

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2015] NZERA Auckland 251  
5440640

BETWEEN

KATIE FRANICH  
Applicant

AND

VODAFONE NEW ZEALAND  
LIMITED  
Respondent

Member of Authority: Vicki Campbell

Representatives: Tim Oldfield for Applicant  
Kate Ashcroft and Lucy Caruthers for Respondent

Investigation Meeting: 19 August 2015

Determination: 20 August 2015

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**PRELIMINARY DETERMINATION OF THE AUTHORITY**

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- A. A non-publication order applies to the information contained within Document A attached to the applicant's brief of evidence.**
  
- B. A non-publication order applies to all evidence which identifies or discloses information which may be used to identify customers and former customers of the respondent and current or former employees, except the applicant, her former manager (Mr Su'a) and the witnesses in these proceedings.**
  
- C. A non-publication order applies to specific remuneration detail in respect of the Business Relationship Manager, Account Manager and Desk Based Account Manager positions is subject to a non-publication order.**

## **Employment relationship problem**

[1] The parties have made applications for non-publication orders which have been granted.

### **The law**

[2] Schedule 2, Clause 10(1) of the Act confers a broad discretion on the Authority to make non-publication orders. It states:

#### **10. Power to prohibit publication**

(1) The Authority may, in respect of any matter, order that all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published, and any such order may be subject to such conditions as the Authority thinks fit.

[3] In the recent Employment Court decision in *H v A Ltd*<sup>1</sup> Judge Inglis had the following to say about applications for non-publication orders:

The Court of Appeal has repeatedly stated that the principle of open justice is an appropriate starting point in cases involving non-publication orders and that this applies in both civil and criminal proceedings. In *R v Liddell*<sup>2</sup>, the Court emphasised the importance of freedom of speech, open judicial proceedings, and the right of the media to report the latter fairly and accurately as “surrogates of the public.

[4] Later in the decision Judge Inglis refers to *Peters v Birnie*<sup>3</sup>, a decision of the High Court in which Asher J states:

There is then, in civil proceedings, an onus on a party to establish a proper foundation for a confidentiality order, just as there is in criminal proceedings. Given the paramount principle of open justice, it is necessary for a person seeking confidentiality orders to point to some public interest such as particular circumstances relating to the privacy of an individual, to justify a departure from the open justice process,...I conclude, therefore, that a party seeking to justify a confidentiality order will generally have to show specific adverse consequences that are exceptional.

[5] The applicant has sought a non-publication order in respect of the information contained within Document “A” attached to the applicant’s brief of evidence. The grounds on which the applications are made are:

[6] The report contains sensitive information about the applicant and disclosure of that information may adversely affect the applicant. As the applicant remains in the respondent’s employ the disclosure of the information would cause embarrassment or distress her in front of her colleagues.

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<sup>1</sup> [2014] NZEmpC 92 at para [33].

<sup>2</sup> [1995] 1 NZLR 538 (CA) at 546.

<sup>3</sup> HC CIV-2009-404-8199, 19 March 2010 at [22].

[7] The respondent has sought non-publication orders in respect to all evidence which identifies or discloses information which may be used to identify current or former employees, except the applicant and the witnesses in these proceedings, customers or former customers and remuneration details in respect of the Business Relationship Manager, Account Manager and Desk Based Account Manager positions.

[8] The orders are sought on the grounds that the evidence includes serious and unsubstantiated allegations about customers and former customers, employees and former employees which is sensitive and could cause embarrassment, distress and/or damage to the reputation of the employees, former employees, customers and former customers. It would be unfair to publish the information given there is no right of response and the information would normally be kept confidential.

[9] With respect to the remuneration information the application for non-publication is made on the grounds that the information is confidential and is commercially sensitive. If disclosed there is a risk that competitors may use the information to gain a competitive advantage.

[10] I have considered the grounds put forward by the parties and the submissions made by the representatives. Non-publication orders are made in respect of the following:

- a) The information contained within Document A attached to the applicant's brief of evidence;
- b) All evidence which identifies or discloses information which may be used to identify customers and former customers of the respondent and current or former employees, except the applicant, her former manager (Mr Su'a) and the witnesses in these proceedings; and
- c) Specific remuneration details in respect of the Business Relationship Manager, Account Manager and Desk Based Account Manager positions.

**Costs**

[11] Costs are reserved and will be dealt with when dealing with costs for the substantive matter.

Vicki Campbell

Member of the Employment Relations Authority