

OMBUDSMAN TASMANIA
DECISION



Right to Information Act Review

Case Reference: R2511-011

Names of Parties: Nathanael Elcock and Kingborough Council

Reasons for decision: s48(3)

Provisions considered: s19, s35, s36

Background

- 1 The Kingborough Council (the Council) is currently in the process of moving to the State Government's Tasmanian Planning Scheme. One of the zones in this planning scheme is the landscape conservation zone. The Council intend to apply the landscape conservation zone to parts of its local government area.
- 2 The applicant in this matter, Mr Nathanael Elcock, objects to most of the Council's application of the landscape conservation zone. Mr Elcock is concerned about the impact this re-zoning will have on the rights of impacted property owners and believes the Council failed to provide impacted residents with proper notice of the changes.
- 3 The re-zoning has proven to be a controversial issue, with significant local opposition to the move being documented by both local and statewide media outlets.¹
- 4 On 30 September 2026, Mr Elcock submitted an assessed disclosure application to the Council requesting copies of internal correspondence sent between staff at the Council. Mr Elcock's request was broken into four parts:

1. *We seek a full copy of email communications from an email we believe to be initiated on the 5th of December 2024 with the following attributes:*

¹ *Kingborough residents fear erosion of property rights under new zoning rules* (29 September 2025), Pulse Tasmania, <https://pulsetasmania.com.au/news/kingborough-residents-fear-property-rights-erosion-under-new-zoning-rules/>; *Council's Zoning Plan Ignites Community Outrage, Threatens Homes* (15 August 2025), Tasmanian Times, <https://tasmaniantimes.com/2025/08/councils-zoning-plan-ignites-community-outrage-threatens-homes/>.

Subject line: Look at the awesome box of LPS reps that we got today – yep they are all envelopes in there under the other ones”

From: Tasha Tyler-More

To: Development Services and others and;

- 2. Other emails with search terms: “LPS reps”, “Local Provisions Schedule representation”*
- 3. Reactions to the aforementioned email/s to the end of correspondence trail are required.*
- 4. Replies to the aforementioned email/s to the end of correspondence trail are required.*

We are seeking this correspondence as affected parties. This information has bearing [sic] on the ongoing LPS hearings for Kingborough, administrative process and matters of natural justice.

- 5 On 21 October 2025, the Council issued its original decision to Mr Elcock. The Council's decision stated both ss35 and 36 of the Act exempted information sought by the applicant from release for being internal deliberative information of the Council and the personal information of a person other than the applicant.
- 6 The Council's decision also set out that it refused to assess Mr Elcock's request, insofar as it related to his request for emails with the search terms: *LPS reps* and *Local Provisions Schedule representation* under s19(a) of the Act. The Council held that accepting this part of Mr Elcock's request would substantially and unreasonably divert the Council's resources from its other work.
- 7 The Council's internal review decision varied the original decision. The internal review decision held that 10 pages of information should be released in part, with ss35 and 36 applying to this information. It upheld the Council's use of s19.
- 8 Mr Elcock sought external review on 10 November 2025. Mr Elcock's application was accepted pursuant to s44 of the Act on the basis Mr Elcock had sought external review within 20 working days of being issued an internal review decision on his assessed disclosure application.
- 9 In submissions to my office, Mr Elcock stated he was not satisfied by the Council's consideration of the scope of his request. I wrote to the Council asking that it reconsider the scope of Mr Elcock's request and assess for release:

- *Emails that reference the 35E Submission from Caleb and Nathanael Elcock; and*
 - *Emails that reference our LPS Representations which was approximately 800 letters / envelopes.*
- 10 The Council agreed to reconsider the scope of Mr Elcock's request and issued a further decision, releasing more information to him on 11 March 2026.
 - 11 This information consisted of two emails and two letters. The letters, apart from slight variances, were largely duplicates of each other. The Council applied s36 not to release some information from these emails and letters to Mr Elcock. On 17 March 2026, Mr Elcock confirmed that he wanted the Council's use of s36 in relation to this information to form part of this external review.
 - 12 Mr Elcock requested his external review be prioritised. This request was granted in accordance with the priority policy.

