(1) PERMANENT ORDER PROHIBITING RELEASE OF UNREDACTED DECISION TO PERSONS OTHER THAN THE OFFICIAL ASSIGNEE.

(2) PERMANENT ORDER PREVENTING SEARCH OF THE TRIBUNAL FILE WITHOUT LEAVE OF THE CHAIRPERSON OR OF THE TRIBUNAL.

IN THE HUMAN RIGHTS REVIEW TRIBUNAL **[2021] NZHRRT 21**

I TE TARAIPIUNARA MANA TANGATA

Reference No. HRRT 087/2016

UNDER **THE PRIVACY ACT 2020**

BETWEEN **IAN BEATTIE**

PLAINTIFF

AND **OFFICIAL ASSIGNEE**

DEFENDANT

AT AUCKLAND

BEFORE:
Mr RPG Haines ONZM QC, Chairperson
Ms BL Klippel, Member
Mr M Koloamatangi, Member

REPRESENTATION:
Mr I Beattie in person
Mr G Neil and Ms HH Ifwersen for defendant

DATE OF HEARING: **15, 16, 17 and 18 March 2021**

DATE OF DECISION: **21 April 2021**

REDACTED DECISION OF TRIBUNAL[1]

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[1] [This decision is to be cited as *Beattie v Official Assignee* [2021] NZHRRT 21. Note publication restrictions.]

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PART ONE

INTRODUCTION

[1] Mr Beattie was adjudged bankrupt on 30 April 2012. His discharge date was 5 June 2015. In the present proceedings he alleges the Official Assignee failed to provide unrestricted access to personal information requested by Mr Beattie under IPP 6. The Tribunal finds that with the exception of a very small number of insignificant documents, the Assignee both provided the information sought and correctly withheld certain other information as permitted by law.

Legislative changes

[2] The relevant information access request was made in 2015 at a time when the then Privacy Act 1993 (PA 1993) had application. That Act was repealed from 1 December 2020 by the Privacy Act 2020 (PA 2020) which came into force on that date. The effect of the transitional provisions in Schedule 1, Part 1, cl 9(1) of the 2020 Act is that the present proceedings must be continued and completed under that Act:

> **9 Proceedings**
>
> (1) Any proceedings commenced before the Human Rights Review Tribunal under Part 8 of the Privacy Act 1993 before the commencement day, but not completed by that day, must be continued and completed under this Act.

[3] In this decision the provisions of the 1993 Act will be referred to unless otherwise expressly indicated as it was the 1993 Act which applied at the relevant time. However, any provision of the 2020 Act affecting the Tribunal's hearing procedure does have present application, as will now be seen.

Open and closed documents and open and closed hearings

[4] In his statement of reply the Assignee says he appropriately withheld information from Mr Beattie in accordance with the provisions of s 27(1)(c) and s 29(1)(a) and (f) of the 1993 Act. Mr Beattie challenges the decision.

[5] It was therefore necessary for the Tribunal to follow its well-established procedure for inspecting closed documents in the context of a closed hearing from which the plaintiff and members of the public were excluded. The Privacy Act 2020 confirms the appropriateness of this practice and confers explicit authority for the holding of a closed hearing. Section 109 provides:

> **109 Proceedings involving access to personal information**
>
> (1) This section applies if—
> (a) proceedings are commenced in the Tribunal under section 97 or 98 in respect of a complaint about a decision made by an agency under subpart 1 of Part 4 to refuse access to personal information; or
> (b) an appeal is lodged in the Tribunal under section 105 against an access direction directing an agency to provide access to personal information.
> (2) During the proceedings the Tribunal may, for the purpose of determining whether the agency may properly refuse access to personal information, do either or both of the following:
> (a) require the agency to produce the personal information to the members of the Tribunal, but to no other person:
> (b) allow the agency to give evidence and make submissions in the absence of—
> (i) other parties; and
> (ii) all lawyers (if any) representing those other parties; and
> (iii) all members of the public.

(3) However, the Tribunal may only exercise the powers in subsection (2) if it is necessary to do so to avoid compromising the matters that the agency considers justify refusing access to the personal information.

[6] The procedure was fully explained to Mr Beattie at the case management teleconference held on 15 February 2018 and in the Chairperson's more recent *Minute* dated 16 March 2020. While that document predated the commencement of the 2020 Act, it is nevertheless congruent with the 2020 Act and in particular, s 109. The 16 March 2020 *Minute* described the process in the following terms:

> **The open and closed phases of the hearing**
>
> **[5]** At a case management teleconference held on 15 February 2018 it was confirmed that because the Official Assignee denies the alleged breach of IPP 6 and relies on the Privacy Act 1993, ss 27(1)(c) and 29(1)(a) and (f), it is inevitable that at the hearing the Tribunal will need to receive part of the Official Assignee's evidence in the context of a hearing which will be closed (at least in part) to Mr Beattie. The *Minute* issued at the close of that teleconference recorded:
>
> > **[10]** As explained during the teleconference, the "closed" process has been devised by the Tribunal to accommodate those cases where the defendant agency cannot adequately explain the nature of the withheld information and its reasons for withholding that information without compromising the very matters the agency submits warrant the withholding of the information from the requester. In addition, the Tribunal needs to see the information itself to form its own view whether the information ought to be disclosed. But the plaintiff cannot see the closed information unless and until the Tribunal decides that it ought to be disclosed.
> >
> > **[11]** This practice was established in a line of cases which includes *Dijkstra v Police* [2006] NZHRRT 16, (2006) 8 HRNZ 339, *Reid v New Zealand Fire Service Commission* [2008] NZHRRT 8, *NG v Commissioner of Police* [2010] NZHRRT 16 and *Rafiq v Civil Aviation Authority of New Zealand* [2013] NZHRRT 10 (8 April 2013) at [25] and [26]. The procedure is for the opening submissions of the agency to be received in open hearing. So too is the evidence called by that agency up to the point where it becomes necessary for the Tribunal to see the withheld information itself. The hearing is then closed to all except for counsel for the agency and the witness. In the closed part of the hearing the Tribunal receives, in the absence of the plaintiff, the closed evidence and submissions including a closed bundle of withheld documents comprising the information withheld from the plaintiff. Once this process has been concluded the hearing returns to "open" format and the plaintiff resumes participation in the hearing.
> >
> > **[12]** Ordinarily, the closed document(s) are submitted in a separately bound "closed" bundle of documents. Any brief (or briefs) of evidence setting out the evidence necessary to substantiate the relevant withholding ground will also need to be submitted in both open and closed forms. To distinguish the open and closed bundles and witness statements the closed versions should have distinctly coloured cover sheets (usually red) intituled in the usual way but described (as appropriate) as follows:
> >
> > > **[12.1]** Open Statement of Evidence of [Jane Doe].
> > >
> > > **[12.2]** Closed (confidential) Statement of Evidence of [Jane Doe].
> > >
> > > **[12.3]** Open bundle of documents.
> > >
> > > **[12.4]** Defendant's Closed (confidential) bundle of documents.
> > >
> > > **[12.5]** Defendant's Closed (confidential) submissions.
>
> **[6]** The Official Assignee will be calling two witnesses, being Mr Stephen Pullan, Deputy Assignee and Ms Emma Louise Wilson, Senior Insolvency Officer. Each has filed a witness statement in both open and closed formats.
>
> **[7]** Mr Pullan's open statement is 135 paragraphs in length. Redactions have been made. Some are minor, others are more substantive. The redactions mean that when the open

statement is read in open court there will be some 20 or so occasions on which the Tribunal will have to close the hearing to receive the closed passages of evidence. This will require Mr Beattie to be temporarily excluded from the hearing room on each of those occasions.

