



Report

Full investigation - *Ombudsman Act 1972*

Council	Campbelltown City Council
Ombudsman references	2022/05292; 2022/05757
Date complaints received	7 October 2022 and 10 October 2022
Issues	Whether the council's inclusion in a public agenda of addresses and contact details of objectors to a road closing process amounted to an error.

Jurisdiction

The complaints are within the jurisdiction of the Ombudsman under the *Ombudsman Act 1972*.

My Office received a complaint from an objector to a road closing process on 7 October 2022 alleging that the Campbelltown City Council (**the council**) had included their full name and address, as well as the addresses of other objectors, in a public agenda available on the council's website. Another objector contacted my Office with a complaint about the same issue on 10 October 2022. Noting that the two complaints raise substantially the same issues, I consider that it is appropriate to deal with them together.

I consider it to be in the public interest that I investigate the complaints.

Investigation

My investigation has involved:

- assessing the information provided by the complainants
- seeking a response from the council
- considering the council's Public Consultation Policy and Privacy Policy
- considering the *Privacy Act 1988* (Cth) and the Australian Privacy Principles
- providing the council and the complainants with my provisional report for comment
- preparing this report.

Standard of proof

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be

upheld. That decision recognises that greater care is needed in considering the evidence in some cases.¹ It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ...²

Procedural fairness

A copy of the provisional report was provided to the council and the complainants for comment. I have not received any response from any of the parties. Accordingly, the views set out in this report are the same as those outlined in my provisional report.

Background

1. On 6 October 2022, the council published the agenda for its 10 October 2022 'Manresa Court Road Closing Process Objectors Meeting' on its website and in print.
2. The original version of the published agenda included the personal contact details of the individuals who had raised objections to the road closing process.
3. After the council received several complaints from individuals about the inclusion of their private details, the agenda was removed from the council website on 7 October 2022 while the council sought legal advice regarding whether it would be appropriate to remove the information from the agenda given the public nature of the road closing process.
4. Also on 7 October 2022, the council received legal advice from Kelledy Jones Lawyers stating that, whilst it is a requirement for council members to receive and consider names and addresses for decision making purposes in the road closing process, where an objection to that information being made public has been received, the council should redact the information.
5. At 12:27 PM on 7 October 2022, the council emailed the individuals who had raised complaints stating that the council had sought legal advice and confirmed that, 'where an objection to the information being made public has been received, Council is obliged to act on this request'. The email also advised that the council had redacted all private address information from the public agenda on its website. The email did not include an apology.

Relevant law/policies

6. Clauses 6.5.1 and 6.5.2 of the council's Public Consultation Policy provide:

6.5.1 Council use of Personal Details

Employees will abide by Council's Privacy Policy when collecting and using personal information acquired during community engagement activities.

¹ This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

² *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

6.5.2 Storage and disclosure of Personal Details

Employees will put in place systems to protect personal data collected and stored by Council.

Personal details of participants in community engagement activities may be recorded in reports to Council, and will be provided where a response has been made to an engagement activity by formal letter or submission.

Employees will retain participants' personal details for a period prescribed under the South Australian State Records Act 1997 and will not disclose these details to any third party except where required by law.

7 Clause 2 of the council's Privacy Policy provides:

2. Power to Make the Policy

The Commonwealth Privacy Act 1988 and the Privacy Amendment Act (Privacy Amendment (Enhancing Privacy) Act 2012) set out the principles which must be followed in relation to the collection, use, storage and disclosure of personal information.

Council acknowledges that the Australian Privacy Principles (the APPs) contained in the Privacy Act and the Privacy Amendment Act set an appropriate standard for privacy protection and apply for some Council funding arrangements.

8 Clause 4 of the council's Privacy Policy provides:

4. Principles

...

Council Employees will treat personal information confidentially. If Council needs to share personal information for any purpose other than for which it was collected, the consent of the person who is the subject of the personal information will be sought before doing so (unless otherwise required by law).

9 Clause 6.1 of the council's Privacy Policy provides:

6.1 Collection and Use of Personal Information

...

