and/or other locations within Clarence City Council including Alma Street and the Senior Citizens Hall*

2. *Based on the same search terms, document definitions, subject matter and date range as point (1) above, capture internal communication between the following Clarence City departments and representatives:*

- *Strategic Development*
- *Communication and Engagement Group*
- *City Culture*
- *CEO's office*
- *Councillors/Council members*

3. *Finalised reports or briefings presented to senior staff or Council members referencing the Walled Garden, Sabio or David Male.*

4. *Correspondence by email or letter between Council officers and external consultants or agencies referencing the Walled Garden, Sabio or David Male; and/or records from or summarizing or referencing Zoom, Skype, Google Meet, Microsoft Teams, Slack, Blue Jeans, Discord or other common video conferencing and online collaboration spaces concerning discussions between Council officers and external consultants or agencies discussing the same matters.*

5. *Council meeting minutes, agendas, notes or formal decisions related to the Walled Garden, Sabio or David Male.*
6. *Decision making processes concerning the list of risks and impediments created by Council officers and representatives relating to the Walled Garden project.*
7. *Metadata as it falls within the guidelines provided by The Ombudsman, within the scope of the requested date range and document definitions*
8. *Within the documentation captured, references to face to face, in-person meetings between DarkLab representatives and Clarence representatives and also minutes or formal decisions that arose from these meetings in respect to raising the subject of Sabio and/or the Walled Garden project and/or risks and/or strategy relating to them.*
9. *A copy of the building surveyor's report done for the Alma St venue (the vacant Senior Citizens building) specifically for The Walled Garden project (as we understand it).*
10. *With a particular focus:*
 - a. *Information flagged by DarkLab to Council officers concerning Sabio and/or The Walled Garden project*
 - b. *Communication from Strategic Development and/or Communication Engagement Group directed to City Culture on these matters*
 - c. *Efforts made by Council officers - including Strategic Development and/or Communication Engagement Group - to properly understand the curatorial intentions of the Walled Garden visual document provided to Council in the first half of February.*
 - d. *Efforts made by Council officers to understand the highly customized nature of the artwork and overall project that was custom designed in detail for the vacant Senior Citizens space. I.e. The visitor experience and the design could not be easily or directly replicated elsewhere because the artwork and experience design was customized specifically for the "quirky" vacant*

Alma Street venue - its dimensions, rooms and spaces - which is a particularly unique and one-off venue to say the least.

e. I seek to understand within what domain of expertise and jurisdiction do the Clarence departments of i) Strategic Development and ii) Communication and Engagement Group ostensibly have the authority to review art, censor art, decide whether art is appropriate, decide what is a potential danger to the community, and constrain the work and commercial business of an artist without a proper independent curatorial assessment or legal order?

f. Considerations by Council officers and representatives of the commercial opportunity cost for the artist of The Walled Garden and any consideration in respect to both commercial damages and reputational damage to Sabio, the artist in the event that the project is unduly delayed, postponed or cancelled by Clarence without thorough and reasonable deliberation or proper consultation with the artist directly.

- 5 Ms Evans' application was accepted on 5 May 2025, after confirmation that the application fee was waived pursuant to s16(2)(a) of the Act.
- 6 On 2 June 2025, the Council issued its original decision to Ms Evans. The Council identified 32 documents as being relevant to Ms Evans' application. It found exemptions under s36 (personal information) and s37 (information relating to the business affairs of a third party) applied to prevent disclosure of some information contained in these documents.
- 7 Ms Evans was not satisfied by the Council's original decision, so on 10 June 2025 sought an internal review. The Council's internal review identified 39 relevant documents and again found exemptions under ss36 and 37 were applicable. These findings related to information contained in 18 documents, namely:
 - Document 2.3 (section 36);
 - Document 2.4 (section 37);
 - Documents 2.10 to 2.14 (section 36);
 - Document 2.16 (section 36);
 - Document 2.18 (section 36);
 - Document 2.22 (section 36);

