

16 December 2010

Law Commission  
PO Box 2590  
WELLINGTON

Dear Commissioners

### **Submission on The Public's Right to Know – Issues Paper 18**

The Christchurch City Council welcomes this opportunity to make a submission on the Commission's Issues Paper 18 "The Public's Right to Know – A Review of the Official Information Act 1982 and Parts 1-6 of the Local Government Official Information and Meetings Act 1987".<sup>1</sup>

In your Issues Paper, you have set out 108 discussion questions. The Council has addressed those questions that are relevant to the Council and our answers are set out below. The Council looks forward to being involved further in the review of the Local Government Official Information and Meetings Act 1987.

- Q1 ***Do you agree that the Schedules to each Act (OIA and the LGOIMA) should list every agency that they cover?***  
Yes.
- Q2 ***Do you agree that the schedules to the OIA and LGOIMA should be examined to eliminate anomalies and ensure that all relevant bodies are included?***  
Yes.
- Q3 ***Do you agree that SOEs and other crown entity companies should remain within the scope of the OIA?***  
Yes.
- Q4 ***Do you agree that council controlled organisations should remain within the scope of the LGOIMA?***  
Yes. It adds to the transparency of these organisations.
- Q5 ***Do you agree that the Parliamentary Counsel Office should be brought within the scope of the OIA?***  
Neutral.
- Q6 ***Do you agree that the OIA should specify what information relating to the operation of the Courts is covered by the Act?***

<sup>1</sup> We refer to our discussions between Margaret Thompson and Vivienne Wilson of the Christchurch City Council's Legal Services Unit. Margaret Thompson agreed that the Council would be able to make its submission by 17 December 2010 instead of 10 December 2010.

LGOIMA). We note that the current provision is generally interpreted rather narrowly. It can be seen to restrict the exchange of opinions between officers, and it can deter officers from committing opinions to paper or electronic form.

Q15 ***What are your views on the proposed reformulated provisions relating to the "good government" grounds?***

We support a widening of the ground to cover expression of opinion and provision of advice. However, we submit that any redraft of section 7(2)(f) of the LGOIMA would need to make it clear that ground applied to communications between staff members and not just between elected members and staff members.

Q16 ***Do you think the commercial withholding ground should continue to be confined to situations where the purpose is to make a profit?***

No. The Council would prefer to see a wider interpretation of the commercial withholding grounds being adopted.

Q17 ***If you favour a broader interpretation, should there be a statutory amendment to clarify when the commercial withholding ground applies?***

Yes. The Council submits that a legislative amendment is required. We agree with the Commission that the definition of commercial information in the Ontario freedom of information legislation is a useful definition. However, we would want to be assured that it covered land transactions (ie real property).

Q18 ***Do you think the trade secrets and confidentiality withholding grounds should be amended for clarification?***

The Council finds the confidentiality withholding ground difficult to apply. In order for this ground to apply the Council must first establish that there is an obligation of confidence. Next the Council must establish that the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied. Alternatively the Council must be able to establish that the making available of the information would be likely otherwise to damage the public interest. Finally the Council must apply the balancing test and determine whether the withholding of the information is outweighed by other considerations which render it desirable in the public interest to make that information available. We think this provision could be amended for clarification.

With respect to the provision relating to trade secrets, we agree that the term is not well understood and its boundaries are not clear. We also agree that the best way to address this is to have detailed guidelines coupled with examples from case law.

Q19 ***Do you agree that the official information legislation should continue to apply to information in which intellectual property is held by a third party?***

We agree that this is another difficult and sensitive area. In some cases the Council may receive information from a third party which is the subject of intellectual property rights, and because of the LGOIMA, the Council may be required to disclose that information. It does mean that third parties entering into arrangements with the Council need to be aware that their information may be disclosed.

Q20 ***Do you have any comment on the application of the OIA to research work,***

We are not convinced that a new withholding ground to cover harassment is required. The trouble with introducing a ground of this nature is that the agency withholding the information would have to withhold the information because it considered that the requester might harass another person. It would be hard to establish the basis for this ground in practice.

We are not clear what the protection of cultural values would cover. We do not support introducing a new ground along these lines at this point.

In terms of anything else we ask you to give further consideration to the withholding of drafts of documents. We refer you to Q14.

Q28 ***Do you agree that the "will soon be publicly available" ground should be amended as proposed?***

We agree that this ground should be amended but we do not agree with your suggestion in paragraph 7.25. There will be situations where the Council may wish to release a document in its final form at the same time to all interested parties.