Issues for Determination

- 13 I must determine whether requested information not released by the Council is exempt from disclosure under ss35, 36 or any other section of the Act. As ss35 and 36 are contained in Division 2 of Part 3 of the Act, my assessment about the Council's use of these sections is subject to the public interest test in s33. Therefore, should I determine information is prima facie exempt from disclosure under ss35 or 36 of the Act, 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 set out in Schedule 1 of the Act.
- 14 I must also determine whether the Council is entitled to rely on s19 of the Act to refuse Mr Elcock's application insofar as it related to his request for emails with the search terms: *LPS reps* and *Local Provisions Schedule representation*

Relevant legislation

- 15 I include copies of ss19, 35, 36, Schedule 1 and Schedule 3 of the Act at Attachment 1.

Submissions

Mr Elcock

- 16 Mr Elcock set out the following in relation to the Council's application of s35:

Resulting from an internal review, pursuant to S43, the Public Authority, through the CEO, Mr David Stewart has

redacted most of the content of the correspondence discovered and tendered to us as part of this review.

S35 of the Act is cited in paragraph three of the Public Authority's internal review response as the relevant part of the Act being applied. We believe that the parts of the body of emails supplied that have been redacted have been done so on the basis of S35.

It is our view that there is reasonable doubt that the supplied documents would be considered to meet the tests for S35 as prescribed in previous determinations from external reviews.

The Public Authority has not provided specific reasoning for its application of this section outside of simply stating or paraphrasing S35 and S36 (to be discussed in the below signposted area) to the supplied documents.

It is our view that the presentation of ~23 redacted lines within the 'to' field on page 6 of the Public Authority's Internal Review supplied documents is indicative that content sent is beyond that of Public/Planning Authority Staff responsible (relevant officers) for assessing representations, in particular ours, made during S35E of LUPAA.

It is also our view that the content of the emails may not constitute an internal deliberative process of the Public Authority and that the Public Authority has not provided specific justification or reasoning as such.

It is clear by the attached photo of our documents submitted to S35E of LUPAA, that we are affected parties of the email chain supplied by the Public Authority.

It is our position that any justification for the use of S35 of the Act, should be considered within the context of considerable public interest, S33, in that:

- a. We are clearly an affected party of the documents supplied. Evidenced by subject line and the Public Authority's attached photo.*
- b. We have made over 800 representations/submissions of responses to the S35E of the Land Use Planning and Approvals Act 1993.*
- c. We are advocating on behalf of over 300 landowners, who have provided us with signed landowner*

statements, at the Tasmanian Planning Commission's Hearings that are being held, presently.

- d. Our representations have been the subject of factually incorrect statements and positions made by the Public/Planning Authority and endorsed within their S35F document submitted, and accepted by the Tasmanian Planning Commission. The TPC has provided us a direction to indicate the errors present.*
- e. Our representations have been the subject of factually incorrect statements and positions made by the Public/Planning Authority, presented to Council members and the public within an Open Council Meeting Agenda.*

Additionally, there may exist content within these emails that demonstrate a genesis of contempt prior to investigation by key staff of the Public Authority, or at the very least a prejudiced or a closed mind towards us, our work, representations, and or methodology. This may explain the driving factors that have resulted in the above points outlined in d. and e.

Redacted content of the body should be revealed to show the truth of the matter and will assist in providing us and the individual landowners that we are advocating on behalf of that we are provided a forum and panel from the Public/Local Planning Authority at the currently in progress hearings of the Tasmanian Planning Commission that is free from a prejudiced or closed mind.

- 17 Regarding the Council's use of s36, Mr Elcock states:

Resulting from an internal review, pursuant to S43, the Public Authority, through the CEO, Mr David Stewart has redacted most of the content of the correspondence discovered and tendered to us as part of this review.

S36 of the Act is cited in paragraph three of the Public Authority's internal review response as the relevant part of the Act being applied.

Of note, it appears that all 'To', 'CC', 'From', 'Email Addresses', 'Phone', fields have been redacted.

It is our view from consulting with previous Right to Information Request external review determinations, when considering S36, personal information, a consistent approach must be retained and, in the view, detailed out by many determinations, 'the names of public officers

performing their regular duties are not usually exempt under s36.’ It is explicated by Ombudsman Tasmania that personal information of the Public Authority’s employees are not generally exempt from an RTI’s discovery. This includes but not limited to an employee’s name, position, and work contact details. This also extends to signatures, and email addresses as they form part of contact details.

It is our opinion that these redactions are not appropriate and should be revealed in accordance with adopting a wholistic approach to what we believe to be documents whereby s36 has been improperly supplied.

