

Report still secret

By Cam Lucadou-Wells

The state's health department has tried to suppress a report that allegedly led to the closure of I Cook Foods' factory in Dandenong South in February last year.

I Cook Foods alleged it was wrongfully blamed, shut down and ruined over the death of a hospital patient.

It led to the retrenching of its staff and the destruction of the 33-year-old business that provided packaged food for Meals-on-Wheels and hospitals.

For 10 months, I Cook Foods lawyers had unsuccessfully sought the report and related documents through discovery and also 'freedom-of-information'.

It has spent an estimated \$250,000 to bring a Supreme Court of Victoria case to get access to the document.

Access was granted on a strict confidentiality basis by Supreme Court Associate Justice Melissa Davy on 17 February.

On the eve of the 3 February hearing, the Department of Health and Human Services offered up the documents on a strict confidentiality basis.

I Cook Foods rejected the offer.

In court, I Cook Foods argued that acting Chief Health Officer of Victoria, Brett Sutton, had "no evidence" that the factory's food was "unsafe" when he issued his closure order on 22 February 2019.

Dr Sutton stated in the order he was satisfied from the "report of an authorised officer of the Department's Food Safety Unit" that the factory's food was "unsafe".

The patient had died in late January.

On 11 February, a lab report found listeria of unreported concentrations on smallgoods



I Cook Foods director Ian Cook has brought Supreme Court action to access a report from the Department of Health and Human Services. 202497

Picture: STEWART CHAMBERS

found at the factory.

A further report on 28 February found the listeria was within safe food-code standards.

Lawyers for I Cook Foods argued that Dr Sutton shut down the factory before a DHHS officer inspected the premises, and that a live slug was allegedly planted during a Greater Dandenong Council officer's inspection on 18 February. The officer had reported 37 corrective actions for the "unclean and unsanitary" premises in a "state of disrepair".

I Cook Foods argued that Dr Sutton may have been "tainted" by bias due to the DHHS and Greater Dandenong Council's interest in a rival company Community Chef.

Arguing for strict confidentiality, Deputy Chief Health Officer Angela Bone stated that in an unfolding public health crisis, "issues, concerns and risks need to be raised, discussed and considered unhindered and actions need to be taken, without fear of undue scrutiny".

She said otherwise there was a risk of "uninformed or ill-informed third parties making public comment and criticism of individuals and actions".

"This in turn could limit the reporting of incidents to DHHS and therefore limit the impact of DHHS' actions to protect the community, as well as undermining the community's confidence in DHHS."

Associate Justice Daly found in favour of a "confidentiality" regime.

"I do accept there is a public interest in encouraging, or at least not impeding, the frank and timely exchange of information during the course of public crises," Assoc Justice Daly stated.

"I accept that requiring disclosure of such communications in an uncontrolled manner may have a chilling effect upon such communications."

Assoc Justice Daly said this carried more weight than the department's concern about criticism from "uninformed or ill-informed" third parties.

Mr Cook said the DHHS's confidentiality regime would restrict access to just him and his lawyers. It would exclude Mr Cook's wife, brother and son who also work at the business.

The question of costs had not yet been decided by Assoc Justice Daly, he said.

Assoc Justice Daly noted that Dr Sutton revoked a varied closure order on 28 March 2019, but it was "too late" for the plaintiff.

"By that time, it had lost all of its contracts. All of its staff have been retrenched, and the plaintiff says it has lost a business generating over \$6 million in revenue per annum."

She also noted that Greater Dandenong Council had dropped all 96 food-safety charges against Mr Cook and I Cook Foods prior to a Magistrates' Court hearing in October.

"The presence of the slug at the plaintiff's premises was the basis of two of the (dropped) charges," Assoc Justice Daly noted.