Q29 ***Do you agree that there should be a new non-conclusive withholding ground for information supplied in the course of an investigation?***

Yes. This new ground would be helpful.

Q30 ***Do you have any comments on, or suggestions about, the "maintenance of law" conclusive withholding ground?***

It is not altogether clear what this ground covers. Does it also apply to civil proceedings as well as criminal proceedings? As you point out, this issue may resolve itself if a new non conclusive ground is included to cover investigations and inquiries.

Q31 ***Do you agree that the Acts should not include a codified list of public interest factors? If you disagree, what public interest factors do you suggest should be included?***

Yes. We agree that the Acts should not include a codified list of public interest factors.

Q32 ***Can you suggest any statutory amendment which would clarify what "public interest" means and how it should be applied?***

See our answer above.

Q33 ***Do you think the public interest test should be contained in a distinct and separate provision?***

No.

Q34 ***Do you think the Acts should include a requirement for agencies to confirm they have considered the public interest when withholding information and also indicate what public interest grounds they considered?***

Yes. This would be helpful and it technically would not require any additional effort on the part of the agency to address the issue. However, there should be the flexibility to hold that there are no public interest factors if there are in fact no applicable factors.

Q44 ***Do you think that provision should be made for an agency to declare a requester "vexatious"? If so, how should such a system operate?***

Yes we do. However, there would need to be some guidelines as to how this system would operate. Matters to take into account might be the number of requests a person has made over a specific period or whether or not the request is "ridiculous".

Q45 ***Do you agree that, as at present, requesters should not be required to state the purpose for which they are requesting official information nor to provide their real name?***

See our comments above about the usefulness of the purpose provision when determining whether a requester is a vexatious requester or a request is vexatious. We do think a person should be required to provide their real name.

Q46 ***Do you agree the Acts should state that requests can be in oral or in writing, and that the requests do not need to refer to the relevant official information legislation?***

This raises an interesting point and we note that in the survey earlier in the year we commented as follows:

*"Given that every request for information is essentially a LGOIMA request, the Council deals with hundreds of requests for information on a daily basis. Often when the public request information they do not have a general understanding that they are making a request under the LGOIMA. Furthermore, when the public do make "official requests", invariably they will refer to the Official Information Act 1982 rather than the LGOIMA. While there is certainly a good understanding that official information "rules" apply to the Council, there is a lack of awareness about the LGOIMA as a whole."*

When a council officer is dealing with an oral request, the Council officer may also not appreciate that the LGOIMA applies. However, we do not consider that there should be a separate regime for oral requests and written requests.

We agree with your suggested wording at paragraph 9.46.

Q47 ***Do you agree that more accessible guidance should be available for requesters?***

Yes.

Q48 ***Do you agree the 20 working day time limit should be retained for making a decision?***

Yes.

Q49 ***Do you agree that there should be express provision that the information must be released as soon as reasonably practicable after a decision to release is made?***

Yes.

Q60 ***Do you agree there is no need for further statutory provision about transfer to Ministers?***

Neutral.

Q61 ***Do you have any other comment about the transfer of requests to ministers?***

Neutral.

Q62 ***Do you think that whether information is released in electronic form should continue to depend on the preference of the requester?***

Yes, we agree that the preference should remain with the requester. However, if a person requests the information in another form which is more costly, the person should meet those costs.

Q63 ***Do you think the Acts should make specific provision for metadata, information in backup systems and information inaccessible without specialist expertise?***

We agree that persons should be able to request information held in backup systems, metadata and the like. However, at times it may be costly to recover this information and the requester should be required to meet the cost of this.

Q64 ***Should hard copy costs ever be recoverable if requesters select hard copy over electronic supply of the information?***

Yes but the Council needs to be able to charge for the costs of providing hard copy.

Q65 ***Do you think that the official information legislation needs to make any further provision for agencies to place conditions on the re-use of information, or are the current provisions sufficient?***

We consider that current obligations are sufficient but agencies could educate requesters about how they should treat information that is provided to them under a request.

Q66 ***Do you agree there should be regulations laying down a clear charging framework for both the OIA and the LGOIMA?***

Most definitely.

Q67 ***Do you have any comment as to what the framework should be and who should be responsible for recommending it?***

We think the three categories model in paragraph 10.90 of the Issues Paper provides a good starting point. Any model would need to be able to keep pace with inflation. There would also need to be an ability to waive the charges if the agency determined this was appropriate in the circumstances.