It is accepted by us that the Public Authority be afforded an opportunity to provide submissions that could argue the case for what is considered sufficient ‘specific or unusual circumstances’ that would justify the preclusion of the work-related personal information, including identification of organisation.

We therefore, foreshadow such a submission and draw the Ombudsman’s attention to S47(4) of the Act where, so far, the Public Authority has not provided sufficient explanation as to why they believe S36 applied to the above-mentioned redactions.

Additionally, any potential specific or unusual circumstances cited, should be considered within the context of considerable public interest, S33, in that:

- a. We are clearly an affected party of the documents supplied.*
- b. We have made over 800 representations/submissions of responses to the S35E of the Land Use Planning and Approvals Act 1993.*
- c. We are advocating on behalf of over 300 landowners, who have provided us with signed landowner statements, at the Tasmanian Planning Commission’s Hearings that are being held, presently.*

Based on the above discussion, it is our position that all redacted personal information be revealed. This includes work related personal information contained within the body of the emails that form the supplied documents.

- 18 Finally, Mr Elcock made the following submissions regarding the Council’s consideration of the scope of his request:

In our Right to Information Application Dated 30 September 2025, we have indicated in the first box that we are searching for internal communications that reference our Local Provisions Schedule (LPS) Caleb and Nathanael Elcock's 35E submission.

We detailed out the specificity of information that we have tried to obtain in the second section.

We detailed out the specificity of the information sought, in section three, to be within the context of "aforementioned emails". That is to say, within the context of previously established requests:

a. Emails that reference the 35E Submission from Caleb and Nathanael Elcock.

b. Emails that reference our LPS Representations which was approximately 800 letters / envelopes.

It is our position that a simple search of our last name, "Elcock" and a combination of "representations", or "reps" or "LPS" etc should yield a concise list of correspondence between 05 December 2024 to 09 December 2024. The Council

19 The Council's internal review stated the following:

. . . most of the information and details contained in the said email has been redacted. This is on the basis that pursuant to Sections 35 & 36 in the Act, information is exempt from disclosure if the information consists of deliberations or a record of consultations between Council staff and/or information is exempt from disclosure under the Act if such a disclosure involves the disclosure of a person's personal information, other than that of the person making the application.

As advised in Council's initial response dated 21 October 2025, in relation to the email dated 5 December 2024, only one email was generated in response from a Council staff member. A copy of the email is enclosed, but pursuant to Sections 35 & 36 in the Act, has also been redacted.

The Council maintains its position that your request for disclosure of any emails with the search terms of 'LPS reps' & 'Local Provisions Schedule representation' is too wide as the work involved in responding to the such a request would substantially and unreasonably divert the Councils resources given that such a search without a

reference to a specific property or to that of an individual or party, would essentially involve a search of the Council's entire records.

Analysis

Preliminary Matters

Council's failure to conduct a public interest test assessment

- 20 Exemption provisions contained Division 2 of Part 3 of the Act are subject to the public interest test assessment contained in s33 of the Act. A review of both the Council's original and internal review decisions shows that it did not conduct a public interest test assessment to justify the non-release of information found to be prima facie exempt from release under either ss35 or 36. This is not in compliance with the Act. The Council is reminded of s22(4) of the Act which states that a public authority's statement of reasons must include, where applicable, the public interest considerations on which that decision was based. A public authority's failure to discharge its obligations under s22 can in some circumstances provide grounds for a finding that information should be released on the basis that a public authority has not discharged its onus under s47(4) of the Act.

Reliance on s19(1)(a) – requests may be refused if resources unreasonably diverted from other work

- 21 The Council's reliance upon s19(1)(a) to refuse the request was a result of confusion between the applicant and the Council about the information which was being sought by the applicant. This confusion was eventually addressed and the information sought by the applicant was assessed for release to them. Therefore, the Council's use of s19 will not form part of this external review.

Section 35 – Internal Deliberative Information

- 22 For information to be exempt from disclosure under s35 of the Act, I must be satisfied it consists of:
- an opinion, advice or recommendation prepared by an officer of a public authority (s35(1)(a)); or
 - a record of consultations or deliberations between officers of public authorities (s35(1)(b)); or
 - a record of consultations or deliberations between officers of public authorities and Ministers (s35(1)(c)).
- 23 Once the requirements of one of these subsections is met, I must then be satisfied the information was prepared or recorded in the course of, or

for the purpose of, the deliberative processes related to the official business of the Council.

