

**Attention is drawn to the
order prohibiting publication
of certain information in this
determination**

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2015] NZERA Auckland 66
5537974

BETWEEN

DAVID LYLES
Applicant

A N D

SWIMMING NEW ZEALAND
INCORPORATED
Respondent

Member of Authority: Eleanor Robinson

Representatives: Royal Reed, Counsel for the Applicant
Michael Smythe, Counsel for the Respondent

Date of Determination: 6 March 2015

DETERMINATION OF THE AUTHORITY

The application

[1] The Respondent has applied in a memorandum dated 2 March 2015 for non-publication orders in relation to certain documents and/or evidence which have been included by the Respondent in a Common Bundle of Documents which has been filed with the Authority and served on the Applicant.

[2] The relevant documents and/or evidence contains personal information relating to persons who are not a party to the investigation now before the Authority and to documents which contain commercially sensitive information relating to the Respondent's High Performance (HP) programme.

[3] The relevant documents are::

- (a) Vol 1 Tab 6 of the Common Bundle of Documents (the employment agreement of an employee);
- (b) Vol 2 Tab 13 of the Common Bundle of Documents (the HP Review);
- (c) Vol 2 Tab 35 of the Common Bundle of Documents (an employment application);

- (d) Vol 2 Tab 36 of the Common Bundle of Documents (an employment application); and
- (e) Vol 2 Tab 40 of the Common Bundle of Documents (an email enclosing a summary of decision from interviews and question).

[4] The reasons for this application for a non-publication order are set out in the email from the Respondent dated 2 March 2015.

[5] The Applicant by email dated 3 March 2015 does not oppose the Respondent's application for non-publication orders.

[6] I have considered the submission of the Respondent and the fact that the Applicant does not oppose the application for non-publication orders in respect of the matters set out above and I accept that a non-publication order is both necessary and appropriate in this case, and that it is in the interests of justice to make such an order.

Order

[7] I order the personal information relating to persons who are not party to the investigation and documents which contain commercially sensitive information regarding the Respondent's HP programme are subject to a non-publication order.

[8] For the sake of clarification, the orders relate to the documents identified in paragraph [3] above.

[9] The parties are advised that a breach of this order will be considered as obstructing the Authority's investigation and liable to a penalty pursuant to s.134A of the Employment Relations Act 2000 (the Act).

[10] Pursuant to s.135(2) of the Act:

- (2) *Every person who is liable to a penalty under this Act is liable, -*
 - (a) *In the case of an individual of a penalty not exceeding \$10,000;*
 - (b) *In the case of a company or other corporation, to a penalty not exceeding \$20,000.*