[8] Of the 13 paragraphs in Ms Wilson's statement, all have been redacted except the first three.

[9] The Official Assignee will also wish to make submissions in both open and closed formats.

[10] Consequently directions are sought as to the most practical way in which the open and closed portions of the hearing can be structured, particularly in relation to Mr Pullan's evidence.

Discussion

[11] Where it is necessary for the Tribunal to convene both open and closed hearings it is inevitable a degree of dislocation will be involved. In minimising the extent of dislocation the Tribunal will need to take into account any likely prejudice to the parties and the need for the Tribunal (as decision-maker) to receive the evidence in a way in which it can be followed most easily.

[12] In the present case it is to be anticipated that when Mr Pullan gives his evidence the Tribunal will need to close the hearing on approximately 20 occasions. Each closure will be of short duration as the longest redacted passage in Mr Pullan's evidence is only 12 short paragraphs in length. Most redactions are between one and four short paragraphs. In addition, as already mentioned, only 10 short paragraphs in Ms Wilson's evidence have been redacted.

[13] In these circumstances there is little unfairness in Mr Beattie being asked to leave the hearing when the closed paragraphs are read by the witnesses:

> **[13.1]** In the case of Mr Pullan the 20 or so brief closed interruptions in the context of a 135 paragraph witness statement is not excessive and will allow the evidence to unfold coherently and with a minimum of disruption to the narrative.
>
> **[13.2]** In the case of Ms Wilson's evidence, there will be one interruption only.

Directions

[14] The following directions are made:

> **[14.1]** The open and closed evidence to be read by Mr Pullan and Ms Wilson is to be read in the sequence of the numbered paragraphs in their respective open witness statements. When any redacted paragraph or passage is also tendered by the Official Assignee for reception by the Tribunal in a closed hearing, Mr Beattie is to be excluded from the hearing for the duration of the giving of that closed evidence. Once the witness returns to the open passages of his or her evidence, the open hearing is to resume in the presence of Mr Beattie.
>
> **[14.2]** The same procedure, suitably adapted, is to apply to any closed submissions to be made by the Official Assignee either in opening or in closing.
>
> **[14.3]** Because the receipt of evidence and submissions in the absence of one of the parties to a proceeding is a derogation from the principle that the parties have a right to be present throughout the hearing, the open evidence and submissions must contain as much as can be said in support of the withholding ground without compromising the claim that the information was lawfully withheld from the requester. Expressed another way, the closed evidence and submissions must be strictly confined to that which is necessary for the agency to justify the withholding decision under ss 27 and 29 of the Privacy Act 1993. The balance must be delivered in open hearing.
>
> **[14.4]** Leave is reserved to both parties to make further application should the need arise.

[7] The Directions given in this *Minute* at [14] were followed during the course of the four day hearing which commenced on 15 March 2021.

[8] In this decision, unless otherwise indicated, reference will be made to the open evidence and submissions only.

The remedy sought by Mr Beattie

[9] Mr Beattie's purpose in bringing the present proceedings is to obtain complete and unrestricted access to the Assignee's file. As expressed by Mr Beattie in his statement of claim, he wants the Assignee to:

> … release the entire file relating to Estate No. 85665 – without impediment of information by redaction or refusal on the grounds that it impinges on other rights under sections 27 and 29.

[10] In his statement of claim Mr Beattie also said he wanted the opportunity to correct that information under IPP 7, to seek its retraction or to "use it to further prosecution of criminal offences".

[11] At the 15 March 2021 hearing Mr Beattie expressly disavowed seeking any other remedy such as damages for any interference with his privacy.

[12] As to the opportunity to correct, Mr Beattie has not to date sought the correction of any information. Furthermore such avenue would only open under IPP 7 in relation to the withheld information were he to first establish that some or all of that information should have been disclosed. For these reasons that part of the statement of claim alleging a breach of IPP 7 was struck out at the case management teleconference held on 15 February 2018. The *Minute* of that date at [7] records:

> **[7]** Mr Beattie explained that he wished to have the opportunity to correct the information about him held by the Official Assignee but, as this information had been withheld, he had not been able to request its correction. Should Mr Beattie be successful or partially successful in his claim, he will then be able to request the correction of any information released to him if necessary. After some discussion, it was agreed that the case currently before the Tribunal should be confined to principle 6. Those parts of the claim relating to principle 7 are struck out.

BRIEF OVERVIEW OF RELEVANT FACTS

[13] Mr Beattie's adjudication as a bankrupt on 30 April 2012 was on the application of the Far North District Council. In his evidence to the Tribunal Mr Beattie said he believed his bankruptcy was "contrived" between three Territorial Authorities, the Ministry of Business, Innovation and Employment (MBIE) and the Official Assignee. These allegations are not relevant to the present proceedings.

[14] The creditors who filed claims in Mr Beattie's bankruptcy were the Far North District Council (claim of $44,238.06 and $3,340.62) and Ms Brenda Foyle (claim of $2,242.83). Ms Foyle is Mr Beattie's neighbour. As to Ms Foyle's claim it is relevant to note that in April 2009 the Disputes Tribunal made an order that Mr Beattie pay $2,337.19 to Ms Foyle following a collision on a shared access road south of Russell in January 2009 between Ms Foyle's motor vehicle (being driven by her nephew) and a motorised farm tricycle being driven by Mr Beattie. Neither motor vehicle was insured. Despite the exhaustion by Mr Beattie of his appeal rights and numerous attempts to relitigate the issue in ancillary proceedings, on 28 October 2010 he was sentenced by the District Court to 100 hours community work in contempt proceedings brought by Ms Foyle. In a judgment given on 17 February 2011 Priestley J dismissed Mr Beattie's appeal. See *Beattie v Foyle* HC WHA CRI-2010-488-68 (17 February 2011).

Insolvent gifts and transactions

[15] On adjudication a bankrupt's property vests in the Assignee. The Assignee then stands in the bankrupt's shoes in order to realise assets for creditors. Bankrupts must disclose their assets to the Assignee and may not engage in the management or control of any business without the Assignee's permission.

[16] Following Mr Beattie's adjudication, the Assignee investigated Mr Beattie's property, conduct and dealings including whether he had concealed assets which could be realised for the benefit of creditors.

[17] The evidence of Mr AS Pullan, now an Official Assignee but at the time a Deputy Assignee, was that the Assignee discovered Mr Beattie was a trustee, settlor and discretionary beneficiary of the Kaimamaku Family Trust (Trust). That trust was created in December 2010. In his statement of affairs filed with the Assignee, Mr Beattie advised that he had transferred the following assets to the Trust in 2010 and 2011 (the Transactions):

[17.1] Property at 842 Russell Road, Hikurangi, Whangarei District;

[17.2] 200 shares in Ormond Forest Partnership No.2 Ltd; and

[17.3] 100 shares in Kaimamaku Consultancy Ltd.

[18] The Transactions were vendor financed by loans from Mr Beattie and his wife. In their personal capacity, Mr Beattie and his wife (Ms Kelly-Beattie) had executed deeds of acknowledgment of debt dated 16 December 2010 (First Deed) and 20 September 2011 (Second Deed) with themselves and Northland Trustee (2010) Ltd as trustees of the Trust (Trustees). Under the First Deed the Trustees were indebted to the Beatties jointly in the sum of $265,000. Mr Beattie's interest in the debt was therefore $132,500.