Q68 ***Do you agree that the charging regime should also apply to political party requests for official information?***

Yes we do.

Q69 ***Do you agree that both the OIA and LGOIMA should set out the full***

- Q79 ***Do you agree that judicial review is an appropriate safeguard in relation to the Ombudsmen's recommendations and there is no need to introduce a statutory right of appeal to the Court?***  
Yes, we agree with the judicial review approach (if you recommend this approach).
- Q80 ***Do you agree that the public duty to comply with an Ombudsman's decision should be enforceable by the Solicitor-General?***  
No. We would not change this position.
- Q81 ***Do you agree that the complaints process for Part 3 and 4 official information should be aligned with the complaints process under Part 2?***  
Neutral.
- Q82 ***Do you agree that, rather than financial or penal sanctions, the Ombudsmen should have express statutory power to publicly draw attention to the conduct of an agency?***  
No. we do not think any new power is required. We note that effectively the Ombudsman does this already by publication of case notes.
- Q83 ***Should there be any further enforcement powers, such as exist in the United Kingdom?***  
No.
- Q84 ***Do you agree that the OIA should require each agency to publish on its website the information currently specified in section 20 of the OIA?***  
Neutral.
- Q85 ***Do you think there should be any further mandatory categories of information subject to a proactive disclosure requirement in the OIA or LGOIMA?***  
No. Local authorities are already required to disclose a large amount of information under section 40 ("local governance statements") of the Local Government Act 2002. There are also additional requirements in relation to policies and plans of Councils.
- Q86 ***Do you agree that the OIA and LGOIMA should require agencies to take all reasonably practicable steps to proactively release official information?***  
Again, no. This would place a large cost on local authorities, and we do not think that the benefits outweigh the costs. As noted above, local authorities already release a lot of information and we do not think there needs to be further statutory obligations to do so.
- Q87 ***Should such a requirement apply to all central and local agencies covered by the OI legislation?***  
No.
- Q88 ***What contingent provision should the legislation make in case the "reasonably practicable steps" provision proves inadequate? For example,***

***policy function, a review function, and a promotion function?***

We are happy for there to be a function relating to the provision of guidance and assistance but we do not think the other functions are required.

Q98 ***Do you agree that the Ombudsmen should continue to receive and investigate complaints under the OIA and the LGOIMA?***

Yes.

Q99 ***Do you agree that the Ombudsmen should be responsible for the provision of guidance and advice?***

Yes, but we think there needs to be a degree of separation between the persons who provide guidance and advice and the persons who adjudicate complaints.

Q100 ***What agency should be responsible for promoting awareness and understanding of the OIA and LGOIMA and arranging for programmes of education and training for agencies subject to the Acts?***

This could be the Ombudsmen but see our answer above.

Q101 ***What agency should be responsible for administrative oversight of the OIA and the LGOIMA? What should be included in the oversight functions?***

See our answer above.

Q102 ***Do you think an Information Commissioner Office should be established in New Zealand? If so, what should its functions be?***

An Information Commissioner Office could be established in New Zealand. However, in accordance with our answers above we see the role of the office as fairly limited.

Q103 ***If you think an Information Commissioner Office should be established, should it be standalone or be part of another agency?***

If such an office is established we think it should be a separate office.

Q104 ***Do you agree that the LGOIMA should be aligned with OIA in terms of who can make requests and the purpose of the legislation?***

We submit that these provisions should left as is. We do not think it is necessary for them to be the same.

Q105 ***Is the difference between the OIA and LGOIMA about the status of information held by contractors justified? Which version is to be preferred?***

Neutral.

Q106 ***Do you agree that the official information legislation should be redrafted and re-enacted.***

We would favour the LGOIMA being reorganised with the provisions relating to LIMS and meetings moved into the Local Government Act 2002.

Q107 ***Do you agree that the OIA and the LGOIMA should remain as separate Acts?***

Yes.

Q108 ***Do you have any comment on the interaction between the PRA and the OI legislation? Are any statutory amendments required in your view?***

Neutral.

Yours Faithfully

A handwritten signature in black ink, appearing to read 'Peter Mitchell'.