- Document 2.24 to 2.30 (section 36); and
 - Document 8.1 (section 36).
- 8 The Council's internal review decision, issued to Ms Evans on 7 July 2025, set out that it could not locate information relevant to items three, four, six and nine of Ms Evans' assessed disclosure application. It noted that information considered outside the scope of Ms Evans' request in Document 2.7 was redacted.
- 9 The Council's internal review decision also set out that it was now refusing to accept item one (insofar as it related to *Art, History, stakeholders or partners and locations such as Bellerive, Rosny and/or other locations within Clarence City Council*) and item seven of the assessed disclosure request. This refusal was pursuant to s19(1)(a) of the Act on the basis that assessing the information requested would substantially and unreasonably divert the Council's resources from its other work.
- 10 Ms Evans was not satisfied by the Council's internal review decision. She applied to my office for external review on 30 July 2025 in relation to the sufficiency of searching for information and appropriateness of exemptions and refusals applied. Her request was accepted pursuant s44(1) and s45(1)(e) of the Act.

Issues for Determination

- 11 I must determine whether the Council's:
- reliance on ss36 and 37 of the Act to exempt information sought by Ms Evans was valid;
 - refusal of parts of item 1 and item 7 of Ms Evans application under s19(1)(a) of the Act was valid; and
 - search for relevant information was sufficient.
- 12 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 information is prima facie exempt under these sections, 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 and at least those contained in Schedule 1 of the Act.

Relevant legislation

- 13 Copies of ss19, 33, 36, 37 and Schedule 1 of the Act are at Attachment 1.

Submissions

Ms Evans

- 14 In applying for external review, Ms Evans' representative set out the following:

Background:

On 2 May 2025, I lodged a Right to Information (RTI) request with Clarence City Council seeking access to documents and internal communications relating to the abrupt cancellation of The Walled Garden project. This project had received \$10,000 in funding from the Council and, after nine months of development, was scheduled to take place throughout June in Greater Hobart as part of the Dark Mofo period. The proposed venue at Bellerive was intended to be made available to the artist, producers, and creative team from March and April for preparation, pre-production, and curation, ahead of ticketed public performances of a highly original work.

The decision-making process in March and April by Council staff — including Tracey Cockburn (Head of Culture), Georgi Wicks (Head of Communications), and CEO Ian Nelson — warrants closer scrutiny. At present, there appears to be no documentary evidence, paper trail, or internal records explaining the rationale for the project's cancellation. The Council has stated that no emails, messages, phone records, or other forms of communication exist that would shed light on how and why this decision was made.

Despite multiple follow-ups, the response provided by the Council was unsatisfactory in several key respects:

- *Key documents and correspondence were omitted without explanation, despite their material relevance and likely existence (as evidenced in public and internal statements).*
- *The statement(s) of reasons are dubious in respect to considerations such as:*
 - a) So called “trade secrets” being protected (leading to documents withheld),*
 - and*
 - b) Clarence apparently did not have adequate technical backup or search capabilities for email across a short period from February to April, 2025.*

I.e. they claim not to have metadata for the short period 10 Feb to 30 April.

- *Delegation of the RTI decision-maker appears to be in question, with concerns raised about institutional bias and the refusal to appoint an external decision-maker where a conflict of interest exists. This undermines the independence and fairness of the internal review process.*

On 3 June, and through early June, I sought internal review, but the outcome failed to address the substantive deficiencies. It did not meaningfully engage with the scope of my application or the requirement for full disclosure under the objectives of the Act.

Key contextual considerations for investigation include:

Sabio, the artist at the centre of the Walled Garden project, has been deeply impacted by what can only be described as sustained mismanagement, negligence, and underhanded conduct by Clarence City Council. The consequences have been serious and well-documented, and arise from a series of events including:

1. *A prolonged period of silence from Council between mid-March and 7 April, during which Sabio received no communication or proper reassurance, despite the project's advanced stage and upcoming deadlines, with a critical project deadline being the beginning of April (which included final confirmation of a venue).*
2. *Between 7 and 13 April, five sudden and significant project obstacles and obstructions were raised by Council, none of which had been previously flagged over the prior nine months of project development. These obstructions arrived without warning and with no opportunity for meaningful dialogue.*
3. *The abrupt and poorly justified cancellation of the project, despite public investment, months of planning, and ongoing commitments.*
4. *The continued mistreatment and disregard Sabio has experienced following the cancellation, which includes dismissive responses, institutional stonewalling, and mischaracterisation of her conduct.*

5. *A total failure of duty of care, compounded by the complete absence of proper consultation, transparency, or support throughout the ordeal.*

... Council staff within the Culture Group have known of her diagnosis and history throughout, yet have shown no discernible consideration of her health circumstances in their handling of this matter.