[19] Under the Second Deed the Trustees owed Mr Beattie $33,800. The total debt owing to Mr Beattie under the First and Second Deeds was therefore $166,300 (Debt). The Debt was forgiven by two gifts (the Gifts):

[19.1] One of $27,000 dated 16 December 2010; and

[19.2] One of $139,300 dated 11 November 2011,

[20] The Assignee took steps to address these Transactions and Gifts from about late 2014.

[21] After taking legal advice, on 4 October 2013 the Assignee issued a notice pursuant to the Insolvency Act 2006, s 206 to cancel the Gifts on the basis that they were insolvent gifts in terms of s 204 of the Act. Cancellation of the Gifts would reactivate the Debt and enable the Assignee to make demand for its payment in accordance with the First Deed and the Second Deed. By letter dated 1 November 2013 the Trustees objected to cancellation of the Gifts.

[22] After taking further legal advice in October 2014, the Assignee resolved to seek creditor funding to commence proceedings in the High Court against the Trustees seeking an order cancelling the Gifts. Creditor funding was not forthcoming, but the Assignee was

nevertheless later able to agree terms with his solicitors to enable progression of the proceedings.

[23] On or about 18 June 2015 the Assignee filed an originating application dated 15 June 2015 (with an accompanying affidavit in support) in the High Court in Whangarei seeking an order cancelling the Gifts.

[24] Mrs Beattie and Northland Trustee (2010) Ltd filed notices of opposition to the Assignee's application. At the second mention of the Assignee's application on 7 September 2015, the High Court set it down for a half day hearing on 6 October 2015.

[25] Resolution discussions then took place between the Assignee and the Trust and settlement was agreed. As a result, by joint memorandum of counsel dated 24 September 2015 the Trustees consented to the granting of orders cancelling the Gifts under s 206(6) of the Act.

[26] The Gifts were thereafter cancelled by court order dated 25 September 2015.

[27] By letter dated 28 October 2015 the Assignee made demand on the Trustees for payment of $166,000 under the First Deed and the Second Deed, plus court awarded costs of $10,684.27.

[28] On 13 November 2015 the Assignee and the Trustees entered into a deed of settlement in full and final settlement of all claims arising in relation to the bankrupt estate of Mr Beattie between the Assignee on the one hand and Mr Beattie, Mrs Beattie and Northland Trustee (2010) Ltd as trustees of the Trust on the other hand. In compromise of the Assignee's demand for payment of $176,684.27, the Trustees agreed to pay $100,000 to the Assignee on or before 18 December 2015. That settlement sum was paid to the Assignee's solicitors and the settlement concluded on 18 December 2015.

[29] The recoveries that were made in the bankruptcy were in fact less than what was required to fully satisfy payment of creditor claims and administration costs. In this regard:

> **[29.1]** The Assignee recovered an income tax refund of $1,932.19;
>
> **[29.2]** The Assignee received payment of $100,000 in settlement of the claims against the Trust by direct credit to the trust account of Meredith Connell (the solicitors for the Assignee) on 18 December 2015;
>
> **[29.3]** Meredith Connell deducted unpaid legal fees of $37,528.15 and accounted to the Assignee for the balance of $62,471.85 on 18 December 2015;
>
> **[29.4]** Interest accrued on the recoveries in the sum of $342.55;
>
> **[29.5]** From the balance of the recoveries of $64,746.59, the Assignee paid:
>
> > **[29.5.1]** Costs of administration totalling $22,615.73;
> >
> > **[29.5.2]** Petitioning creditor costs of $3,340.62; and
> >
> > **[29.5.3]** A dividend to the unsecured creditors of $38,790.24.

[30] The creditor claims totalled $46,480.89, excluding the petitioning creditor's costs of $3,340.62. The dividend that was paid to the unsecured creditors provided a recovery of

83.45% of their total unsecured non-preferential claims. They recovered $7,690.65 less than the sum of their unsecured non-preferential claims. They also did not receive payment of any post-adjudication interest.

[31] Mr Beattie is aggrieved at the amount paid to the Assignee in respect of the costs of administering the bankrupt estate. He is also aggrieved at the deduction by Meredith Connell of its legal fees.

[32] Following settlement of the proceedings relating to the recovery of the Transactions and Gifts there has been no further investigation into Mr Beattie's estate or steps taken by the Assignee apart from responding to Mr Beattie's IPP 6 request.

THE TWO INFORMATION REQUESTS

[33] Mr Beattie has made two IPP 6 requests. The present proceedings arise out of the second. However reference to the first is necessary.

The first IPP 6 request

[34] The first request was made by letter dated 21 October 2013. Mr Beattie sought "a copy of all documents contained on the file held by the Ministry of Business, Innovation and Employment pertaining to Ian Beattie". The Assignee responded on 2 December 2013. Most documents were provided but others were withheld. The Assignee's response to the request is not properly the subject of the present proceedings. Mr Beattie accepts he made no complaint (and had no need to complain) about the terms of the Assignee's response to the first request. Consequently there was no investigation by the Privacy Commissioner. Absent such investigation the Tribunal has no jurisdiction. See *Director of Human Rights Proceedings [NKR] v Accident Compensation Corporation (Strike-Out Application)* [2014] NZHRRT 1, (2014) 10 HRNZ 279 at [40].

[35] However, absence of jurisdiction was not conceded by Mr Beattie who at one point of the hearing appeared to contend that because his second IPP 6 request duplicated the first, the second request put in issue the correctness of the Assignee's hitherto unchallenged withholding of documents in the context of the first request. As to this:

> **[35.1]** We see no reason to depart from the Tribunal's long-established interpretation of the Act. As Mr Beattie made no complaint to the Privacy Commissioner about the terms of the Assignee's response to the first request and as there was no investigation by the Commissioner, the Tribunal has no jurisdiction in relation to the Assignee's response to the first request.
>
> **[35.2]** In any event, on a without prejudice basis the Official Assignee at short notice and with some inconvenience was able to present to the Tribunal as closed Exhibit E those documents which had been withheld from Mr Beattie under ss 27 and 29 of the PA 1993 in response to the first access request. Taking into account the additional closed evidence and submissions so received by the Tribunal and having ourselves inspected the closed documents, we are satisfied that all of the documents in Exhibit E were properly withheld from Mr Beattie in response to the first IPP 6 request.

[36] In these circumstances the Assignee's response to the first access request is not a live issue before the Tribunal.

The second IPP 6 request

[37] Mr Beattie was discharged from bankruptcy on 5 June 2015 without objection from the Assignee.

[38] By letter dated 23 September 2015 Mr Beattie made a second IPP 6 request for all documents on his bankruptcy file. The access request was for "all documents contained on the file held by [MBIE]".

[39] By letter dated 27 October 2015 the Assignee through his solicitors responded that:

[39.1] As the Assignee had on 2 December 2013 complied with the first IPP 6 request (dated 21 October 2013), the Assignee's decision on the second access request related only to information generated since that time.