Peter Mitchell  
**General Manager Regulation and Democracy Services**  
**CHRISTCHURCH CITY COUNCIL**



15 February 2010

Law Commission  
P O Box 2590  
WELLINGTON

Dear Commissioners

**Review of the Official Information Act 1982 and the Local Government Official Information and Meetings Act 1987**

**Introduction**

The Christchurch City Council welcomes this opportunity to make a submission on the Local Government Official Information and Meetings Act 1987 (LGOIMA) review.

In your review document, you have set out a number of areas for discussion and we note that you have asked for indications of where problems lie and ideas for further exploration or reform rather than detailed submissions. The Council has followed your topic headings in this submission, and has provided information on its experience operating under the LGOIMA. The Council looks forward to being involved further in the review of this Act over the next few months.

The Council supports the comments made by *Local Government New Zealand* in its submission that freedom of information is vital if democracy is to work, and that citizens should have access to information. The Council strives to meet its obligations under the LGOIMA and it makes a conscious effort to release information if at all possible. However, at times, the Council faces various difficulties in complying with the Act and it is therefore very timely that you are now conducting this review. These difficulties are explained further below.

**1. Overview of the Act**

- 1.1 Given that every request for information is essentially a LGOIMA request, the Council deals with hundreds of requests for information on a daily basis. Often when the public request information they do not have a general understanding that they are making a request under the LGOIMA. Furthermore, when the public do make "official requests", invariably they will refer to the Official Information Act 1982 rather than the LGOIMA. While there is certainly a good understanding that official information "rules" apply to the Council, there is a lack of awareness about the LGOIMA as a whole.
- 1.2 Over the past 20 years, the Council has become very familiar with the sections of the LGOIMA and the Council has developed its own processes in order to comply with the Act. However, the wording of the LGOIMA could be improved if a more modern drafting style was adopted. For example, section 7 (other reasons for withholding information), one of the key sections of the Act, is a

long provision containing some complicated subsections and paragraphs. This provision would be easier to use if it was split into more sections and the wording simplified. While we have become accustomed to interpreting such phrases as “*would be likely unreasonably to prejudice...*”, there must be a simpler way of expressing these concepts.

## **2.0 Applying the Act**

### ***Case by case consideration***

- 2.1 The Council agrees that dealing with each request for official information on a case by case basis is the most appropriate approach. Every request is potentially different and the timing of each request is critical. The status of information will change over time. While the Council has developed some general processes for dealing with frequently recurring situations, generally all requests are treated on their own merits.
- 2.2 In dealing with the various requests, staff do consult the Ombudsmen’s Practice Guidelines and case notes. We discuss this further at paragraph 9.2 of this submission.

### ***Two-stage test***

- 2.3 You have drawn attention to the two-stage test that applies under section 7 of the LGOIMA. Once the Council has determined that a withholding ground under section 7(1) applies, it is then required to consider whether the interest in withholding the requested information is outweighed by the public interest favouring disclosure.
- 2.4 At times, it is difficult to apply the public interest balancing test. This is because of the uncertain nature of what constitutes the public interest and the weight which should be attributed to the public interest. Literally the public can be interested in every matter before the Council and it is then a question of weighing the extent of that public interest. In conducting the review, we suggest that the Commission consider whether it is necessary for the public interest balancing test to apply every time the Council applies a withholding ground under section 7.

## **3.0 Reasons for withholding information**

### ***Maintenance of the law***

- 3.1 The Council has no particular comments to make about section 6 of the LGOIMA except to say that it relies on this section from time to time, and in particular, section 6(a).

### **Good government**

- 3.2 Section 17(d) of LGOIMA provides an administrative reason for refusing a request in that the information requested is or will soon be publicly available. The Council has given this section particular consideration in relation to the release of drafts (for example draft reports on environmental planning matters).
- 3.3 For example, land developers or property owners may request draft reports in order to gain knowledge on infrastructure and related requirements in order to use that information to lobby Council and/or to use that information to their financial advantage and /or the financial disadvantage of others. In contrast, Council officers want to be able to report to the Council with a considered position without developers being able to lobby/make representations to councillors (except as part of the public consultation process).
- 3.4 However, whether or not the Council could rely on section 17(d) to justify withholding a draft report depends on the circumstances of each particular case. The types of considerations the Council would take into account are what stage of "draft" the requested information is at, how long it will be until the draft document is finalised, and if the document is intended to be made public, when it is finalised. We suggest that the Commission should give detailed consideration to whether or not there should be a specific ground for withholding draft papers.

