

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

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**[2015] NZERA Auckland 387
5556692**

BETWEEN	JOSEPHINE BARLOW Applicant
AND	WAIKATO SHEDS LIMITED First Respondent
	BRIAN INSOLL Second Respondent

Member of Authority:	Eleanor Robinson
Representatives:	Danny Gelb, Advocate for Applicant Sarah-Jane Davies, Counsel for Respondent
Submissions received:	3 December 2015 from Respondent None from Applicant
Determination:	9 December 2015

DETERMINATION OF THE AUTHORITY ON A PRELIMINARY MATTER

The Applications

[1] This determination addresses an application for a non-publication order made by the First Respondent.

[2] The First Respondent requests that a non-publication order is issued in respect of identified documents referenced in the Respondent's Bundle, namely items 3, 5 and 7.

[3] The basis on which the First Respondent applies is that the relevant documents contain commercially sensitive financial information in relation to the Respondent's legitimate proprietary interest which is it is necessary to protect from trade partners and competitors.

[4] Further, that the non-publication order would not disadvantage the Applicant; and that it is just in all the circumstances to do so.

[5] The Applicant does not oppose the orders sought by the First Respondent.

The Principles

[6] The principles of open justice and the right to freedom of expression are rights which go to the very existence and vigour of our political and legal institutions¹. As observed by Lord Hewart in *R v Sussex Justices, Ex parte McCarthy*² it is fundamental to our legal system that justice is not only done, but that it is also seen to be done. This is the principle of open justice, which serves a wider purpose than the interest represented in the particular case. It is critical to the maintenance of public confidence in the system of justice³.

[7] Departure from the general rule of public justice is generally held to be accepted as not being lightly granted, and moreover that public justice requires the identification of all aspects of the litigation. In *Clark v Attorney-General*⁴ the Court of Appeal said:⁵

[T]he principles of open justice and the related freedom of expression create a presumption in favour of disclosure of all aspects of Court proceedings which can be overcome only in exceptional circumstances

[8] However I am satisfied that in the present case the information identified and itemised by the First Respondent, being sales and financial data and weekly sales reports, have the necessary character of confidentiality such that it would be an appropriate use of the Authority's powers pursuant to s 160(1)(e) of the Employment Relations Act 2000 (the Act) to issue the non-publication order applied for by the First Respondent.

Determination

A. Pursuant to clause 10 (1) of Schedule 2 of the Act, the documents in the Respondent's Bundle numbered 3, 5 and 7 are prohibited from publication until this order is revoked or varied by further orders of the Authority.

Eleanor Robinson
Member of the Employment Relations Authority

¹ *Suppressing Names and Evidence*, New Zealand Law Commission, Report 109, October 2009 at page 7.

² [1924] 1 KB 256 at 259

³ *Lewis v Wilson & Horton Ltd v Others*, CA 131/00, 29 August 2000, para [79]

⁴ [2005] NZAR 481 (CA)

⁵ *Ibid* at para [42]