[39.2] The letter enclosed a folder containing the documents which responded to the second request. Those documents were categorised as follows:

(a) Correspondence between the Assignee and you (including attachments);

(b) Correspondence between the Assignee's solicitors, Meredith Connell, and your solicitors (including attachments);

(c) Correspondence between the Assignee's Solicitors, Meredith Connell, and the High Court;

(d) Documents filed in, or otherwise generated in, the High Court proceeding of which you are a named party in your capacity as trustee of the Kaimamaku Family Trust;

(e) Correspondence between Inland Revenue and you (including attachments);

(f) Creditor claims filed in the estate and supporting information;

(g) Creditor report;

(h) Documents provided by you to the Assignee; and

(i) Publicly available information (for example company searches, searches of the insolvency register, title searches, transfer instruments, property sales information, judgments).

[39.3] Certain information was withheld. A schedule attached to the 27 October 2015 letter identified the categories of information so withheld as well as the reasons for the withholding. The columns in the schedule were:

- Description of information.
- Reason for withholding information.
- Section of the Official Information Act 1982 (OIA)/Privacy Act. The relevant sections cited were PA 1993, ss 27(1)(c), 29(1)(a) and 29(1)(f).

[40] Mr Beattie has at no time taken issue with the Assignee's treatment of the second request as a request for information generated since the previous request. In addition his letter dated 14 December 2015 to the Assignee (and attached to the statement of claim) confirms that his second access request was not in truth an "everything" request because he complained at being provided with "irrelevant" documents:

> The folder supplied via Meredith Connell is an accumulation of irrelevant documents that bear little relationship to my request. The fact that numerous documents are duplicated just bulks out the total erroneous file. Everything there we already have.

[41] As explained in this letter, what Mr Beattie really wanted was "to ascertain how the Official Assignee could accumulate $18,000 odd in costs to my estate account without any justification". His request "particularly pertained to how costs were generated". Referring to a five page spreadsheet which had been provided by the Official Assignee relating to the Assignee's then charges, Mr Beattie said he insisted on receiving "a complete breakdown of each and every charge racked up to my cost". In truth Mr Beattie was seeking not information but an audit of the items charged by the Assignee. However, such audit lies outside the reach of PA 1993 and of the present proceedings.

[42] In these circumstances there can be little doubt that the second access request did not put in issue the adequacy of the Assignee's response to the first access request. Mr Beattie's real complaint is that he has not received a minute by minute, charge by charge breakdown of the work done by the Assignee, the reason for the work being done, its justification and how the costs were calculated. The difficulty faced by Mr Beattie is that neither the PA 1993 nor the PA 2020 require an agency to create personal information that is not already held by the agency and an IPP 6 request gives access only to personal information which at that point in time is held and held in such a way that it can readily be retrieved.

Access to information and the litigation context

[43] The adequacy of the access given to Mr Beattie's personal information must necessarily be assessed within the context of contemporaneous events, particularly the High Court proceedings which were then being pursued by the Assignee in the High Court. Disclosure of information in those proceedings to Mr Beattie was also disclosure of Mr Beattie's personal information and such disclosure must be taken into account in determining whether the Assignee gave proper access in response to the IPP 6 request.

[44] The proceedings were filed on 18 June 2015. Resolution discussions followed with the result that on 24 September 2015 the Trustees consented to the cancellation of the Gifts. The High Court order followed on 25 September 2015. Mr Beattie's IPP 6 request was dated 23 September 2015.

[45] On 18 September 2015 Mr Neil (of Meredith Connell) sent an email to Ms V McGoldrick, solicitor of Henderson Reeves, Whangarei proposing settlement terms. Ms McGoldrick was acting for the Trustees in the High Court proceedings. Attached to the email from Mr Neil was a spreadsheet providing a breakdown of the bankrupt estate's obligations. On 22 September 2015 Ms McGoldrick responded requesting:

> **[45.1]** The time records and information supporting the Assignee's claimed costs of (then) some $18,000.
>
> **[45.2]** The time records supporting the additional unbilled time of (then) $20,182.64.

[46] Attached to the email was a consent form signed by Mr Beattie on 22 September 2015 which in turn requested the release to Henderson Reeves of:

> **[46.1]** Further information and breakdown on the admitted creditor claims of $46,480.89.

[46.2] Time records and cost breakdown for the $18,000.

[46.3] Time records for the unbilled time records of $20,182.64.

[47] By email dated 23 September 2015 Mr Neil responded by (inter alia):

[47.1] Providing the Assignee's time records and spreadsheet of outgoings. These documents recorded administration costs of (then) $18,882.93.

[47.2] Explaining that the unbilled legal costs related to administrative matters and the conduct of the High Court proceedings. The Assignee would not, however, be disclosing the Meredith Connell time records as they comprised confidential information to which neither the trustees nor the bankrupt had an entitlement.

[48] In short, when on 23 September 2015 Mr Beattie made his IPP 6 request for "all documents contained on the file":

[48.1] He had on the previous day, through his lawyer (Ms McGoldrick) requested specific information from his bankrupt file.

[48.2] He had already received the Assignee's time records and spreadsheet of outgoings together with the further information set out in Mr Neil's email correspondence with Mr Beattie's lawyer.

[49] As deposed by Mr Pullan in his evidence, Mr Beattie would also have received in the legal proceedings other information about his bankrupt estate through his lawyer. Specifically the Assignee's solicitors provided the lawyers with:

[49.1] Advice of the quantum of admitted claims and the administration costs in Mr Beattie's bankrupt estate as at 29 July 2015.

[49.2] Details of the creditor claims, post-adjudication interest and administration costs by email dated 18 September 2015, including a five page spreadsheet providing a breakdown of the costs.

[49.3] Further details of the creditor claims and administration costs by email dated 23 September 2015. The Assignee's internal time records and an internally prepared spreadsheet of outgoings accompanied the email. The time records comprised six pages detailing the Assignee's then total charges of $18,475.90.

[50] Mr Beattie acknowledged by email dated 2 October 2015 that his lawyer forwarded to him the communications received from Meredith Connell.

[51] Against this background the second IPP 6 request dated 23 September 2015 in large measure repeated the request made by Mr Beattie through his lawyer on 22 September 2015 (ie the previous day) to which his consent form was attached.

Repeat requests

[52] The 22 September 2015 request made by Mr Beattie through his lawyer (and supported by Mr Beattie's signed consent form) was as much a request for Mr Beattie's personal information as the request made by Mr Beattie on the following day. It is not necessary that a request use the statutory language of IPP 6 or for it to make reference to it being a request for access to personal information under IPP 6. See *Armfield v*

Naughton [2014] NZHRRT 48, (2014) 9 HRNZ 808 at [68]. Repetitive requests are, however, unhelpful as can be seen from the facts in *Turner v University of Otago* [2021] NZHRRT 18 at [112] to [117].

[53] Given their close proximity and the duplication of information sought, the requests of 22 and 23 September 2015 are for practical purposes to be merged, as is the Assignee's response.

[54] In summary the repetition of requests leads us to the following conclusions:

> **[54.1]** It was entirely reasonable for the Assignee to address the second IPP 6 request on the basis that Mr Beattie, having expressed no complaint regarding the response to the first request, would be provided with only that information which post-dated the closing date of the information originally provided in response to the first request. Mr Beattie has never complained about that approach.
>
> **[54.2]** In the circumstances the access requests made by Mr Beattie in the course of the settlement discussions are so closely associated with the virtually contemporaneous "separate" IPP 6 request dated 23 September 2015 that they are to be treated as one request and that all the information provided by the Assignee in the course of the litigation, the settlement discussions and by way of the separate response dated 27 October 2015 is to be taken into account in determining whether the Assignee did comply with the request.

