

**Confidential - Rescission Motion - Disclosure Incident**

**Elected Member** Mayor Kris Hanna

**Report Reference:** GC200526M02

**Confidential Report****Reason For Passing This Resolution**

**Local Government Act (SA) 1999 S 90 (2) 3(h)** : legal advice. **Local Government Act (SA) 1999 S 90 (2) 3 (g)** : matters that must be considered in confidence in order to ensure that the council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty.

**Confidential Motion**

That pursuant to Section 90(2) and (3)(h) and (g) of the Local Government Act 1999, the Council orders that all persons present, with the exception of the following persons: Adrian Skull, Tony Lines, Ilia Houridis, Sorana Dinmore, Akos Szonyi, Kate McKenzie and Jaimie Thwaites, be excluded from the meeting as the Council receives and considers information relating to the Confidential - Rescission Motion - Disclosure Incident, upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential given the information relates to legal advice and a matter currently under a confidential order.

**Motion:**

That the following resolution passed at the 12 May 2020 General Council meeting in relation to the 'Confidential - Rescission Motion - Disclosure Incident' report (Report Reference: GC200512M01):

1. *Council notify all affected individuals, including both those on the suppressed register and those who are not.*
2. *The notification include advice that, unless the affected individual has ordered name suppression, the security breach does not involve information that is not already public domain, either internally or externally to the City of Marion.*
3. *That affected parties be advised that comprehensive advice has been received by highly qualified professional investigative parties that deem the residual risk of damage to affected persons to be small enough as to obviate the need for notification of affected parties and that no there is 'no evidence of misuse (of data)'.*
4. *That the Local Government Minister be consulted concerning the position in which Council has been placed and the corresponding advice it received.*

be rescinded.

If the rescission motion is passed, the following is to be moved:

1. Council notes the extensive, independent, expert investigative reports into an incident of inadvertent exposure of ratepayer data by Council Administration; and
2. Council notes that reputational damage to Council is a factor to be given little or no weight in a case such as this where the welfare of residents is the prime concern; and



3. Determines that the relevant individuals should not be notified due to the low probability of any harm occurring as a result of the data exposure (based on the expert reports) and the certain impact of distress among vulnerable individuals which would be caused by notification.
4. In accordance with Section 91(7) and (9) of the *Local Government Act 1999* (the Act), Council orders that this report, the attachments to this report and the minutes, having been considered in confidence under Section 90 (2) and (3)(g) and (h) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council Meeting in December 2020.

### Supporting Information:

This rescission motion is brought because, since the last General Council meeting, further consideration has been given to the conflict of interest rules which led three Elected Members to leave the meeting. All Elected Members are part of the very substantial class of residents affected by the motion thus an exemption to normal conflict of interest rules applies; in any case the resolution sets out to inform ratepayers, and the Elected Members have already been informed, therefore there can be no interest affected by passing or implementation of the resolution. All Elected Members should have an opportunity to participate in such an important decision.

The reasoning behind the replacement motion is essentially that the expert reports demonstrate a (very) low probability that harm arose from the exposure of data nearly two years ago. This needs to be considered along with the fact that, anecdotally, many ratepayers with suppressed details are vulnerable one way or another eg a number would be domestic violence victims. Notification would undoubtedly cause great distress to such people and possibly a feeling that the individual or family must relocate. The prospect of successful negligence claims against Council for "forced" relocation is a secondary consideration.

It should be stressed that the breach was brought to light by a *benevolent* explorer of our website; that access to the private data could only be gained by someone highly proficient in a particular computer language ("Python"); and that the highest value to any malevolent data thief would be to sell on the dark web immediately (of which there is *zero evidence* after extensive searching by our experts).

The GC200512M01 Council resolution to disclose raises the *low* probability of harm caused by the breach to a *certain* infliction of distress on some vulnerable residents. It would be tragic for this to be done unnecessarily ie if no harm has been done up to this point.

The following summarises all relevant passages from the expert reports regarding the risk of harm having already occurred as a result of the breach:

- Clyde & Co Updated letter of advice p6 "We consider that there are reasonable grounds for the Council to conclude that **this incident does not meet the serious harm threshold and therefore, it is not required to notify affected individuals.**"
- Clyde & Co Updated letter of advice p6 "This is primarily on the basis that: (a) the third party's motivations are not to misuse the information or to be financially compensated but rather to inform the Council of a vulnerability on its website; (b) **there is no evidence to suggest the third party has misused the information;** and (c) **to notify individuals (particularly those whose details are suppressed) would cause undue alarm and concern** and may cause notification fatigue. In that regard, notifying may indeed do more harm than good."
- Cyjax CONFIDENTIAL: Marion Open Source Investigation -28 February 2020 review pg1 "**Overall, there is very little sensitive information related to Marion available in open sources.**"



- Cyjax CONFIDENTIAL: Marion Open Source Investigation -28 February 2020 review pg5 "We conducted a range of sources across multiple search engines, including Google, Bing, Yandex and Duck Duck Go. **We did not find any sensitive files or information belonging to Marion.**"
- Cyjax CONFIDENTIAL: Marion Open Source Investigation -28 February 2020 review pg6 "**We did not identify any sensitive files or information about Marion on the darknet.** This included use of our extensive Darknet archive maintained on the Cyjax portal"
- Cyjax CONFIDENTIAL: Marion Open Source Investigation -28 February 2020 review pg7 "**We did not identify any sensitive information pertaining to Marion in our paste archive.** The Marion domain was captured in two pastes 2017. These pastes comprised a list of Australian government domains but no other information"
- Cyjax CONFIDENTIAL: Marion Open Source Investigation -28 February 2020 review pg7 "Cyjax monitors multiple underground forums for our clients, including Raid Forums, Nulled and Cracked.to. **We did not discover any confidential Marion files or information being shared on these platforms.**"

<b>Response Received From:</b>	Manager Corporate Governance - Kate McKenzie
	General Manager Corporate Services - Sorana Dinmore
<b>Corporate Manager</b>	Manager Corporate Governance - Kate McKenzie
<b>General Manager</b>	General Manager Corporate Services - Sorana Dinmore

#### **Staff Comments:**

##### **Comments regarding Process**

Section 12(3) of the *Local Government (Procedures of Meetings) Regulations 2013*, outlines the process for Council to rescind or amend a resolution of Council passed since the last general election . This section states "A motion the effect of which, if carried, would be to revoke or amend a resolution passed since the last general election of the council must be brought by written notice of motion."

If the motion to revoke the resolution passed on 12 May 2020 is successful, the resolution ceases to have effect. Council would then be able to pass another resolution if it desired.

Under Section 12(4) of the *Local Government (Procedures of Meetings) Regulations 2013*, if a motion to rescind/amend is lost, a motion to the same effect cannot be brought until after the expiration of 12 months or until after the next general elections (whichever is the sooner).