

**ATTENTION IS DRAWN TO THE ORDER  
PROHIBITING PUBLICATION IN A & B.OF  
THIS DETERMINATION  
IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2017] NZERA Auckland 98  
3005591

BETWEEN HP NEW ZEALAND LIMITED  
Applicant

A N D JAMES KEOGAN  
Respondent

Member of Authority: Rachel Larmer

Representatives: Mr Towner, Counsel for Applicant  
Mr Patterson, Counsel for the Respondent

Investigation Meeting: On the papers

Date of Determination: 03 April 2017

---

**INTERIM NON-PUBLICATION ORDER OF THE AUTHORITY**

---

- A. An interim non-publication order applies to the commercially sensitive information identified in paragraphs 1(a)-(c) of Mr Towner's non-publication application dated 31 March 2017 until further order of the Authority.**
- B. The orders sought by Mr Towner in paragraph 2(a),(b),(e) of the 31 March 2017 application are granted but on an interim basis only, until further order of the Authority.**
- C. No orders are made regarding paragraph 2(c) and (d) of Mr Towner's application dated 31 March 2017.**
- D. The Authority has noted paragraph 2(c) and the order sought in paragraph 2(d) can be reviewed again at the investigation meeting on an 'as required' basis.**

## **Employment relationship problem**

[1] HP New Zealand Limited (HP NZ) and Mr Keogan are parties in an Authority investigation meeting scheduled to be held on 12 April 2017.

[2] As per the Authority's timetabling directions HP NZ has filed evidence in support of its application. HP NZ says that some of the evidence contains commercially sensitive information such as customer and partnership information, product and launch strategies (excluding publically available information), and sensitive business strategy information.

[3] HP NZ seeks orders including non-publication orders regarding the viewing, use and disclosure of the commercially sensitive information. HP NZ also seeks an order limiting what may be published in the Authority's determination and that exclusion orders be issued regarding the investigation meeting for when evidence is being given in relation to the commercially sensitive information.

[4] Mr Keogan has not yet had an opportunity to respond to this application. However it has been dealt with on an urgent basis in order to preserve the confidentiality on an interim basis of the evidence which was filed on Friday afternoon. The continuance of this interim non publication order will be reviewed on application by Mr Keogan and/or at the investigation meeting.

[5] I am satisfied this is an appropriate matter in which to exercise the Authority's discretion to grant the orders sought at paragraphs 2(a), (b) and (e) of Mr Towner's application dated 31 March 2017 prohibiting Mr Keogan and his counsel from discussing the contents of the confidential information (as defined in paragraph 1(a)-(c) of Mr Towners application dated 31 March 2017) with others or from allowing others to view the commercially sensitive information.

[6] I am satisfied that the commercially sensitive information was provided to assist the Authority with its investigation and that the information identified by Mr Towner in his application is inherently commercially sensitive in nature. I acknowledge HP NZ's concern that because Mr Keogan is about to start work with

one of its competitors HP NZ genuinely believes that a non-publication order is required to ensure the confidentiality of its commercially sensitive information is preserved.

[7] I am satisfied that this non-publication order goes no further than what is necessary to preserve the confidentiality of the information in issue and that it is in the interest of justice to issue a non-publication order.

[8] Accordingly, pursuant to clause 10(1) Scheduled 2 of the Employment Relations Act 2000 I make the following interim orders:

- a. An interim non-publication order applies to the commercially sensitive information identified in paragraphs 1(a)-(c) Mr Towner's non-publication application dated 31 March 2017.
- b. The orders sought by Mr Towner in paragraph 2(a),(b),(e) of the 31 March 2017 application are granted on an interim basis until further order of the Authority.

[9] However no orders are made regarding paragraph 2(c) and (d) of Mr Towner's application dated 31 March 2017.

[10] The Authority has noted paragraph 2(c) and will exercise its discretion but considers an order regarding its determination is not appropriate and not required.

[11] The Authority further considers that the order sought in paragraph 2(d) excluding witnesses from the investigation meeting is not necessary at this stage. The situation can be reviewed again at the investigation meeting on an 'as required' basis if there are people present at the material time who should properly be excluded.

[12] Any application filed by Mr Keogan to rescind or vary this interim non-publication order shall be accorded urgency.

**Rachel Larmer**  
**Member of the Employment Relations Authority**