### **Commercial interest**

- 3.5 Again, from time to time, the Council has relied on the commercial interest withholding provisions in the LGOIMA. The discussion document notes that these provisions are used relatively frequently and the interpretation of the Ombudsmen is fairly settled. We agree that the Ombudsmen have adopted a consistent approach to the use of these provisions. However, we query whether this has been the correct approach for local government.
- 3.6 The Ombudsmen use a relatively narrow definition of the term "commercial activities". As noted in their Guidelines, the Ombudsmen are of the view that in order to be "*commercial*", activities must be undertaken for the purpose of making a profit. The Council undertakes a number of commercial activities however, these are not necessarily undertaken for the purpose of making a profit. Put a different way, the Council takes a prudential view of the term "commercial" which reflects the principles in section 14(1)(f) and (g) and section 101(1) of the LGA 02. For example, the Council may be involved in the funding of events in the City because this in turn stimulates the wider business community and stimulates the economy.
- 3.7 This point illustrates a wider concern that the Council has about the interface between the LGOIMA and the LGA 02. Since the LGOIMA came into force in 1988, local authorities now operate under a new statute and must comply with a much broader range of provisions that require openness and transparency. Furthermore, the Minister of Local Government is embarking on additional reforms as part of his Local Government Transparency, Accountability and Financial Management Review. The Council submits that any changes to the LGOIMA should be viewed in light of this new legislative background.

## ***Privacy***

- 3.8 The Council agrees that there is tension between the LGOIMA and the Privacy Act 1993. At times, even experienced lawyers have difficulties in determining whether the LGOIMA applies or the Privacy Act applies. Furthermore, the Ombudsmen and the Privacy Commissioner do not necessarily agree as to which Act applies in a particular case.
- 3.9 For example, the Council may be prosecuting a dog owner for a breach of the Dog Control Act 1996 where a dog has attacked a person or an animal. The dog owner may request the name and contact details of the victim. On the one hand this can be viewed as a request for information about another person (ie the victim) so it could be refused on the ground of section 7(2)(a) of the LGOIMA. On the other hand, this can be viewed as a request for information about the dog owner because the dog owner wants to know who has complained about him or her. It is therefore personal information about the dog owner and potentially should be released under the Privacy Act 1993.
- 3.10 We ask you to give special consideration to the relationship between the two Acts. Both statutes could be clearer about these "overlaps".

## ***Processing difficulties***

- 3.11 Some information requests to the Council require substantial work to collate even though the Council makes wide use of its electronic systems. Often the information requested will not be stored electronically in a manner that is easily transferable to enable it to be provided to the requester. As you note, the retrieval and filing of electronic information poses a new range of issues for public sector agencies. It will often take a substantial effort on the part of staff to collate the information requested.
- 3.12 While the Council makes every effort to provide requested information, at times it is necessary to rely on section 17(f), 17A and 17B of the LGOIMA. In these circumstances, the Council adopts the practice of asking the requester to revise his or her request. If the requester does not wish to narrow down the request and still requires the information, he or she is advised that it will be necessary to extend the time frame for providing the information and that a charge will be payable for the information. Any charges are imposed in accordance with the Council's LGOIMA charging policy.
- 3.13 The Council has found that this approach has helped to narrow down requests. However, where information is held by the Council electronically, we question whether it should be the role of the Council to effectively re-sort that information in order to meet a request. We suggest that it should be sufficient compliance to provide the information as it is held, and it should be the responsibility of the requester to collate the information to their requirements.

## ***Withholding provisions in general***

- 3.14 The Council has considered the other withholding provisions, and makes some general comments about sections 7(2)(e) and 7(2)(j).

- 3.15 As far as staff recall, the Council has not had cause to rely on section 7(2)(e) (ie avoid prejudice to measures that prevent or mitigate material loss to members of the public). There is no Ombudsmen Guideline about this provision.
- 3.16 The Council considers that it is very difficult to rely on the ground in section 7(2)(j) (ie prevent the disclosure or use of official information for improper gain or improper advantage). Given that a requester is not required to disclose the purpose for which he or she has requested the information, it is extremely difficult to establish whether the information will be used for improper gain or improper advantage.
- 3.17 The Council also asks the Commission to consider whether there should be a new withholding ground added to protect any person from improper pressure or harassment. The current ground only applies to members, officers, employees of the Council and persons to whom section 2(5) of the LGOIMA applies. The Council has received requests for complainant information (for example information about the names of persons that have complained that another person may be breaching a Council bylaw). It is possible that the complainant information might be used to harass other persons (eg the complainant). If the public wish to make a complaint to the Council they need to feel that they will be "safe" in that their information will be treated in a confidential manner and they will not be subject to harassment from third parties. Under the LGOIMA this may not currently be the case.