WHETHER THE INFORMATION REQUESTED BY MR BEATTIE WAS MADE AVAILABLE

[55] The evidence given by Mr Pullan was that with the exception of a very small number of documents and with the further exception of the withheld documents, Mr Beattie was given access to all of the personal information sought by him in his second IPP 6 request. We accept this evidence.

[56] We now address the three categories of documents in relation to which there was a degree of untidiness in complying with Mr Beattie's second IPP 6 request.

[57] In the first category are three documents which were inadvertently withheld from Mr Beattie. As described in Mr Pullan's evidence, those documents were related to the Assignee's High Court proceedings:

> **[57.1]** An email dated 22 April 2015 from Emma Wilson (of the Assignee's office) to the Whangarei High Court;
>
> **[57.2]** An email dated 4 June 2015 from Emma Wilson to Paul Lincoln, Whangarei High Court; and
>
> **[57.3]** An email dated 5 June 2015 from Emma Wilson to Paul Lincoln, Whangarei High Court.

[58] Each of these emails comprises a brief, routine communication between the Assignee's office and the Whangarei High Court and are of little consequence. Nevertheless they were inadvertently withheld from Mr Beattie. Copies of each of the documents were released to Mr Beattie on 20 April 2016, prior to the filing of the statement of claim in the Tribunal on 5 December 2016.

[59] As the only remedy sought by Mr Beattie is that of disclosure of the documents, and as copies of the documents were disclosed prior to the commencement of these proceedings the failure to provide the documents in time warrants no remedy.

[60] The second category of documents not provided to Mr Beattie comprises a small number of documents held on the file kept by the Official Assignee Compliance Unit (OACU). That Unit had investigated whether Mr Beattie had been working as a self-employed person without the Assignee's consent.

[61] Mr Pullan stated that in the course of completing discovery for the present proceedings before the Tribunal he had identified documents from the OACU file which were potentially discoverable. Three documents relating to the Assignee's referral of Mr Beattie to the OACU would have been withheld on the grounds that disclosure would prejudice the maintenance of the law. The third document is a warning letter dated 3 December 2014 sent to Mr Beattie by the OACU advising that no action would be taken against Mr Beattie in relation to his alleged employment or self-employment.

[62] The submission for the Assignee is that this document has always been in Mr Beattie's possession and in addition a further copy was provided to him in the course of the discovery process before the Tribunal. Again, as the remedy sought is one of disclosure and as the document has been in Mr Beattie's possession since December 2014 and formally disclosed in the litigation process, no remedy is warranted notwithstanding a technical failure to provide a yet further copy in response to the second IPP 6 request.

[63] We now address the third category being the online documents.

The online documents

[64] The evidence of Mr Pullan was that:

> **[64.1]** A bankrupt is able to access information and documents using a personalised link to the Insolvency and Trustee Service (ITS) website relating to their bankruptcy. The bankrupt is provided with an activation code which enables him or her to access and review the information and documents via the ITS website.
>
> **[64.2]** When Mr Beattie was adjudicated bankrupt he was on 2 May 2012 provided with an activation code which allowed him to access his ITS User Account via the ITS website. Mr Beattie has been able to access his ITS User Account throughout the Assignee's administration of his bankrupt estate and subsequent to his discharge.
>
> **[64.3]** On his individual ITS User Account Mr Beattie was able to access the following documents:
>
> > **[64.3.1]** Statement of receipts and payments;
> >
> > **[64.3.2]** List claim details;
> >
> > **[64.3.3]** List asset progress updates;
> >
> > **[64.3.4]** First creditors report; and
> >
> > **[64.3.5]** Bankruptcy discharge certificate.

[64.3.6] A dashboard summary of the above information, together with key estate details.

[64.4] These documents and information were updated throughout the administration of Mr Beattie's bankrupt estate. The documents referred to in the preceding paragraph are copies of the documents in their current form.

[65] Mr Beattie claimed that because he and his wife did not have internet access at the time the access code was sent to him on 2 May 2012 he could not access the information. But Mr Pullan's evidence establishes that much if not all of this information was in any event later sent to Mr Beattie in the context of the High Court proceedings, particularly by way of Mr Neil's email dated 23 September 2015.

[66] The Assignee also draws attention to the fact that on 30 September 2015 (six days after the date on the second IPP 6 request and just two days after receipt of that request by the Assignee on 28 September 2015) the ITS user account was in fact activated and from at least 1 October 2015 Mr Beattie was able to (and did) communicate with the Assignee via email. It follows that from 30 September 2015 (prior to the expiry of the statutory time within which the Assignee was required to respond to the access request) Mr Beattie had been given full access to all of the documents available to him on the ITS webpage.

[67] We agree with this analysis. Mr Beattie must be taken to have activated his right of access to the information no later than 1 October 2015.

[68] The obligation of an agency under IPP 6 is to provide access to personal information. This can be done by providing a copy of a document where the information is contained in a document; or it can be done by providing access to information held online, as was done here. Just as the requester cannot be compelled to read any document provided to him or her, the requester cannot be compelled to read the online information. But the obligation of the agency is discharged by providing access to the document in a manner consistent with the requirements of PA 1993, s 42 (now PA 2020, s 56). This was done in the present case.

[69] Finally, the Assignee submits that in the even further alternative the documents were in any event provided to Mr Beattie on 8 March 2018 as part of discovery in this present proceeding.

[70] With this submission the Tribunal agrees.

Conclusion

[71] With the exception of the three emails identified by the Assignee and the one letter sent by the OACU to Mr Beattie, Mr Beattie was given access to all the personal information requested by him. Leaving aside for the moment the information withheld by the Assignee under PA 1993, ss 27 and 29, we conclude that no breach of IPP 6 of the kind which would justify the grant of the remedy sought by Mr Beattie has been established by him. That is, as the remedy sought by Mr Beattie is that of disclosure and as access has already been given to the personal information held by the Assignee, no remedy is warranted.

[72] We now address the information withheld by the Assignee under PA 1993, ss 27 and 29.

THE INFORMATION WITHHELD BY THE ASSIGNEE

[73] The Assignee has withheld information from Mr Beattie on the grounds permitted by PA 1993, s 27(1)(c) (avoiding prejudice to the maintenance of the law), s 29(1)(a) (privacy of another) and s 29(1)(f) (legal professional privilege).

[74] As Mr Beattie expressly acknowledged at the hearing that he did not challenge the Assignee's decision to withhold documents on the grounds of legal professional privilege we do not in this decision address the application of s 29(1)(f). It is necessary to observe, however, that having inspected the relevant documents ourselves we have concluded that Mr Beattie's concession was properly made. Legal professional privilege has been properly established in relation to the documents in question.

Onus of proving the exception

[75] Where an agency relies on any of the withholding grounds in PA 1993, ss 27 to 29, the agency has the onus of proving the exception. See PA 1993, s 87:

> **87 Proof of exceptions**
>
> Where, by any provision of the information privacy principles or of this Act or of a code of practice issued under section 46 or section 63, conduct is excepted from conduct that is an interference with the privacy of an individual, the onus of proving the exception in any proceedings under this Part lies upon the defendant.

Section 101 of the 2020 Act is to the same effect.