Grounds for Review:

We believe that:

1. *The agency has failed to make a proper decision in accordance with the Act.*
2. *There has been a failure to conduct a fair and impartial internal review.*
3. *There is evidence of institutional bias, or a reasonable apprehension of such, which further justifies external oversight.*
4. *The decision is contrary to the objects of the Act, which favour disclosure unless there is a clear and lawful reason not to provide information.*

Remedy Sought:

We respectfully request that the Ombudsman:

- *Review the Council's handling of the RTI request.*
- *Assess whether the decision complies with the Right to Information Act 2009.*
- *Direct the Council to release further material*
- *Seek clarification on whether metadata can be retrieved for the period 10 Feb to 30 April*
- *Investigate the delegation of the RTI function and the potential conflict of interest issues raised.*
- *Consider recommending systemic improvements if procedural fairness has not been upheld.*

- 15 On 4 February 2026, the applicant's representative provided supplementary submissions, an extract of which clarified the information sought:

What we seek from Clarence:

Please identify the exact passages of our 14 April email relied upon to justify the 28 May CEO letter, and provide any internal correspondence/briefing that records that reliance.

The information and decision trail should exist. It is very strange if a public authority did not record this information or have it available.

Council

- 16 The Council did not provide submissions relevant to this external review beyond its internal review decision and correspondence to Ombudsman Tasmania responding to enquiries from my office about the search it conducted for relevant information. I will refer to these, where relevant, in the analysis section of this decision.

Analysis

Section 19 – Requests may be refused if resources substantially and unreasonably diverted

- 17 The Council has sought to refuse two parts of Ms Evans' request on the basis of s19(1), deciding that to respond to them would be an unreasonable and substantial diversion of its resources from its other work.
- 18 Section 19(2) of the Act sets out that for a public authority to rely on s19(1) to refuse to accept aspects of an assessed disclosure application, it must first provide the applicant with a:
- reasonable opportunity to consult the public authority...with a view to the applicant being helped to make an application in a form that would remove the ground for refusal.*
- 19 This consultation is mandatory and a public authority cannot validly refuse an application under s19 if it has not occurred.

Did Council provide the Applicant with a reasonable opportunity to consult with it, in order to help the Applicant make an application in a form that would remove the ground for refusal, as is required by s19(2)?

20 The Council, on internal review, decided to refuse:

- request item 1 insofar as it related to Ms Evans's request for
 - Art, History, stakeholders or partners; and
 - Locations such as Bellerive, Rosny and/or other locations within Clarence City Council; and
- request item 7

of Ms Evans' assessed disclosure application.

21 This decision altered the Council's original decision which decided that information relating to these aspects of Ms Evans' application would be contrary to the public interest to release.

22 The Council was correct to alter its original decision. Despite stating that it would be contrary to the public interest to release this information, the Council's original decision failed to cite an exemption provision in Part 3 of the Act to justify its non-disclosure. The public interest test is not itself an exemption provision. It is part of an assessment of whether an exemption applies. Information must be released if it is not exempt or a request cannot be validly refused.

23 It is permissible to rely on s19(1) on internal review when the relevant parts of the request were previously claimed to be exempt, though this would be unusual. It can occur if an error is discovered on review, such as the application of an exemption without collating and reviewing the relevant information. However, the consultation required in s19(2) must still occur and the applicant must still be given the opportunity to refine their request to remove the ground of refusal.

24 By changing its decision and refusing to accept these aspects of Ms Evans' application without providing her a further opportunity to refine the scope of her request, the Council did not comply with its obligations under s19(2) of the Act.

25 As the Council has failed to comply with a mandatory part of s19, it is not entitled to rely on the refusal provision.