- 24 Section 35 (1) of the Act does not apply to the following:
- purely factual information (s35(2));
 - a final decision, order or ruling given in the exercise of an adjudicative function, or a reason which explains such a decision, order or ruling (s35(3)); or
 - information which is older than 10 years (s35(4)).
- 25 As to the meaning of 'purely factual information' in s35(2), I refer to *Re Waterford and Treasurer of the Commonwealth of Australia (No 1)* where the Commonwealth Administrative Appeals Tribunal (AAT) observed the word 'purely' in this context has the sense of 'simply' or 'merely' and the material must be factual in quite unambiguous terms.²
- 26 The phrase was considered again in *Re Secretary, Department of Prime Minister and Cabinet and Secretary, Department of Infrastructure and Regional Development and Sanderson* where the AAT considered:
- ...it is intended to emphasise that the material must be "...wholly... [or] entirely..." comprised of factual material and cannot incorporate any material that is not factual material... It does not contain material that can be described as opinion, advice, recommendation or even conjecture.*³
- 27 The meaning of the phrase 'in the course of, or for the purpose of, the deliberative processes' has also been considered by the AAT. In *Re Waterford and Department of Treasury (No 2)*, it adopted the view that these are an agency's thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.⁴
- 28 The Council claimed that information was exempt under s35 in the relevant information but neither the original nor internal review decisions issued by the Council make explicit which redactions relate to s35. However, having reviewed the unredacted copies of information subject to this external review, it appears the Council applied s35 of the Act to information contained in the body of nine emails identified as relevant to Mr Elcock's application. These emails were sent on Thursday, 5 December 2024 at:
- 1:52pm;
 - 1:52pm;

² [1984] AATA 518 at [14].

³ [2015] AATA 361 at [106].

⁴ [1984] AATA 67 at [58].

- 1:52pm;
- 2:03pm;
- 2:06pm;
- 2:07pm;
- 2:12pm;
- 2:31pm; and
- 2:32pm.

Two of the emails timestamped as being sent at 1:52pm are identical duplicates of each other.

- 29 The information the Council withheld under s35 of the Act consists of relatively innocuous communications between Council officials relating to representations provided to the Council about the planned re-zoning. Though the communications are somewhat casual in their tone, they nonetheless relate to the official business of the Council in that they consist of discussion amongst the Council's officials about who the representations were made by.
- 30 Therefore, I am satisfied the communications not released by the Council are indeed prima facie exempt pursuant to s35(1)(b) of the Act, as they are records of deliberations between the Council's officers made in the course of, or for the purpose of, the deliberative processes related to the Council's official business.

Section 33 – Public interest test

- 31 Section 35 is subject to the public interest test, so I must now turn to assess whether it would be contrary to the public interest to release information I have identified as prima facie exempt from disclosure pursuant to s35(1)(b) of the Act.
- 32 Schedule 1 matter (a) – *the general public need for government information to be accessible* – is essentially a restatement of the objects of the Act and as such will almost always be relevant and weigh in favour of disclosure.
- 33 I am not satisfied any other Schedule 1 matter is relevant to this assessment. As noted, the information identified as exempt under s35 is largely innocuous and it is not clear to me why its release would be contrary to the public interest. Considering this, I find it would not be contrary to the public interest to release all information identified as being prima facie exempt under s35 of the Act.
- 34 Notwithstanding my finding in relation to the Council's use of s35, I note that it appears to have applied s35 to information I find is more appropriately assessed for release under s36 of the Act, namely the

address detailed in the email sent on 5 December 2024 at 3:31pm. I will assess this information later in my decision.

Section 36 – Personal Information of a Person

35 For information to be exempt from disclosure 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 release of the relevant information would lead to that person's identity being readily ascertainable.

36 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.

37 The Council applied s36 of the Act to withhold the following information from the applicant:

- names of the Council's officers;
- position titles of the Council's officers;
- direct email addresses of the Council's officers;
- direct phone numbers of the Council's officers;
- references to the word 'phone' and 'Kingborough Council' in various email signatures;
- public facing email addresses and phone numbers from the Council and the Tasmanian Planning Commission; and
- personal information of private citizens

38 As I noted earlier in my decision, I also find it appropriate to assess the address detailed in the email sent on 5 December 2024 at 3:31pm for release s36 of the Act.