All personal information will be collected for a lawful purpose directly related to a legislative function or power of the Council where the personal information is necessary for or directly related to that purpose. The Council is committed to ensuring that its residents and ratepayers are aware of the purpose for which the personal information is being collected and aware that its collection is authorised or required by law. The Council will take reasonable steps to inform a resident or ratepayer whose information it collects:

- (a) of the purpose(s) for which the personal information is being collected, unless that purpose is obvious
- (b) whether the collection of the personal information is authorized or required by law; and
- (c) in general terms, of its usual practices with respect to the use and disclosure of personal information of the kind collected.

10 Clause 6.2.1 of the council's Privacy Policy provides:

6.2.1 Distribution to Third Parties

The Council will not permit the provision of personal information it holds on residents, ratepayers and other persons to third parties except where:

- the resident, ratepayer or other person has made a written request for personal information to be provided to a third party
- the resident, ratepayer or other person has given consent for the personal information to be available to a wider audience (for example, oral history recordings)
- the provision of personal information is for the purpose of distributing materials of and on behalf of the Council (e.g. the provision of address data for use by a mailing service provider to post Rate Notices)
- the third party has been contacted by the Council to provide advice or services for the sole purpose of assisting the Council to provide benefits to residents, ratepayers and other persons (eg. State or Federal Electoral Offices, Office of the Valuer General, Insurers)
- the Council is required or authorized by law to provide personal information to a third party (eg. provision of personal information to the State Electoral Office) or to the public at large (eg. in accordance with the Local Government Act 1999 or to an applicant under the Freedom of Information Act 1991 where the information is not otherwise exempt)
- the resident, ratepayer or other person has been advised of the Council's usual practice of disclosing personal information to that third party or a third party of that type for a particular purpose and where the disclosure is consistent with that purpose
- a public consultation submission has been received by Council. To enable transparency in consultation processes to occur, all public consultation submissions received by Council may become public documents and may be included in a report to Council which is also available to the public. The membership details of Online Community Panel members will only be shared with the contractor that facilitates the Panel and will not be shared with other parties or individuals.

11 Clause 6 of the Australian Privacy Principles (contained in Schedule 1 of the Privacy Act) provides:

6 Australian Privacy Principle 6 - use or disclosure of personal information

Use or disclosure

6.1 If an APP entity³ holds personal information about an individual that was collected for a particular purpose (the *primary purpose*), the entity must not use or disclose the information for another purpose (the *secondary purpose*) unless:

- (a) the individual has consented to the use or disclosure of the information;
- or

³ 'APP entity' is defined in section 6(1) of the *Privacy Act 1988* (Cth).

(b) subclause 6.2 ... applies in relation to the use or disclosure of the information.

6.2 This subclause applies in relation to the use or disclosure of personal information about an individual if:

(a) the individual would reasonably expect the APP entity to use or disclose the information for the secondary purpose and the secondary purpose is:

...

(ii) if the information is not sensitive information - related to the primary purpose; or

Whether the council's inclusion of addresses and contact details of objectors to a road closing process in a public agenda amounted to an error

- 12 In response to my enquiries, the council advised that the decision to include the names and addresses of respondents in the public agenda for the meeting was made following consideration of the following:
- the road closing process is a public submissions process, and the Surveyor-General's Guidelines require a person to provide a full name, address and details or reasons for their submission
 - several concerns had been raised by residents that the council was not giving sufficient weight to responses provided by affected residents and respondents that live locally in Athelstone
 - continual calls were being made by residents, principally a core group of respondents to the process, for the council to be more open and transparent in relation to its documentation and meeting arrangements for the road closing process
 - a majority of responses discussed matters specifically relevant to their address, and in some instances included the address within the submission
 - a range of persons had provided responses, including people closely affected by the road closing, as well as people living upwards of one kilometre from the affected road
 - it would be relevant for council members to have an understanding of the locality of each respondent when listening to their verbal submissions
 - the Surveyor-General Guidelines did not provide guidance with respect to meeting arrangements or setting up an agenda for the Road Closing Process
 - it was likely that there would be complaints if the respondents did not have access to this information.
- 13 I do not consider that any of these factors would tend to justify the council's decision to publish the private contact information of respondents on its website.
- 14 I acknowledge that it may have been necessary for the council to obtain private contact details for the respondents as part of the submissions process, for example to establish the bona fides of the submission. However, my concern is not with the gathering of the information, but rather its public disclosure on the council's website.
- 15 It would not appear necessary for the council to publish private contact details of respondents on its website in order to alleviate concerns about the amount of weight being given to responses provided by affected residents and respondents that live locally in Athelstone.