Section 36 – Personal information of a person other than the applicant

26 For information to be exempt under s36 of the Act, I must be satisfied its release would reveal the identity of a person other than the person seeking the information, or that the information would lead to that person's identity being readily ascertainable.

27 Section 5 of the Act defines personal information as:

Any information or opinion in any recorded format about an individual –

(a) whose identity is apparent or is reasonably ascertainable from the information or opinion; and

(b) who is alive, or who has not been dead for more than 25 years.

28 The Council has applied s36 to a range of information, including to the names of people associated with DarkLab, the names of various artists, the direct contact details of various individuals, the names of art installations and performances, the names of those from third party businesses providing their services to the Council for a fee, the first names of Council staff and a position title contained in multiple screenshots of Microsoft Teams chats, a website address and a pick-up address.

29 I am satisfied that most of this is personal information as defined in s5 of the Act and is therefore prima facie exempt from disclosure pursuant to s36 of the Act. My exception to this finding relates to information not released from two of the screenshots of Microsoft Teams chats provided to the applicant. These screenshots are contained in documents 2.12 and 2.4.

Document 2.12

30 The information redacted from document 2.12 contains correspondence between Council staff. It contains discussion between staff about potential changes to the working conditions of a particular staff member. Though the information does contain references to two names, which are clearly personal information, some of the other information removed does not identify any person or leave their identity reasonably ascertainable. As such, I find that all information redacted in document 2.12 is not exempt and should be released, except for the two names contained in that information and the words between *impact* and *industrially*. This information is prima facie exempt under s36 of the Act.

Document 2.4

31 The information redacted from document 2.4 contains correspondence sent between Council staff. It contains advice about why the Project did not proceed. Upon review of this information, it is not clear how the release of most of this information would identify an individual or leave a person's identity reasonably ascertainable. This information is therefore not exempt from disclosure under s36 of the Act and should be released to the applicant, subject to the following exception.

- 32 My finding here does not extend to the second word of the second line of redaction, which are initials of a position title. The identity of this person is reasonably ascertainable to a person with knowledge of the relevant organisation. I am therefore satisfied this information is prima facie exempt pursuant to s36 of the Act.

Section 33 – Public interest test

- 33 I now turn to assess whether it is contrary to the public interest to release information I have identified as prima facie exempt from disclosure pursuant to s36 of the Act. The Council's internal review decision set out that it considered the following Schedule 1 matters as relevant to the information it found prima facie exempt under s36:

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

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

(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.

- 34 In conducting this public interest assessment, I will categorise the information identified as prima facie exempt into separate classes of information.

Names of individuals

- 35 The Council has identified the names of various people, including those from DarkLab, the names of various artists and the name of a building surveyor providing his services to the Council, as exempt from disclosure pursuant to s36 of the Act.

- 36 I agree with the Council that there would be harm to the interests of some of these individuals or it would prejudice the ability to obtain similar information in future. These matters outweigh the need for government information to be accessible and the enhancement of scrutiny of government decision-making processes in the following instances:

- The last names of employees of DarkLab, who are not decision-makers or employed by a public authority;
- The names of artists who submitted proposals which did not eventuate into installations or events;

- The name of the second Council employee (and the words between *impact* and *industrially*) in document 2.12, as this relates to their employment conditions.
- 37 I am not satisfied, however, that the following names would be exempt under s36:
- The name of the first Council employee in document 2.12, who is performing their regular duties;
 - The position title in document 2.4;
 - The building surveyor;
 - The first names of DarkLab employees;
 - Artists who were engaged by the Council to undertake exhibitions or installations.
- 38 All are undertaking paid work and it is not clear what the harm to their interests would be in releasing documents revealing them performing their professional duties.

Names of art installations and performances

- 39 The Council has also identified the names of art installations and performances as being exempt pursuant to s36. As with the names of artists employed by the Council to undertake exhibitions or installations, I find it would not be contrary to the public interest to release the names of various art installations or performances. It is not apparent to me why the release of this information would negatively impact upon the interests of the owners and creators of these works. This information is not exempt and should be released to Ms Evans.