[76] As held in *Geary v Accident Compensation Corporation* [2013] NZHRRT 34 at [74] and [75], the relevant date on which the agency must have good reason for refusing access to personal information is the date on which the decision is made whether the request is to be granted. Provided such good reason exists at the date of the denial of the request, the failure by the agency to offer that reason at the time it communicates its decision on the request does not amount to an interference with the privacy of the individual as defined in PA 1993, s 66.

Section 27(1)(c) Privacy Act 1993 – disclosure likely to prejudice the maintenance of the law

[77] Principle 6 is subject to Part 4 of the 1993 Act which sets out the circumstances in which an agency may lawfully refuse access to personal information. Part 4 includes s 27 which relevantly provides:

> **27 Security, defence, international relations, etc**
>
> (1) An agency may refuse to disclose any information requested pursuant to principle 6 if the disclosure of the information would be likely—
> (a) …
> (b) …
> (c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
> (d) …

[78] The term "likely" is not to be equated with more likely than not. The standard of proof is not the balance of probabilities. "Likely" is to be understood as requiring the agency to show there is a serious or real and substantial risk to the interest being protected: *Commissioner of Police v Ombudsman* [1988] 1 NZLR 385 (CA) at 391, 404

and 411 and *Nicholl v Chief Executive of the Department of Work and Income* [2003] 3 NZLR 426 at [13]. See also *Rafiq v Commissioner of Police* [2012] NZHRRT 13 at [30] and *Lohr v Accident Compensation Corporation* [2016] NZHRRT 31 at [34]. In *Commissioner of Police v Ombudsman* Cooke P, in relation to earlier but similar provisions in the OIA, stated that:

> To cast on the Department or organisation an onus of showing that on the balance of probabilities a protected interest would be prejudiced would not accord with protecting official information to the extent consistent with the public interest, which is one of the purposes stated in the long title of the Act. At first sight it might seem otherwise, but what has just been said becomes obvious in my view when one considers the range of protected interests in s 6, including as they do, for instance, the security or defence of New Zealand, the New Zealand economy and the safety of persons. **To require a threat to be established as more likely to eventuate than not would be unreal. It must be enough if there is a serious or real and substantial risk to a protected interest, a risk that might well eventuate** …
>
> **Whether such a risk exists must be largely a matter of judgment** … [Emphasis added]

[79] As to the meaning of the phrase "to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences and the right to a fair trial" we do not in the context of the present case attempt an exhaustive analysis (cf *Lohr* at [35]). It is sufficient to note:

[79.1] Law enforcement is not the whole of the provision (see the reference to the right to a fair trial) but the specific mention of "the prevention, investigation, and detection of offences" indicates the importance placed by the legislature on protecting these activities. See Ian Eagles, Michael Taggart and Grant Liddell in *Freedom of Information in New Zealand* (Oxford, Auckland, 1992) at 177 commenting on the identical provision in s 6(c) of the OIA.

[79.2] By inserting into s 6(c) of the OIA the words "including the prevention, investigation, and detection of offences" after the words "the maintenance of the law" the framers of the OIA have recognised that one of the ways in which the law can be maintained is in the prevention, investigation and detection of offences against it. See *Commissioner of Police v Ombudsman* at 405 per McMullin J. In our view the same must necessarily apply to the identical s 27(1)(c) of the Privacy Act.

[79.3] The transitive verb "to prejudice" in OIA, s 6 is to be given its natural and ordinary meaning. In the context of s 6 it means "to impair" the interests identified in OIA, s 6(a), (b) and (c). See *Kelsey v Minister of Trade* [2015] NZHC 2497, [2016] 2 NZLR 218 at [120]. Given the close similarity between OIA, s 6 and PA 1993, s 27(1), the privacy legislation should be interpreted in the same manner.

[79.4] Disclosure of the methods by which crimes are uncovered and criminals apprehended could easily render such methods nugatory. Those who are minded to commit offences should not be able to anticipate and forestall the means by which their activities are detected. See Eagles, Taggart and Liddell op cit 178.

[79.5] Personal information may be withheld on the basis that disclosure would be likely to prejudice any future investigation or detection of offences: *Adams v New Zealand Police* CRT Decision No 16/97 (12 June 1997) cited in P Roth *Privacy Law and Practice* (loose leaf ed, LexisNexis) at [PVA27.7(e)]. In that decision the Complaints Review Tribunal considered whether details of an inquiry into threats made by the plaintiff could be withheld under s 27(1)(c) on the basis that their

disclosure would prejudice any future investigation or detection of threats made in a similar manner. The Tribunal found that the information had been properly withheld as there was some risk the plaintiff might repeat his behaviour, he seeming to have a very low frustration threshold and had made a number of threats which he apparently did not intend to carry out but which nonetheless required investigation.

[79.6] It is well-established that in a proper case, s 27(1)(c) may be relied on to deny access to the name of an informant. As stated by Rodney Hansen J in *Nicholl* at [16]:

> [16] There is therefore a substantial body of decisions dating from 1982 which have recognised that in a proper case, s 27(1)(c) may be relied on to deny access to the name of an informant. The decisions are firmly grounded in the words of the statute and in the pragmatic concerns which, since *R v Hardy* (1794) 24 St Tr 199, have conferred public interest immunity on police informants. For more than two centuries it has been accepted that the public interest favours preserving the anonymity of police informers by keeping open avenues of information which will assist in the detection and investigation of crime.

[79.7] In *Commissioner of Police v Ombudsman* at 397 it was recognised that there will be material on the file, such as internal memoranda, instructions, notes of conferences, expressions of opinion and information that may reveal investigative methods, which will commonly continue to be protected from disclosure even after the investigation is complete. So in *Dijkstra v Police* [2006] NZHRRT 16, (2006) 8 HRNZ 339 at [29] it was held that the fact that the Police file remained open and that the Police would investigate any new leads was a sufficient basis to find that information should still be protected from disclosure on this basis.

[79.8] As to the withholding of information in the nature of intelligence, in *Tonkin v Manukau District Court* HC Auckland M No. 437/SW01, 26 July 2001 at [10] Rodney Hansen J observed in the context of criminal disclosure and the equivalent withholding ground in the OIA that:

> … I am of the view that these documents are entitled to the protection available under s 6(c) of the Official Information Act. In my view, it is necessary and desirable that Police officers should be able to communicate internally in writing without fear that matters of opinion and comment will later be disclosed. I see it as necessary to the efficient workings of the Police and in no way contrary to the right to a fair trial for internal memoranda to be protected from disclosure in proper cases. Informal communications in which tentative, provisional and subjective views are expressed, must be a necessary part of the investigation and detection of offences. As long as they do not contain evidence which is not available from other sources, I see no threat to the administration of justice in their being protected by s 6(c) of the Act.

[79.9] Section 27(1)(c) is not limited in its application to criminal proceedings nor to criminal law enforcement: *Geary v New Zealand Psychologists Board* [2012] NZHC 384, [2012] 2 NZHR 414 at [62]. It applies also to an agency such as the Assignee who is a statutory officer with public responsibilities, particularly the administration of the Insolvency Act 2006.

[79.10] On the face of the wording of PA 1993, s 27(1)(c), maintenance of the law includes, but is not limited to the prevention, investigation and detection of offences. It must include the effective discharge of an agency's statutory responsibilities such as where, as here, the Assignee is investigating a bankrupt's financial affairs as part of managing and administering the bankrupt's estate under the provisions of the Insolvency Act.