Kingborough Council and Tasmanian Planning Commission public facing email addresses and phone numbers

39 The public facing email addresses and phone numbers of the Council and the Tasmanian Planning commission are not exempt from disclosure under s36 of the Act. The release of this information would not reveal the identity of a person other than the applicant or leave the identity of someone other than the applicant reasonably ascertainable.

40 Accordingly, any reference to the following information in documents forming part of this external review should be released to the applicant:

- the email address DevelopmentServices@kingborough.tas.gov.au;
 - the email address development@kingborough.tas.gov.au;
 - the email address tpc@planning.tas.gov.au;
 - the phone number 03 6165 6828; and
 - references to the word ‘*phone*’ and ‘*Kingborough Council*’ in email signatures
- 41 I am also not satisfied it would be contrary to the public interest to release the references to the word *phone* and *Kingborough Council* which were redacted from the email signatures of emails sent at the following times:
- 5 December 2024 at 1:52pm;
 - 5 December 2024 at 2:03pm;
 - 5 December 2024 at 2:06pm; and
 - 5 December 2024 at 2:12pm.
- 42 The release of this information would not reveal the identity of a person other than the applicant or leave the identity of a person other than the applicant reasonably ascertainable. This information should also be released.

Names of the Council’s officers and their position titles

- 43 I am not satisfied the names of the Council’s officers, or their position titles are exempt from disclosure pursuant to s36 of the Act. It is the consistent position of this office and standard Australian practice that the personal information of officers of public authorities which relate to the performance of their regular duties, including names, should be released, unless specific and unusual circumstances apply to justify non-disclosure.⁵ The Council has not indicated any specific or unusual circumstances applying in this instance so this information should be released.

Direct contact details of the Council’s officers

- 44 However, I do find it would be contrary to the public interest to release the direct contact details of the Council’s staff. As set out in the external review decision of *Damien Matcham and Department of Health*:

Unlike generic email inboxes, workplace phone numbers, and work postal addresses, there is potential for harm with the release of an employee’s direct email or office phone number as they may become exposed to harassment as a

⁵ J and Department for Education, Children and Young People (11 December 2025) at [63], available at https://www.ombudsman.tas.gov.au/data/assets/pdf_file/0007/839716/Final-Decision-PDF.pdf.

result of this information being released. Further, it is valid for public authorities to limit the release of direct contact numbers and emails of staff to ensure public enquiries are able to be directed through appropriate channels.⁶

- 45 The direct email and office phone contacts of the Council's staff are exempt from disclosure under s36 of the Act and should not be released to the applicant.

Personal information of private citizens

- 46 After reconsidering the scope of Mr Elcock's assessed disclosure application the Council identified correspondence in its possession between the Tasmanian Planning Commission and two private citizens consisting of two emails and two largely identical letters as responding to Mr Elcock's assessed disclosure application. The Council, pursuant to s36, redacted the names of the private citizens, a home address and unique property CT and PID numbers, a direct email address and direct phone number and information revealing the workplace and occupation of one of these individuals.
- 47 Upon reviewing this information, I am satisfied that it would be contrary to the public interest for this information to be released. The substance of these documents, namely the correspondence from two of these individuals to the Tasmanian Planning Commission, has already been provided to the applicant and the information redacted under s36 would add little to no value to the information already provided.
- 48 Given the heightened friction within the Kingborough local community in relation to the proposed re-zoning, I recognise that the release of information identifying these individuals may expose them to a risk of harm and harm their privacy.
- 49 Further, the covering email attached to the letter addressed to the Tasmanian Planning Commission indicates that this correspondence was sent on the understanding that if it was made available on the Tasmanian Planning Commission's website that it would be de-identified. Were the information subject to redactions under s36 be released, the authors of this letter could be identified and this would hinder the fair treatment of these citizens in their dealings with Government.
- 50 On balance, I find the release of this information would be contrary to the public interest and therefore should not be released to the applicant.
- 51 I also find that it would be contrary to the public interest to release the address contained in the email from 5 December 2024 at 3:31pm. The

⁶ Damien Matcham and Department of Health (14 July 2025) at [34], https://www.ombudsman.tas.gov.au/data/assets/pdf_file/0018/820152/Final-Decision-R2403-008_606DF.pdf.pdf.

release of this information would be of little value to the applicant and would pose a risk to the privacy of those individuals. This information should not be released.