Direct contact details and address

- 40 I am satisfied it is contrary to the public interest to release any direct contact details of third parties, which included mobile phone numbers and email addresses, identified as exempt pursuant to s36 of the Act by the Council. I also find it to be contrary to the public interest to release the address redacted in document 1.4. The release of this information would add minimal value to the information being released to the applicant and could potentially harm the interests of those affected by its release. This information is exempt from disclosure under s36 and should not be released to the applicant.

Website address

- 41 I am not satisfied it is contrary to the public interest to release the URL web address redacted from document 1.4. Though it contains the first names of two artists, I have found that these names can be released earlier in my decision. I also note this website is publicly available, therefore this URL is already in the public domain. It is unclear what

harm could eventuate to the artists' interest and therefore cannot be considered exempt from disclosure pursuant to s36 of the Act. The website address should be released to the applicant.

Section 37 – Information relating to the business affairs of a third party

- 42 Section 37(1) of the Act provides that information is eligible for exemption if it relates to the business affairs of a third party and contains trade secrets (s37(1)(a)) or would be likely to expose the third party to competitive disadvantage (s37(1)(b)).
- 43 The Council relied on s37(1) of the Act to redact information contained in documents 1.5, 1.6 and 2.4. The Council's internal review decision did not specify whether it relied on s37(1)(a) or (b) to justify redactions from each document. However, as trade secrets do not appear to be contained in this information, I will proceed on the basis the Council withheld information under s37(1)(b) on the basis that its release would be likely to cause a third party a competitive disadvantage.
- 44 As to the meaning of competitive disadvantage, in the matter of *Forestry Tasmania v Ombudsman* [2010] TASSC 39, Porter J held at [52]:

For the 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 the provisions are concerned with the potential impact on the undertaking or agency acting as a competitor in the market. . .¹

- 45 The Court further held at [59]:

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

- 46 At [41] the Court interpreted the meaning of 'likely' to be a *real or not remote chance or possibility, rather than more probable than not.*

Document 1.5

- 47 The Council has redacted a part of an email sent between it and DarkLab containing a high-level description of an artwork which had not previously been exhibited. I am satisfied the release of details of an artist's work prior to its official release has the potential to cause competitive disadvantage. This information is prima facie exempt under s37(1)(b).

¹ [2010] TASSC 39.

Document 1.6

- 48 The Council has redacted three dot points of information contained in an email detailing the resources a third-party business can provide to support an art exhibition. I am satisfied the release of details relating to unfinalised funding offers to artists has the potential to cause competitive disadvantage to the relevant business. This information is prima facie exempt under s37(1)(b).

Document 2.4

- 49 The Council has redacted information from three lines of Microsoft Teams chat correspondence from one Council staff member to another. The chat details information provided by a third party about their financial arrangements and an unfinalised commercial agreement. I am satisfied the information, if released, has the potential to cause competitive disadvantage to a third party. It is prima facie exempt under s37(1)(b).

Section 33 – Public interest test

- 50 I now turn to assess whether it is contrary to the public interest to release information I identified as prima facie exempt from disclosure pursuant to s37(1)(b) of the Act. The Council's internal review decision set out that the Council identified the following Schedule 1 matters as relevant:

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

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

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

- 51 I agree with the Council these matters are relevant and weigh in favour of disclosure. I also find Schedule 1 matters (a) – *the general public need for government information to be accessible*, and (b) – *whether the disclosure would contribute to or hinder debate on a matter of public interest*, to weigh in favour of disclosure.
- 52 However, I also find Schedule 1 matters (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*, to be the key Schedule 1 matters weighing against disclosure.

- 53 The information I identified as prima facie exempt reveals an artist's work which has not been exhibited, unfinalised commercial negotiations and financial details of a third party organisation. If this information was released, competitors of the third parties may be given an advantage and the third parties detrimentally impacted.
- 54 Overall, I find it would be contrary to the public interest to release the limited information I have found to be prima facie exempt pursuant to s37(1)(b) or the Act. The Council is not required to provide this information to the applicant.