- 16 It is unclear to me why the council would consider that calls from residents for the council to be more open and transparent in relation to the road closing process would necessitate the publication of private contact information of respondents on its website. It seems unlikely to me that this is the type of information that those residents would have wanted to be disclosed.
- 17 I have reviewed the unredacted version of the agenda and, while it is true that several respondents make reference to the potential effects of the road closure on their specific properties, I do not consider those references to have been so specific that the addresses could not reasonably have been redacted from the submissions. Additionally, I consider that the nature of the responses is such that whether or not a respondent was closely affected by the road closure would have been reasonably clear without the need to disclose private contact details.
- 18 While I agree that it would be relevant for council members to have an understanding of the locality of each respondent when listening to their verbal submissions, I am also not convinced that it was necessary for the council members to be provided with the addresses of individuals in order to achieve this. As I have noted above, I consider that the nature of the responses received is such that at least a general sense of each respondent's locality would have been reasonably clear without the need to disclose specific addresses. Even if I am incorrect in reaching that conclusion, I note that it would have been possible for the council members to have received this information in confidence rather than including it in a publicly available agenda.
- 19 It is unclear to me why the council considered that a lack of guidance within the Surveyor-General Guidelines would justify the publication of private information on its website. To the contrary, I consider that it would have been more appropriate, in the absence of a clear requirement, for the council to err on the side of caution and redact the information.
- 20 Similarly, it is unclear to me why the council considered that it would be likely to receive complaints if the addresses of respondents were not included in the agenda. I consider that the public generally expects that private information of individuals will not be released to the public by councils.
- 21 Additionally, I note that the council did remove the personal details of an individual whose name and/or address had been suppressed from the council's Assessment Record and/or Voters Roll. As such, it is clear that the council considered it was not necessary for the information to be included within the agenda, at least for some individuals.
- 22 I note that clause 6.2.1 of the council's Privacy Policy specifically states that the council will only permit the provision of personal information it holds on residents, ratepayers and other persons to third parties in particular circumstances. Only one of those circumstances appears to be applicable in this matter:

To enable transparency in consultation processes to occur, all public consultation submissions received by Council may become public documents and may be included in a report to Council which is also available to the public.

However, I consider that this clause relates only to the substance of a public consultation submission, and not to the personal details of the individual making the submission. In this matter, the inclusion of submissions within the public agenda is not in issue, but rather the inclusion of personal addresses.