Preliminary Conclusion

52 In accordance with the reasons set out above, I determine:

- section 19 does not apply;
- exemptions claimed pursuant to s36 should be varied; and
- exemptions claimed pursuant to s35 are not made out.

Responses to Preliminary Conclusion

The Council

53 On 13 April 2026, my preliminary decision was made available to the Council pursuant to s48(1)(a) of the Act to seek its input before finalisation.

54 On 27 April 2026, the Council provided its submissions. These submissions were substantial and stated that it objected to my findings regarding ss35 and 36. It also asserted:

- The Council would be breaching the duty of care it owes its employees to provide a safe workplace if it released the personal information of its employees without their consent;
- The Council's release of requested personal information would breach the *Personal Information Protection Act 2004* (the PIP Act); and;
- My preliminary decision ignores Courts and Tribunals that have said that an individual's privacy should be considered when assessing information for release.

Section 35

55 The Council submitted that I was wrong to use the word innocuous as some sort of legal test to justify my finding that the Council improperly relied on s35 not to release requested information. The Council then went on to submit that my use of the word innocuous speaks to why this information should not be released *because there is no public need for this particular information to be accessible and to be released*.

56 I stress that my use of the word innocuous at paragraphs 29 and 33 of my decision was to describe the nature of the relevant communications being considered for release as part of this review and were not an articulation of the relevant test. Rather, as I set out at paragraph 13, the relevant test to be applied in determining whether information identified as being prima facie exempt under s35 should be released is whether the release of that information would be *contrary to the public interest*.

- 57 My use of the word innocuous speaks to the lack of sensitivity attached to the relevant communications and the lack of identifiable harm that would flow from those communications being made public. It was on this basis I found the release of this information would not be contrary to the public interest and therefore found it should be released. I maintain this finding.

Section 36

- 58 The Council made substantial submissions responding to my findings in relation to its use of s36. The most pertinent was the Council's submission that:

. . . unusual circumstances exist in this matter with respect to the TPS & the LPS on the basis of the heightened ongoing community angst against Councils staff.

- 59 The Council also set out that three workplace health and safety incidents had been lodged with the Council concerning psychological hazards because of the public commentary that had been directed at the Council's staff.
- 60 Given the current levels of angst within some quarters of the Kingborough community towards the Council and the multiple workplace health and safety incidents that the Council submits have occurred, I am satisfied that unusual and specific circumstances apply, such that on balance, it would be contrary to the public interest to release the names of some of the Council's officers and their position titles contained in information responding to the applicant's request. The release of this information would pose a risk to the safety of the relevant individuals and this would outweigh the value this information would provide to the applicant.
- 61 However, I reject the Council's submissions in relation to the Council's key decision makers regarding the proposed re-zoning. Those individuals are the Council's Chief Executive Officer, Mr Dave Stewart and the Council's Manager Development Services, Ms Tasha Tyler-Moore. It is reasonable, given their senior positions, for these individuals to face some level of public scrutiny in relation to how the Council has proceeded with the proposed re-zoning in the Kingborough local government area. Each of these individuals played a key role in how the Council handled this matter. Further, in relation to Mr Stewart, it is widely known that he is the Council's Chief Executive Officer. It would not be appropriate to redact his name and position titles from information provided to the applicant.
- 62 I also reject the Council's submissions that the email addresses and phone numbers detailed at paragraph 37 of this decision should be exempt from release under s36.

- 63 This information is either already available to the public or is not the direct contact email address of any individual. The phone numbers and email addresses that are publicly available on the Council's or the Tasmanian Planning Commission's websites cannot be considered exempt from release. The email that does not appear to be publicly available would not pose a risk to the safety of any individual as it is not a direct contact email, but rather an inbox that would be monitored the Council's staff. I therefore find the risk of harm that any individual may be exposed to is significantly reduced. Accordingly, I find that on balance, this information should be released.
- 64 The Council's submissions indicated it agreed that references to the words 'phone' and 'Kingborough Council' in various email signatures were not exempt from release under the Act. It noted that redactions applied to this information were inadvertent rather than a conscious application of s36.
- 65 In summary, the following information is subject to s36 of the Act and should not be released:
- names and position titles of the Council's officers other than Mr Stewart and Ms Tyler-Moore that were not involved in key decision making regarding the proposed re-zoning;
 - direct email addresses of the Council's officers;
 - direct phone numbers of the Council's officers; and
 - personal information of private citizens.
- 66 The following information is not exempt under s36 of the Act and should be released:
- references to the word 'phone' and 'Kingborough Council' in various email signatures;
 - public facing and generic email addresses and phone numbers of Kingborough Council and the Tasmanian Planning Commission; and
 - the names and position titles of Mr Stewart and Ms Tyler-Moore who were involved in key decision making regarding the proposed re-zoning.