Sufficiency of Search

- 55 I conducted a review of the search record the Council provided my office and made relevant enquiries of the Council after the applicant's representative raised further concerns to my office about the searching conducted. The applicant's representative was particularly concerned that the reasons for cancellation of the Project did not appear to be contained in the information and that he considered this showed information must have been omitted.
- 56 I consider that the Council has conducted a thorough search for information relevant to the applicant's extensive request. The Council's search record demonstrates the information management systems that were searched. While responding to my enquiries, the Council asserted it had also searched all internal and external communication methods for information responding to the applicant's request.
- 57 Importantly, the Council's response to my enquiries about the search it conducted contained its explanation for why the Project was cancelled. Rather than the Project being cancelled for the five reasons referred to earlier in my decision (as asserted by the applicant's representative), the Council asserted the Project was cancelled for reasons set out in private correspondence it sent to the applicant's representative on 16 April 2025.
- 58 After reviewing the Council's search record and correspondence to my office and in light of the Council's explanation for why it cancelled the Project, I am satisfied the Council conducted an adequate search for information relevant to the applicant's assessed disclosure application.

The applicant's supplementary submissions

- 59 On 4 February 2026 the applicant's representative clarified that the applicant wanted the Council to *identify the exact passages of our 14 April [2025] email relied upon to justify the 28 May [2025] CEO letter, and provide any internal correspondence/briefing that records that reliance.*

60 As set out above, I consider the Council's search for information was sufficient, including any search for *internal correspondence/briefing* referred to in the applicant's 4 February 2026 submissions.

Preliminary Conclusion

61 Accordingly, for the reasons set out above, I determine:

- the Council was not entitled to rely on s19(a) of the Act and is directed to reassess this aspect of Ms Evans' application in accordance with the Act;
- exemptions claimed under s36 should be varied;
- exemptions claimed under s37 are affirmed; and
- the Council conducted a sufficient search for information.

Responses to the Preliminary Conclusion and further analysis

The Council's submissions and further analysis

62 As the above preliminary conclusion was adverse to the Council, it was made available to it pursuant to s48(1)(a) of the Act on 30 July 2026 to seek its input prior to finalisation. On 20 August 2026, the Council provided submissions responding to my findings regarding its use of s19 and s36.

Section 19

63 Regarding my finding in relation to the Council's use of s19, the Council's submissions stated:

On internal review, it was identified that aspects of the original decision were not sustainable because the original delegate had sought to rely on public interest considerations in circumstances where the relevant information had not been identified, located or assessed. Council therefore considered that section 19 provided the more appropriate statutory framework for dealing with those aspects of the request, particularly given the likely resources required to locate, analyse and, where necessary, redact the information sought.

While Council accepts that a further consultation process may have been available, the internal reviewer formed the view that further consultation was unlikely to materially narrow the scope of the application. Consultation directed to narrowing the scope had already occurred before the original decision was made and had not substantially reduced the resource burden.

64 I accept that in these circumstances, where scope negotiations occurred prior to the assessed disclosure application being accepted, it may have appeared unlikely that further negotiations would have been successful in reducing the scope of Ms Evans' request.

65 However, s19 had not been relied on previously by Council to refuse any part of Ms Evans' request. The Act does not permit the use of s19 without consultation with the applicant under s19(2). It is a mandatory step and previous scope negotiations which do not refer to s19 are not sufficient to complete this requirement. It was necessary for the delegate responding to Ms Evans' application to re-engage with her, or her representative, under s19(2) of the Act to negotiate about the scope of the information request:

with a view to the applicant being helped to make an application in a form that would remove the ground for refusal.

66 As I set out at paragraph 19 of this decision, the requirement to engage in negotiations under s19(2) before relying on s19(1) is mandated by the Act and cannot be bypassed. Accordingly, I maintain my finding in relation to s19, that Council was not entitled to rely on this provision.

Section 36

67 Council's submission also set out that the first names of DarkLab employees and the name of an artist not engaged by Council should not be released:

Council's position is that the first names of DarkLab employees should not be released. In the circumstances, disclosure of first names would be sufficient to identify the individuals concerned. Council submits that this risk of identification is heightened by the relatively small size of the arts community and the applicant's involvement within that community. In that context, a first name alone may readily identify the employee, even where the surname has been withheld. Council also notes that DarkLab is not a government entity and its employees are not public officers. The first names of those employees do not bear upon Council's decision-making, nor do they affect the substantive content or meaning of the information proposed for release.

