



[5] IBM took steps to advise Mr Simpson of his obligations upon his resignation on 16 August 2013. Reminders were subsequently issued on 18 September 2013, 5 February 2014 and 11 March 2014.

[6] On the first day of the Investigation Meeting held on 1 April 2014 Mr Simpson entered into evidence 'Document 78' which was a matter of concern to IBM as it contained confidential and commercially sensitive information from IBM's financial ledger.

[7] On the basis that it considers Mr Simpson has retained and had access to confidential information that is not currently before the Authority, IBM is seeking an order that Mr Simpson complies with his obligations as set out in clause 21 of the Employment Agreement and clause 1 of the Confidentiality Agreement.

#### *Submissions of the Applicant*

[8] Ms Neville for Mr Simpson submits that the application by IBM is limited only to confidential information. In this respect Ms Neville confirms that counsel retains a number of documents and information which Mr Simpson considers support his claims in the Authority proceedings and which include performance results, same time discussions, and email discussions with other employees. This information is held in electronic form by counsel who holds an irrevocable authority to destroy the material.

[9] Ms Neville submits that issues of commercial sensitivity and confidentiality are protected by orders made by the Authority such that a compliance order is unnecessary.

#### **Determination**

[10] Pursuant to clause 1 of the Confidentiality Agreement which Mr Simpson signed on 4 July 1996, he agreed: *If I leave the employ of IBM, I will return all IBM property in my possession, including all confidential information or material such as drawings, notebooks, reports and other documents.*

[11] However despite this commitment Mr Simpson has retained IBM confidentiality information in electronic form stored on a disc. Whilst I accept that such information resides with counsel who has an irrevocable authority to destroy it in due course, I consider that this information is of such a nature as to fall under the obligations contained in clause 21.3 of the Employment Agreement and clause 1 of the Confidentiality Agreement.

[12] The Respondent has already filed its witness statements and supporting evidence and there is no evidence that it intends to file supplementary evidence prior to, or at, the resumed Investigation Meeting to be held on 28 May 2014.

[13] In response to IBM's witness statements and supporting evidence Mr Simpson filed Document 78 using the retained information, however there is no suggestion that he intends to further submit any evidence in opposition.

[14] Accordingly I find that there is no basis to argue a continuing need for him to retain the disc containing IBM's confidential information for the purposes of supporting his claim in the Authority.

[15] Further should Mr Simpson require access to information held by IBM for the purposes of any appeal against the Authority's decision, he will be entitled to gain access to that information by means of the discovery process.

[16] Accordingly I order that Mr Simpson comply with his obligations as set out in clause 21 of the Employment Agreement and clause 1 of the Confidentiality Agreement pursuant to s 137(1)(a)(i) of the Employment Relations Act 2000 within 7 days of this determination.

#### **Costs**

[17] Costs are reserved pending the conclusion of the substantive matter.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**