Duty of Care

- 67 The Council's submissions also set out that the Council owed a duty of care to provide a safe workplace for its employees and that this would *definitely include the non-release of an employee's personal details unless consent to do so has first been obtained from the employee.*
- 68 While it is well established that employers have responsibilities and duties to their employees regarding the provision of a safe workplace, I

do not accept that this permits any blanket exemption of all work-related personal information relating to the performance of their regular duties. When working as a public servant there are also responsibilities to the public in that work and requirements that government information be accessible. Parliament has decided that there should be openness and transparency regarding the operations of government and I reject that this is incompatible with workplace safety in most circumstances.

- 69 When there are specific circumstances which may mean the release of personal information of employees of a public authority would harm their interests or their safety, the Act allows for information to be exempt under s36. That the release of the Council officers' personal information would breach a duty of care the Council owes its staff is a matter that can be considered when conducting the public interest test assessment contained in s33 of the Act.
- 70 As noted earlier in my decision, neither the Council's original or internal review decisions contain a public interest test assessment, nor made explicit any reference to such a duty being breached by the release of requested information.
- 71 Should the potential breach of the Council's duty of care be a relevant consideration when responding to future assessed disclosure applications, I encourage the Council to be explicit about this when conducting the relevant public interest assessment under s33 of the Act.

Release of personal information would breach the PIP Act

- 72 The Council's submissions asserted the release of various Council officers' personal information would constitute a breach of the PIP Act. I reject this assertion. Such an argument ignores Personal Information Protection Principle 2(1)(f) of the PIP Act which states that a personal information custodian (in this case the Council) may disclose personal information about an individual for a purpose other than the purpose for which it was collected *where the use or disclosure is required or authorised by or under law*.
- 73 The release of personal information found not to be exempt information after being assessed for release under the Act will not breach the PIP Act. This is because the release of that information has been *authorised under law* by virtue of that assessment and therefore the exception in Personal Information Protection Principle 2(1)(f) applies.

Privacy versus information access

- 74 The Council's submissions also noted various decisions of other jurisdictions which set out that an individual's privacy and the intent of privacy legislation should be considered when assessing information for release.

75 I accept that the privacy concerns must be considered when deciding whether government held information should be released. However, privacy considerations must be balanced against the Tasmanian public's right to information held by Tasmanian public authorities. This is set out in s3 of the Act which states that discretions conferred under the Act should be exercised in a way that affords the provision of the maximum amount of information. I am satisfied that my decision strikes this balance appropriately.

Mr Elcock

76 On 12 August 2026, a preliminary decision incorporating my consideration of the Council's input was made available to Mr Elcock, pursuant to s48(1)(b) of the Act to seek his input before finalisation.

77 Mr Elcock did not make any submissions speaking to the validity of my findings. Mr Elcock did however ask that my decision reflect that he does not object to the Council's application of the landscape conservation zone in its entirety, but rather his objections are site specific to particular properties. This is now reflected in my final decision.

Conclusion

78 In accordance with the reasons set out above, I determine:

- section 19 does not apply;
- exemptions claimed pursuant to s36 should be varied; and
- exemptions claimed pursuant to s35 are not made out.

Dated: 18 August 2026



Dr Grant Davies
OMBUDSMAN

Attachment 1

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 35 – Internal deliberative information

(1) Information is exempt information if it consists of –

(a) an opinion, advice or recommendation prepared by an officer of a public authority; or

(b) a record of consultations or deliberations between officers of public authorities; or

(c) a record of consultations or deliberations between officers of public authorities and Ministers –

in the course of, or for the purpose of, the deliberative processes related to the official business of a public authority, of a Minister or of the Government.

(2) Subsection (1) does not include purely factual information.

(3) Subsection (1) does not include –

(a) a final decision, order or ruling given in the exercise of an adjudicative function; or

(b) a reason which explains such a decision, order or ruling.

(4) Subsection (1) ceases to apply after 10 years from the date of the creation of the information referred to in that subsection.

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.

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.