68 The relevant names of DarkLab employees are associated with their occupational duties. While I accept that their identities may be able to be ascertained by those with knowledge of the Tasmanian arts sector, it is still not readily apparent to me why the release of this information would be of concern to these individuals in these circumstances. Without further information clearly setting out why it would be contrary to the

public interest to release this information, I maintain my finding that it is not exempt.

Ms Evans' submissions and further analysis

- 69 On 31 August 2026, the applicant and her representative were also afforded the opportunity to make submissions responding to my draft decision pursuant to s48(1)(b) of the Act. On 12 October 2026, the applicant's representative made comprehensive submissions responding to my draft decision. These submissions consolidated a range of previous correspondence sent to my office responding to my draft decision.
- 70 A significant proportion of the applicant's submissions related to issues regarding the cancellation of the Project and whether the Council had conducted itself appropriately or provided appropriate reasons for this decision. This review is limited to the assessment of whether searching for relevant information was sufficient, refusal under s19 was permitted or exemptions were applicable. I have not investigated and will not provide comment on questions regarding the appropriateness of Council's actions beyond those bounds or the cancellation of the Project, as these matters are not within the scope of this review.

Council's searching

- 71 The primary relevant submissions made by the applicant's representative related to my proposed finding that the Council's search for information was sufficient. These set out that:

Paragraphs 54–57 and the conclusion at [61] treat the search as adequate after reviewing “the search record” and Council’s correspondence. The applicant had specifically argued that the reasons for cancellation were missing, which indicated incomplete disclosure.

The decision accepts Council’s statement that the project was cancelled for the reasons in the private 16 April 2025 correspondence (Jane Murrell letter under the Managing Unacceptable Customer Conduct Policy), not the five reasons previously put to the applicants (neighbours, childcare proximity, future budgets, bad press, Mayor’s Franklin candidacy, and historical friction with partners). It then uses that assertion to support the conclusion that the search was sufficient.

This is circular and weak:

- Contemporaneous records already produced (Conboy’s notes, Teams messages, meeting records, draft letters) show content, childcare, Communications, partner-friction, and political*

considerations all being actively and suddenly discussed in the twelve days immediately before the 16 April letter.

The conduct rationale appears in the formal withdrawal letter; the internal trail is broader.

– Known or later-produced records that fall within the request (including the 10 April Comms Strategy meeting that did occur and left minutes about project cancellation, the Holdfast building report for 17 Alma Street, specific 14–16 and 29 April emails, and internal briefings) were not all captured in the first release.

The decision does not grapple with why these were missed or whether the search methodology (systems, custodians, date parameters, Teams/Outlook/SharePoint, Mayor's office, etc.) was adequate.

The finding therefore rests more on Council's post-hoc characterisation of the decision than on a demonstrated, document-by-document sufficiency analysis.

- 72 The Council's 16 April 2025 letter to the applicant's representative stated the Council made its decision to withdraw the Council's future involvement in the Project because the language used in a recent email *breached the standard of respectful, collaborative communication* expected of parties partnering with Council. This letter went on to state that this decision was made in alignment with Council's *Managing Unacceptable Customer Conduct Policy* which sets out minimum standards of behaviour expected of parties dealing with Council.
- 73 It is necessary for me to make clear that I have not relied solely on this correspondence to make my finding that Council's searching was sufficient. Rather, as set out at paragraph 57, it was considered along with the Council's search record and other correspondence the Council provided which stated that the five reasons referred to at paragraph 2 of this decision were not reasons for the Council discontinued support for the Project (as was suggested by the applicant's representative).
- 74 Importantly and irrespective of the above, I was satisfied the Council's search record revealed that Council's searching was conducted with sufficient thoroughness and in accordance with my *Guideline in Relation to Searching and Locating Information*. This, combined with a plausible explanation as to why information assumed to exist by the applicant was not identified by the Council's search, led me to be satisfied by Council's search for relevant information. I have not altered that view following the further submissions of the applicant's representative.