- 23 In any case, clause 6.1 of the council's Privacy Policy requires the council to take reasonable steps to inform a resident or ratepayer whose information it collects:
- (a) of the purpose(s) for which the personal information is being collected, unless that purpose is obvious
 - (b) whether the collection of the personal information is authorized or required by law; and
 - (c) **in general terms, of its usual practices with respect to the use and disclosure of personal information of the kind collected** (my emphasis)
- 24 The council advises me that members of the community were invited to object to the road closing process in three ways:
- correspondence was sent to individuals and organisations as identified on the Preliminary Plan for the project
 - correspondence was sent to residents and ratepayers associated with property identified as being within 300m of the proposed road closure
 - a public notice was placed in the local newspaper, *Adelaide East Herald*, the *SA Government Gazette* and on the council's website inviting submissions.
- 25 I have reviewed all three of these documents as part of my investigation. None of them disclose that the addresses of respondents might be included in a public agenda of the council. Noting that the council received several complaints about the inclusion of private information within the public agenda, it does not appear that respondents were informed in any other way that this information could be made publicly available.
- 26 In response to my enquiries about whether respondents were consulted about the release of their private contact information prior to its publication on the council's website, the council provided the following:
- No. Staff anticipated that respondents would understand that if this information was required for a public submissions process, that Council would need this information to make a decision and could reasonably expect this information to be published.
- 27 I do not consider that this was a reasonable assumption for the council to make, particularly where respondents were not informed that the information might be disclosed in this manner.
- 28 Additionally, clause 6.1 of the Australian Privacy Principles provides that private information collected for a particular purpose must only be disclosed for a secondary purpose where the individual has consented to the disclosure, or where the secondary purpose is related to the primary purpose and the individual would reasonably expect that the information might be disclosed for that purpose.
- 29 It is clear that the respondents did not consent to the disclosure of their addresses within the public agenda. While it may be argued that the disclosure of that information within the agenda was related to the primary purpose for its collection (being to establish the bona fides of each submission), I do not consider that the individuals would have reasonably expected that information to be publicly displayed on the council's website.
- 30 In summary, I do not consider that the council's inclusion of the addresses of individuals within a public agenda was supported by the council's Privacy Policy or by the Australian Privacy Principles.
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- 31 I am of the view that the inclusion of this information within the public agenda was inappropriate. As I have stated above, I consider that the public generally expects that private information of individuals will not be released to the public by councils. In this regard, I note the potential security risks that may be raised by the council's disclosure of this information, in particular for individuals who may be escaping domestic violence or otherwise subject to stalking or harassment. I consider that public disclosure of such information by the council reduces public confidence in the council to appropriately deal with personal information, and directly undermines the consultation process, noting that had individuals been aware that their private addresses were to be released publicly, they may not have taken part in the process at all.
- 32 After the council made the decision to redact the information from the public agenda following receipt of several complaints, on 7 October 2022 the following statement was emailed to those individuals that complained:

Hi

Staff have received notification that you would like your address redacted from the agenda published on Council's website in relation to the Manresa Court Road Closing Process Objectors Meeting.

As you may be aware, the consultation process for this matter required all respondents to provide their name and address as part of the prescribed road closing process, and this information will be submitted to the Surveyor-General.

Staff sought advice from our lawyers this morning and confirmed that whilst it is a requirement for Elected Members to receive and consider name and address information for decision making purposes in relation to this process, where an objection to the information being made public has been received, Council is obliged to act on the request.

On being made aware of your request, Council Staff removed the agenda from our website whilst we sought advice on the matter. Having subsequently received the advice and being aware that several people wished to have their address information removed, we have made a decision to redact all private address information from the public agenda on our website. This version is now on our website.

- 33 I note that this statement does not appear to contain any acknowledgement of error by the council or apology for the disclosure of private information in a public agenda. Rather, the response appears to imply that, were a similar situation to arise in the future, the council would publish such information again, only to remove it upon receipt of an objection. I do not consider that this is an appropriate approach.

Opinion

In light of the above, my final view is that the council acted in error for the purposes of the Ombudsman Act.

To remedy this error, I issue the following recommendations under section 25(2) of the Ombudsman Act:

1. That the council issue an apology to all respondents whose private information was published.
2. That the council issue a public apology acknowledging the error.

3. That the council make any amendments necessary to its policies and procedures to ensure that a similar situation does not arise in the future.

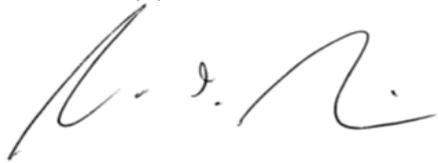
Final comment

In accordance with section 25(4) of the Ombudsman Act, I request that the council report to me by **13 March 2022** on what steps have been taken to give effect to my recommendations above; including:

- details of the actions that have been commenced or completed
- relevant dates of the actions taken to implement the recommendation.

In the event that no action has been taken, reason(s) for the inaction should be provided to the Ombudsman.

I have also sent a copy of my report to the Minister for Local Government as required by section 25(3) of the *Ombudsman Act 1972*.



Wayne Lines
SA OMBUDSMAN

13 December 2022