#### **4.0 Scope of the Act**

- 4.1 We have no particular comments to make on the scope of the LGOIMA.

#### **5.0 Information Technology**

- 5.1 We agree that since the LGOIMA came into force on 1 March 1988, technological advances have transformed the format of information held by the Council and how that information is stored. With the use of email and other electronic communications, there is a much larger amount of information which can be the subject of a request. Even with sophisticated IT systems, it is very time consuming to locate all of the electronic information that may be needed to be provided to a requester. However, over the last few years, the Council has invested in a number of new information technology systems. For example, the Council has introduced a new electronic document management system to track and store electronic documents and images of paper documents.
- 5.2 However, as mentioned above, often the information requested will not be stored electronically in a manner that is easily transferable to enable it to be provided to the requester. Just because the Council holds the information electronically does not necessarily mean that it makes complying with the LGOIMA an easier task. In this respect we refer to our comments at paragraph 3.13.
- 5.3 You have queried whether the LGOIMA should include provisions to require or encourage pro-active publication of information by agencies. Again, this question raises the issue of the interface between the LGOIMA and the LGA 02.

- 5.4 Under the LGA 02, all local authorities must act in accordance with the principles set out in section 14(1). The first principle is that a local authority should conduct its business in an open, transparent, and democratically accountable manner. Following on from this principle there are a range of other provisions in the LGA 02 which encourage open and transparent decision-making. For example, Part 6 of the LGA which sets out the decision-making provisions as well as the requirements for local authority planning such as the long-term Council community plan (3 yearly), the annual plan (yearly except for the LTCCP year), and the annual report. We also draw to your attention the need for the Council to have a local governance statement under section 40 of the LGA 02. This is a small sample of what the Council is required to make publicly available.
- 5.6 These requirements will be further enhanced by the upcoming reforms to the LGA 02 as a part of the Local Government Transparency, Accountability, Financial Management reforms promoted by the Minister of Local Government Hon. Rodney Hide.
- 5.7 In light of these provisions and upcoming reforms, the Council questions whether further legislative amendments are required to encourage the proactive publication of information by agencies.
- 5.8 Furthermore, we also ask you to take into account the effect on individuals of making council information publicly available. Under section 83(1)(j) of the Local Government Act 2002, the Council, where it is conducting a special consultative procedure, must make all written submissions on the proposal available to the public subject to the LGOIMA. While we note that the Local Government Act 2002 is not part of this review, we make the point that the requirement to make submissions publicly available can deter persons from making submissions rather than encourage them to do so. The Council has received a number of complaints from individuals who do not like their submissions to be made publicly available.

## **6.0 Administrative Compliance**

- 6.1 We agree that there is a wide variation in how the 20 day rule is applied. In practice, the Council endeavours to comply with section 13 of the LGOIMA by deciding whether or not to make the information available and providing the information requested as soon as practicable (but in any case within the 20 working days). However, the Council is aware that other agencies interpret section 13(1) of the LGOIMA (and the equivalent provision in the Official Information Act 1982) as only requiring the agency to make a decision on the request within the 20 working day period and not necessarily providing the information within this period.
- 6.2 In terms of the 20 working day time period, sometimes the Council experiences difficulties in meeting this request and it will exercise its discretion to extend the time frame under section 14 of the LGOIMA.
- 6.3 Broadly speaking we do not have any great problems with the rules relating to timeframes. However, these provisions would benefit from plain English drafting.

- 6.3 From time to time, the Council will also exercise its discretion to charge for information requested, invariably where the requester has asked for a large amount of information and or where the information requested will require a substantial time to collate and research. As mentioned above, any charges are imposed in accordance with the Council's LGOIMA charging policy. However, by and large the bulk of the costs for complying with the LGOIMA is met by the ratepayer.