Scope of assessed disclosure request

- 75 The applicant's representative suggested I had misunderstood the scope of the applicant's request at paragraph 59 of my draft decision.
- 76 I have reviewed relevant documents and acknowledge that I did inadvertently reduce the scope of the request, as this was expanded by agreement after it was lodged to include information post-dating the request date. I have corrected this error to remove this reference and apologise for any confusion.

Section 19

- 77 The applicant's representative submitted my finding under s19, though correct, was meaningless. The applicant's representative welcomed my proposed finding regarding s19 but lamented that it does not compel the Council to release information sought by the applicant:

The finding that the s19(1)(a) refusal was invalid for want of the mandatory s19(2) consultation opportunity is sound. Council must reassess those parts of Item 1 and Item 7. In practice this only returns the matter to Council for a fresh decision; it does not itself compel disclosure of the material or fix any deficiencies in the original search parameters.

- 78 I have noted this comment but I am only able to return a matter for reassessment if reliance on a refusal provision is set aside, it is not reasonable or permitted to do otherwise under the Act.

Section 37

- 79 The applicant's representative set out that it was his view redactions applied to document 2.4 under s37 obscured information which may show why the Project did not proceed:

s37 is affirmed for the limited passages in 1.5, 1.6 and parts of 2.4 (unexhibited artwork description, unfinalised funding offers, third-party financial arrangements). Those findings are narrower on the face of the decision, but Document 2.4 remains important because it contains advice "about why the proposed Walled Garden project did not proceed."

- 80 While I acknowledge the applicant's representative's strong interest in why the Project did not proceed, these submissions did not make specific arguments in relation to the minimal information in Document 2.4 which was proposed to be exempt under s37. Accordingly, I maintain my finding in relation to the Council's use of s37, as I consider the appropriate balance was struck between the interests of the various parties.

Documents claimed to be missing

81 The applicant's representative also claimed that further information should exist and should have been located, including:

1. *Minutes of Mayor's meeting just prior to cancellation, deciding on the cancellation...*
2. *Instructions to Council's PR and crisis management consultant, prior to cancellation letter...*
3. *Summary of conversations with Sabio [the applicant] and Male [the applicant's representative]...*
4. *Minutes of CEO's meeting with Cockburn and Harris on 28 April; plus follow-up records of responses and decisions from the meeting through email or other communication.*

82 The applicant's representative stated this information should have been assessed because the information released by the Council referred to the abovementioned meetings and conversations.

83 I reiterate my finding that I am satisfied by the Council's search for relevant information. It was sufficiently thorough and was completed in accordance with my *Guideline in Relation to searching and Locating Information*. Records are not always made of conversations and meetings and it is outside my powers during this external review to investigate whether such records should have been kept in the relevant circumstances.

Conclusion

84 I have carefully considered the totality of the parties' submissions and all the surrounding circumstances relevant to this external review. However, for the reasons set out above, my findings remain unchanged.

85 Accordingly, I determine:

- the Council was not entitled to rely on s19(a) of the Act, and is directed to reassess this aspect of Ms Evans' application in accordance with the Act;
- exemptions claimed under s36 should be varied;
- exemptions claimed under s37 are affirmed; and
- the Council conducted a sufficient search for information.

86 I apologise to the parties for the delay in finalising this decision.

Dated: 26 October 2026

A handwritten signature in blue ink, consisting of a large loop followed by a horizontal stroke and a trailing line.

Dr Grant Davies
OMBUDSMAN

Attachment 1 – Relevant Legislation

Section 19 – Requests may be refused if resources unreasonably diverted

(1) If the public authority or Minister dealing with a request is satisfied that the work involved in providing the information requested –

(a) would substantially and unreasonably divert the resources of the public authority from its other work; or

(b) would interfere substantially and unreasonably with the performance by that Minister of the Minister's other functions –
having regard to –

(c) the matters specified in Schedule 3 –

the public authority or Minister may refuse to provide the information without identifying, locating or collating the information.

(2) A public authority or Minister must not refuse to provide information by virtue of subsection (1) without first giving the applicant a reasonable opportunity to consult the public authority or Minister with a view to the applicant being helped to make an application in a form that would remove the ground for refusal.

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.

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 working 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.

Section 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.

Schedule 1 – Matters relevant to the 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.