[80] Mr Pullan gave detailed evidence in relation to the withholding grounds. It is not practical to relate that evidence in detail. It is sufficient to note that in outlining the role performed by the Assignee and his actions in relation to the administration of bankruptcies his open evidence was:

> **[80.1]** The primary role of the Assignee in administering bankruptcies is to collect and realise assets for the benefit of creditors, and to protect the public from the risks presented by the commercial conduct of bankrupts.
>
> **[80.2]** The ITS, through the regional Assignee, administers and enforces the Insolvency Act. The overall purpose of the Act is to secure a full and complete examination and disclosure of the facts relating to the bankruptcy in the interests of the public.
>
> **[80.3]** The objectives of the Insolvency Act include the following:
>
> > **[80.3.1]** To provide a predictable and simple regime for financial failure that can be administered quickly and efficiently, imposes the minimum necessary compliance and regulatory costs on its users and does not stifle innovation, responsible risk taking or entrepreneurialism;
> >
> > **[80.3.2]** To maximise returns to creditors by providing flexible and effective methods of insolvency administration and enforcement;
> >
> > **[80.3.3]** To enable individuals in bankruptcy and other insolvency procedures under the Act to again participate in the economic life of the community by discharging them from their remaining debts in appropriate circumstances.
>
> **[80.4]** As far as possible, the Assignee and the ITS aim to enable debtors to achieve compliance with their statutory obligations, rather than seeking to penalise them for any and every breach. It is recognised that the majority of debtors wish to, and do, comply with their obligations.
>
> **[80.5]** The Assignee seeks to provide individuals with the information and tools to comply with their obligations under the Insolvency Act. Where this is not achieved, further enforcement will be considered, particularly where there is a public interest in such enforcement action being taken on the basis that such non-compliance is serious, prolific, has caused serious financial loss, or where there are persistent failures to comply with the Act.
>
> **[80.6]** As well as administering the bankrupt's estate (by realising the assets and paying liabilities), the role of the Assignee includes investigation into the bankrupt's estate and his or her affairs. This includes investigating both actions by the bankrupt leading up to his bankruptcy, as well as during and may include, for example, the location of funds, or actions by the bankrupt in breach of the Insolvency Act following adjudication.
>
> **[80.7]** Members of the public, creditors, insolvency practitioners and other agencies can contact the Assignee to make complaints or provide information regarding potential breaches of legislative obligations administered by the Assignee. All complaints made to the Assignee are considered. Further investigation may occur where to do so would assist the Assignee to conduct his

role. This may depend on the evidence available, whether the public interest requires a prosecution, and the cost effectiveness of proceeding with an investigation.

[80.8] Complaints, which often include the provision of information and supporting documentation, are instrumental to the investigation process, and a key source of information for the Assignee. Accordingly, protecting the confidentiality of the parties that disclose such information is instrumental to ensuring that such information continues to be provided to the Assignee.

[81] In relation to the specific withholding ground in PA 1993, s 27(1)(c) (prejudice to maintenance of the law) Mr Pullan stated in his open evidence that it is important the Assignee is able to withhold information concerning investigations or reviews of bankrupts' affairs. If the Assignee released information relating to particular lines of enquiry, or the subjects of information requests or summonses to the bankrupt (or to any other members of the public), the effectiveness of these investigations would be compromised. Mr Pullan gave three main reasons for this.

[82] The first reason was the need to protect the confidentiality of the Assignee's investigation techniques. Mr Pullan confirmed the Assignee had withheld information about the Assignee's administrative and investigative techniques ie the methods the Assignee used to investigate Mr Beattie's assets and liabilities. In his closed evidence he demonstrated how the relevant documents showed a particular aspect of the techniques employed by the Assignee in the course of his investigations. In his open evidence he emphasised the importance of protecting the confidentiality of such information to ensure the Assignee is able to effectively undertake his statutory functions in relation to the management and administration of a bankrupt's estate. Release of the information would provide bankrupts with an opportunity to conceal and dissipate assets or otherwise engage in activities contrary to the Act. He explained that where a bankrupt is thought to have dissipated property, this information could enable the bankrupt to stay one step ahead of investigators in either keeping property concealed or further dissipating property before it could be recovered for the benefit of creditors.

[83] The second reason was to protect the identity of those who supply information to the Assignee. This is a separate (but overlapping) ground to the s 29(1)(a) ground of protecting the privacy of another. Mr Pullan in open evidence explained that so as not to deter people from providing the Assignee with information, the identity of informants required protection. He pointed out that information provided by third parties can greatly assist in the investigation of a bankrupt's property, conduct and dealings (and any possible offending). If the identity of the suppliers of information is revealed there is a risk that third parties would be deterred from furnishing information to the Assignee, which could be to the detriment of the administration of the bankrupt's estate and the public interest.

[84] In submissions the Assignee drew attention to the close parallel with other agencies responsible for administering public money or third party assets. The particular examples were benefit fraud under social welfare legislation and the administration of the Accident Compensation Act 2001. In relation to these analogous statutes reference was made to the observations of Rodney Hansen J in *Nicholl* at [16], [19] and [20] regarding the public interest which favours the anonymity of informers and the fact that the detection and investigation of benefit fraud (or we might add, ACC fraud and fraud on creditors) is peculiarly reliant on a flow of information from the public:

> [16] There is therefore a substantial body of decisions dating from 1982 which have recognised that in a proper case, s 27(1)(c) may be relied on to deny access to the name of an informant. The decisions are firmly grounded in the words of the statute and in the pragmatic concerns which, since *R v Hardy* (1794) 24 St Tr 199, have conferred public interest immunity on police informants. For more than two centuries it has been accepted that the public interest favours preserving the anonymity of police informers by keeping open avenues of information which will assist in the detection and investigation of crime.
>
> …
>
> [19] … I think Mr Stevens was right to say that the detection and investigation of benefit fraud is peculiarly reliant on a flow of information from the public. A government department is singularly ill-equipped to carry out the observations which frequently bring such offending to light. It is not just a matter of insufficient resources, though that too must play a part. It is the nature of the activities which tend to reveal benefit abuses. They would often escape detection if it were not for the intervention of members of the public.
>
> [20] In my view, the respondent's fears that disclosure of the identity of the informant could discourage other potential informants from giving information are fully justified. It undoubtedly would prejudice the maintenance of the law, and by the means identified in s 27(1)(c) – the prevention, investigation and detection of offences.

[85] The third reason referred to by Mr Pullan in his open evidence was the need to prevent prejudice to any future investigation into Mr Beattie's financial affairs. Mr Pullan explained that while Mr Beattie is a discharged bankrupt, that does not prevent the Assignee from taking recovery action in the future if the need arises. Therefore it is important that the Assignee's methods and specifics of inquiries and investigation remain confidential. In his experience it is not uncommon for the Assignee to receive, post-discharge, information about potential breaches of the Act occurring during or prior to a person's bankruptcy. Nor is it uncommon for the Assignee to discover post-bankruptcy, the existence of assets that have vested in the Assignee and which are recoverable by him, but which were concealed from his office. The Assignee is not prevented from recovering such property, or from taking steps against a bankrupt for any breaches of the Act that are discovered following his or her discharge. Should the Assignee receive new information regarding a discharged bankrupt after their discharge then further investigation may be required into his or her affairs. It is important to ensure that any such future investigation is not prejudiced by the disclosure of information that reveals the information already held by the Assignee about a bankrupt and the investigative techniques that were formerly utilised.