## **7.0 Administrative issues for officials**

### ***Workplace management***

- 7.1 The Council agrees that applying the LGOIMA requires balancing competing interests, which is a complex task. Requests for information are generally referred to the team or unit holding the requested information. However, if it appears that a withholding ground in the LGOIMA may be applicable, the request is then referred to the Legal Services Unit of the Council for legal staff to assess whether a ground applies and the balancing test is met.
- 7.2 In this respect, the Chief Executive pursuant to section 43(1) of LGOIMA has delegated to the Legal Services Manager the authority to decline requests wholly or partly. The Legal Services Unit spent 504 hours dealing with 98 separate LGOIMA requests in the calendar year to 31 December 2009. The time spent is approximately 1/3 of a full time solicitor's hours. The cost was \$53,380 and is 5% of the internal legal costs. This cost is directly ratepayer funded as there is no recovery of any of this costs<sup>1</sup> through fees charged in terms the recovery guidelines. This cost is possibly only a small fraction of the total cost of compliance with LGOIMA borne by the ratepayers as only contentious requests are referred to the Legal Services Unit.
- 7.3 The Legal Services Unit of the Council also runs training sessions for Council staff on the LGOIMA and the Privacy Act. The Society of Local Government Managers also runs a Legal Compliance Programme online which contains a toolkit module for LGOIMA. In addition the Local Government New Zealand and the Department of Internal Affairs have provided some training for elected members through the Knowhow Programme. However, we agree that that there could be additional central government support for training sessions on the LGOIMA. We also suggest that the Ombudsman's Guidelines could be simplified. We discuss this further at paragraph 9.2 below.

### ***Large requests and workload***

- 7.4 We refer to our comments above on dealing with requests for large amounts of information. Often the Council deals with numerous requests for information from the same small group of persons. The Council uses its best endeavours to comply with these requests. If the Council has received repeated requests from the same person for the same sort of information, it will rely on the ground in section 17(h) of the LGOIMA (ie that the request is frivolous or vexatious or that the information requested is trivial).

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<sup>1</sup> Costs incurred in determining whether or not a withholding ground is applicable.

## **8.0 Possible Sanctions**

- 8.1 The Council does not consider that any **additional** sanctions should be added to the LGOIMA. The Council considers that the current regime provides a sufficient deterrent to local authorities. However, we submit that it would be timely to review the sanction provisions to see whether they may improved. We question whether these provisions achieve the right balance.
- 8.3 Since the LGOIMA came into force the Council has only on one occasion considered whether or not it would comply with a recommendation of the Ombudsman. This occurred in 2009 and related to the release of the purchase price of the Ellerslie International Flower Show. The Council had withheld the purchase price relying on a number of grounds in section 7. Requesters complained to the Ombudsman and the Ombudsman was of the view that the purchase price should be released.
- 8.4 The Council gave full consideration to sections 30 to 35 of the LGOIMA, and it decided to comply with the Ombudsman's recommendation. In making this decision, the Council noted that if it resolved not to comply with the recommendation of the Ombudsman, the requesters could apply to the High Court for a review of the Council's decision on the ground that the decision was beyond the powers conferred by sections 32 and 33 or was otherwise wrong in law. However, whatever the outcome of those proceedings, the LGOIMA required the High Court to order that the costs of the applicant on a solicitor and client basis would be paid by the Council. The High Court could only exercise its discretion not to award costs against the Council if it was satisfied that an application brought under section 34(1) has not been reasonably or properly brought.
- 8.5 We appreciate that full consideration was given to these provisions when the LGOIMA was passed in 1987. However, in light of the review, we submit that the Commission should have another look at whether the balance between the parties is the correct balance.

## **9.0 Role of Ombudsmen**

- 9.1 The Council notes that the Ombudsmen fulfil a dual role in relation to the LGOIMA and the Official Information Act.
- 9.2 The Council uses the Ombudsmen's Guidelines to assist with the interpretation of the LGOIMA. However, it must be remembered that they are only guidelines and are not binding on public sector agencies. From time to time, the Council does not always agree with the Guidelines and it will adopt a different interpretation if it is justified and legally defensible. Staff have also expressed a concern that the Guidelines are of limited assistance because they are long and technical documents. The Guidelines would benefit from being rewritten and simplified. Specific examples or case studies would also be helpful.
- 9.3 However, this is where there can be a tension between the dual roles of the Ombudsmen. In responding to a complaint made to the Ombudsmen, it can be difficult for an agency to argue that a different interpretation of the LGOIMA to that expressed in the Guidelines applies. In reviewing the LGOIMA, the Council asks that consideration should be given to whether the Ombudsmen retain both roles of assisting with compliance with the LGOIMA (through the provision of



