

21 July 2023

File Ref: OIAPR-1274023063-3773

Brian Warburton

By email: fyi-request-23264-41d31ea3@requests.fyi.org.nz

Tēnā koe Brian

Request for information 2023-168 and 2023-169

I refer to your two requests for information dated 25 June 2023, which were received by Greater Wellington Regional Council (Greater Wellington) on 25 June 2023. You have requested the following information in 2023-168:

“In relation to a LGOIMA request made to PCC on 27 July 2021, and subsequently transferred (in part) by PCC to GWRC, and in respect of a discharge of untreated wastewater to the Onepoto arm of Porirua Harbour on or about 18th and 20th July 2021. A previous request for information by me to GWRC was refused by Mr A Cross (GM - Environment Group) dated 16/08/2021. Mr Cross indicated that the information couldn't be provided because (at that time) the discharge was the subject of investigation with related collation of documents and correspondence by GWRC. I note that is now more than 2 years ago, so I presume that GWRC has collated the relevant necessary for a prosecution. So in relation to this investigation by GWRC, I hereby request the following information:”

(a) a copy of the documents and correspondence GWRC has collated; and,

(b) if GWRC has come to a conclusion about prosecution under the RMA, a copy of the document that records: what the conclusion was, who came to that conclusion, the date, the reasons why, and the document that records that the person making that conclusion has the required delegation under the RMA.

(c) if GWRC has not come to a conclusion about prosecution under the RMA, a copy of the document that records the reasons why a decision has not yet been made.”

And the following information requested in 2023-169.

“1. Has GWRC concluded its investigation.

- 2. If it hasn't concluded its investigation please provide me with the reasons and the expected time frame.*
- 3. If GWRC has concluded its investigation what has the outcome of that.*
- 4. If GWRC has concluded its investigation will it be proceeding with prosecution*
- 5. If GWRC has concluded its investigation and is not proceeding with prosecution, the reasons why*
- 6. If GWRC has concluded its investigation and is not proceeding with prosecution, a copy of all information that GWRC has relied upon in coming to this conclusion.*
- 7. If GWRC has concluded its investigation and is proceeding with prosecution, information so I can understand the current status of those proceedings."*

Greater Wellington's response follows:

An investigation commenced in relation to the Paremata waste water pipe incident that took place on 17 July 2021. On 23 September 2021 Wellington Water submitted an Emergency Works Report along with confirmation that it was their belief that the works were undertaken in accordance with the emergency provisions of section 330 of the Resource Management Act 1991 (RMA). These provisions allow a network utility operator to undertake works for the purpose of preventative or remedial action under certain circumstances. The investigation was subsequently de-prioritised. Following the receipt of the Emergency Works Report, the overseeing officer raised some concerns with the use of section 330 RMA emergency provisions in this instance, however it appears that the officer responsible at the time opted to not pursue any further enforcement action in relation to this incident. Subsequently, we engaged with Wellington Water on the use of section 330 RMA emergency provisions.

No further action, including an enforcement decision has been made in relation to this investigation and we can confirm we are able to release to you any relevant information we hold.

In regard to the specific information you requested in 2023-168 and 2023-169 please see the following answers:

2023-168

(a) a copy of the documents and correspondence GWRC has collated; and,

Please see **Attachment 1** which contains emails from Wellington Water alerting and updating Greater Wellington about the burst wastewater main as well as **Attachment 2** which contains emails between Greater Wellingtons Environmental Protection Officer and Wellington Water requesting further information on the event and **Attachment 3** which contains an email from Wellington Water

informing Greater Wellington that they are considering using section 330 Emergency Works of the RMA.

(b) if GWRC has come to a conclusion about prosecution under the RMA, a copy of the document that records: what the conclusion was, who came to that conclusion, the date, the reasons why, and the document that records that the person making that conclusion has the required delegation under the RMA.

The investigation did not result in a prosecution so these documents do not exist. Therefore, we are refusing this part of your request under section 17(e) of the Local Government Official Information and Meetings Act 1987 (LGOIMA) on the basis that the document alleged to contain the information does not exist or, despite reasonable effort to locate it, cannot be found.

(c) if GWRC has not come to a conclusion about prosecution under the RMA, a copy of the document that records the reasons why a decision has not yet been made.”

The investigation did not result in a prosecution being considered or discussed so these documents do not exist. Therefore, we are refusing this part of your request under section 17(e) of the (LGOIMA) on the basis that the document alleged to contain the information does not exist or, despite reasonable effort to locate it, cannot be found.

Before refusing a request under section 17(e) of the LGOIMA, we are required to consider consulting the requester before making that decision. In this instance we concluded that consulting you would not change the outcome of our decision.

2023-169

1. Has GWRC concluded its investigation.

Yes, Greater Wellington has concluded the investigation.

2. If it hasn't concluded its investigation please provide me with the reasons and the expected time frame.

Not applicable, as Greater Wellington has concluded the investigation.

3. If GWRC has concluded its investigation what has the outcome of that.

No formal enforcement action was taken in relation to the incident. As noted above, we have subsequently engaged with Wellington Water in relation to their use of section 330 RMA emergency provisions.

4. If GWRC has concluded its investigation will it be proceeding with prosecution

No further enforcement action, including prosecution, will be pursued in this instance.

5. If GWRC has concluded its investigation and is not proceeding with prosecution, the reasons why

The investigation was deprioritised to allow the investigating officer time to focus on another important prosecution. When this officer left the Environmental Protection Team in late 2022 it was concluded that Greater Wellington would not continue with the investigation. It appears, although not documented, the officer accepted the use of section 330 (emergency provisions) in this instance.

6. If GWRC has concluded its investigation and is not proceeding with prosecution, a copy of all information that GWRC has relied upon in coming to this conclusion.

Greater Wellington decided not to take enforcement action over the sewage spill into Porirua Harbour. We are refusing this part of your request under section 17(g) of the LGOIMA on the basis that there are no documents concluding the investigation or the decision around not to proceed with a prosecution. It appears the officer at the time concluded that section 330 RMA could apply and therefore a defence might exist. We therefore decided to engage with Wellington Water on the appropriate use of section 330 going forward for incidents such as this.

Generally, the decision whether or not to prosecute is informed by referring to the solicitor general's guidelines ([SOLICITOR-GENERAL'S Prosecution Guidelines](#)).

7. If GWRC has concluded its investigation and is proceeding with prosecution, information so I can understand the current status of those proceedings."

Greater Wellington is not proceeding with enforcement action including prosecution.

If you have any concerns with the decision(s) referred to in this letter, you have the right to request an investigation and review by the Ombudsman under section 27(3) of the LGOIMA.

Please note that it is our policy to proactively release our responses to official information requests where possible. Our response to your request will be published shortly on Greater Wellington's website with your personal information removed.

Nāku iti noa, nā



Lian Butcher
Kaiwhakahaere Matua Rōpū Taiao | Group Manager Environment