Findings of fact in relation to s 27(1)(c)

[86] Having inspected the closed evidence filed by the Assignee and having taken into account the open and closed evidence given by Mr Pullan in relation to the documents withheld under PA 1993, s 27(1)(c) and applying the principles of law set out above, we are of the view the information withheld under s 27(1)(c) has been properly withheld. The Assignee has discharged his onus and proved that disclosure of the information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences.

[87] We turn now to the second withholding ground.

Section 29(1)(a) Privacy Act 1993 – the unwarranted disclosure of the affairs of another individual

[88] Section 29(1)(a) of the Act relevantly provides:

29 Other reasons for refusal of requests

(1) An agency may refuse to disclose any information requested pursuant to principle 6 if—
(a) the disclosure of the information would involve the unwarranted disclosure of the affairs of another individual or of a deceased individual;

[89] As held in *Watson v Capital and Coast District Health Board* [2015] NZHRRT 27 at [91], this withholding provision has two requirements:

[89.1] That the disclosure of the information would disclose the affairs of another person; and

[89.2] That such disclosure would be unwarranted.

[90] The Tribunal went on at [93] to state that the term "unwarranted" requires the Principle 6 right of access held by the requester to be weighed against the competing interest recognised in s 29(1)(a). In that exercise consideration must be given to the context in which the information was collected and to the purpose for which the information was collected, held and used. How the balance is to be struck in a particular case and a determination made whether disclosure of the information would involve the "unwarranted disclosure" of the affairs of another individual will depend on the circumstances. See *Director of Human Rights Proceedings v Commissioner of Police* [2007] NZHRRT 22 at [63].

[91] As already observed, on the facts this withholding provision overlaps with s 27(1)(c).

[92] In his open evidence Mr Pullan stated that maintaining strict confidentiality of the identity of those individuals who supply information to the Assignee is considered fundamental to the ongoing provision of such information. The supply of information from members of the public is instrumental to the Assignee completing his statutory functions of administering a bankrupt's estate and investigating and detecting possible offending (ie breaches of the Act).

[93] Information from third parties is an important source of information enabling the Assignee to investigate a bankrupt's property, conduct and dealings (and any possible offending). If their identities are disclosed to the bankrupt then they and any other members of the public who may have information relevant to the Assignee's tasks are likely to be deterred from providing information to the Assignee. Such may be prejudicial to both the administration of the bankrupt estate and to the general public interest.

[94] In Mr Pullan's open evidence he said that in his experience members of the public typically seek confidentiality of their identity and of the information they provide to the Assignee as they are concerned about being identified by the bankrupt. Should the Assignee not be able to guarantee that confidentiality, there is a concern that the providers of such information will be deterred from providing it.

[95] In these circumstances Mr Pullan believed the negative consequences of disclosing information provided by third parties to assist the Assignee in the administration of and investigation into a bankrupt's estate, and the investigation of possible offending outweighed Mr Beattie's interests in obtaining access to such information.

Findings of fact in relation to s 29(1)(a)

[96] Taking into account the open and closed evidence given by Mr Pullan as well as the open and closed submissions made on his behalf we accept that information held by the Assignee relating to the administration of Mr Beattie's estate and possible offending by him against the Insolvency Act identifies a number of third parties as being a source of information about Mr Beattie. It does so by two means:

> **[96.1]** Directly, by identifying them by name, including contact details such as postal and email addresses.
>
> **[96.2]** Indirectly, by the nature of the information supplied. The nature of the information provided would only be known by a limited number of persons and would therefore enable Mr Beattie to identify who had provided it to the Assignee.

[97] We further accept the evidence given by Mr Pullan that maintaining the strict confidentiality of the identity of those who supply information to the Assignee is fundamental to the ongoing provision of such information. The Assignee must be able to guarantee confidentiality of the identity of third parties.

[98] Weighing these interests against Mr Beattie's IPP 6 right of access it is notable Mr Beattie could point to no prejudice caused by the withholding of the information. He has not established any valid reason for requiring the information other than curiosity. But the Assignee is correct in submitting there is evidence that Mr Beattie is a person who can hold a grudge. A relevant example is provided by the long history of his attempts to thwart Ms Foyle's efforts to enforce the judgment obtained by her against Mr Beattie. Those attempts eventually led to Mr Beattie being sentenced to 100 hours community work for contempt. These circumstances illustrate his potential for uncompromising and unpleasant behaviour. Further, at the hearing before the Tribunal he showed himself in poor light by openly displaying animosity towards Ms Foyle. He spoke of her in hostile terms. In addition to accusing her of lying he said:

> … there was no bloody way I was paying that bitch $2,200 ever again.

[99] This unprovoked outburst in the context of a judicial hearing (and while he was giving evidence) showed lack of judgment and of circumspection. The Assignee's concerns as to what Mr Beattie might say or do were he to learn the identity of those who have provided information to the Assignee are well-founded. In these circumstances there were good grounds for the Assignee to believe Mr Beattie's behaviour could discourage potential informants from giving information.

[100] We are accordingly satisfied the Assignee has discharged his onus and proved that in the circumstances of the present case disclosure of the information would involve the unwarranted disclosure of the affairs of another individual(s).

PART TWO

Redacted section of decision commences

[101] [Redacted]

[Redacted]

[102] [Redacted]

[103] [Redacted]

[104] [Redacted]

[105] [Redacted]

[106] [Redacted]

[107] [Redacted]

[Redacted]

[108] [Redacted]

Redaction of decision ends

PART THREE

OVERALL CONCLUSION

[109] Our overall conclusion is:

> **[109.1]** The few documents inadvertently overlooked by the Assignee when giving access to the personal information requested by Mr Beattie were subsequently provided to Mr Beattie. As the only remedy sought by Mr Beattie is that of disclosure and as access has now been given to all of the personal information held by the Assignee, no remedy is warranted.
>
> **[109.2]** The Assignee has discharged his onus under PA 1993, s 87 and PA 2020, s 101 by establishing that the information withheld from Mr Beattie falls within the identified exceptions in ss 27 and 29 of the Privacy Act 1993.

[110] As no interference with the privacy of Mr Beattie has been established, his claim is dismissed.

Costs

[111] At the request of the Assignee costs are reserved.

[112] The following timetable is to apply:

> **[112.1]** The Assignee is to file and serve his submissions within 14 days after the date of this decision. The submissions for Mr Beattie are to be filed and served within a further 14 days with a right of reply by the Assignee within 7 days after that.
>
> **[112.2]** The Tribunal will then determine the issue of costs on the basis of the written submissions without further oral hearing.
>
> **[112.3]** In case it should prove necessary, we leave it to the Chairperson of the Tribunal to vary the foregoing timetable.

NON-PUBLICATION ORDERS

[113] The following orders are made:

[113.1] There is to be no publication of the unredacted decision of the Tribunal.

[113.2] The unredacted decision of the Tribunal is to be released only to the Official Assignee and to his legal representatives.

[113.3] The decision of the Tribunal released to Mr Beattie and to the public is to be redacted by the deletion of all of Part 2, being paras [101] to [108] inclusive.

[113.4] There is to be no search of the Tribunal file without leave of the Chairperson or of the Tribunal. The plaintiff and defendant are to be notified of any request to search the file and given opportunity to be heard on that application.

[113.5] Leave is reserved to both parties to make further application should the need arise.

.....	.....	.....
Mr RPG Haines ONZM QC	**Ms BL Klippel**	**Mr M Koloamatangi**
Chairperson	**Member**	**Member**