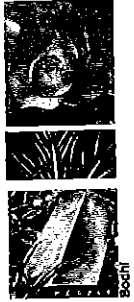


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15 February 2010

Sir Geoffrey Palmer  
President  
Law Commission  
PO Box 2590  
WELLINGTON

Dear Sir Geoffrey

RE: REVIEW OF THE LOCAL GOVERNMENT OFFICIAL INFORMATION  
AND MEETINGS ACT 1987

Thank you for providing the Kāpiti Coast District Council with the opportunity to comment on the Law Commission's review of the Official Information Act 1982 and the Local Government Official Information and Meetings Act 1987.

Please find attached Council's answers to each of your specific questions which provides an overview of our experiences with the interpretation and application of this legislation.

If you have any questions regarding our Submission please make contact with the submission author, Linda Guerin, Corporate Support Officer Corporate Planning & Reporting Team. Linda can be contacted on (04) 296-4838 (DDI) or via email on: [linda.guerin@kapiticoast.govt.nz](mailto:linda.guerin@kapiticoast.govt.nz)

Yours sincerely

Sharon Foss  
MANAGER, CORPORATE PLANNING & REPORTING

Attachment: Kāpiti Coast District Council Submission

## **Kāpiti Coast District Council response to the Law Commission review of the Local Government Official Information and Meetings Act 1987**

### **OVERVIEW OF THE ACT**

***1A Do you find the OIA and/or LGOIMA easy to read and understand?***

Yes, the parts of LGOIMA regarding information requests are written in a fairly simple and straightforward manner.

***1B What changes would make the Acts easier to follow?***

Possibly the sections in part one of LGOIMA could be shifted to run alongside section 17 and 18. This would allow for the withholding and refusal sections relating to the decision making process, in instances where we hold the information requested, to run alongside each other.

***1C Do you have any comment on the overall framework of either Act?***

As above.

***1D What advantages or disadvantages would there be in having the official information legislation for both local and central government in the same act?***

An advantage would be that it would be less confusing for the general public. While requests are managed regardless of how, or if, the person requesting the information refers to legislation, having the two official information acts and then the privacy act can make the process of requesting information seem unnecessarily complicated and possibly off-putting for the general public.

### **APPLYING THE ACT**

***2.1A What is your experience with the case-by-case approach?***

For the most part our requests all differ slightly. In some instances the application of the legislation may seem relatively straightforward until the information requested is gathered and it becomes apparent that disclosure may breach other responsibilities that we have. This means that case-by-case consideration is usually essential.

***2.1B How important is it for upholding the principals of the Act?***

This legislation promotes the provision of information held by our organisation. Without case-by-case consideration we would generally work on the basis of providing all information requested so long as we held the information required. This would most likely mean that there would be instances where we would fail to protect the rights of other parties and in some instances cause damage to the workings of our organisation. We therefore consider the case-by-case approach to be extremely important.

**2.1C *How helpful do you find the Case Notes and Guidelines of the Ombudsmen?***

Extremely helpful, especially in instances where we have unique situations and want to ensure that our approach correctly follows the legislative requirements.

**2.1D *Would you like more general guidance from the Ombudsmen on frequently recurring situations?***

Yes.

**2.2A *What is your experience with the two stage test?***

When considering requests we tend to consider that our job is to provide requested information unless there are strong grounds to withhold or refuse. Public interest can be difficult to determine as people requesting information are not obliged to explain why they are making the request. In many instances, when the information is about other parties or even Council negotiations, we are left to make a judgment call on how that particular piece of information could be of public interest.

**2.2B *How important is it for upholding the principles of the Act?***

Very important- just difficult to determine in some instances where on face value the particular information may not seem to have public interest relevance.

**2.2C *Have you any suggestions for improvement?***

In instances where we are unable to readily identify any public interest factors that we believe might override any reasons for withholding under section 7, the person making the request could be given an opportunity to outline why they believe disclosure is in the public's interest.

**REASONS FOR WITHHOLDING INFORMATION**

**3.1A *What is your experience with the section 6 conclusive grounds for withholding information?***

This is not a section that is relevant to the majority of our requests. We are only aware of one instance where Council has been required to apply this section.

**3.1B *What is your experience with the s6 maintenance of the law ground?***

We are not aware of any instances where Council has applied this section.

**3.1C *Should any of the grounds in s6 be subject to the public interest test?***

We don't believe so.

**3.1D *Should any other conclusive grounds be added to s6?***

Not that we are aware.

**3.1E *In what circumstances do you commonly apply the s6 maintenance of law ground?***

We have not had to apply this section.

**3.2A *What is your experience of the provisions that enable information to be withheld on the basis of enabling good government?***

In most instances we find that public interest overrides section 7(2)(f). However, there are instances where we will consider releasing the documentation but delete the names and identifying details of some parties. This provides protection to the individuals involved but still enables the relevant information to be released as in most instances it is the information itself that is of relevance to the individual who has made the request, not the names of people involved.

**3.2B *Have you any suggestions for improvement?***

More interpretation surrounding "will soon be publicly available" would be very useful.

**3.2C *Which of the "good government" grounds is most often relied on?***

We very rarely consider section 7(2)(f). Section 17(d) is used occasionally although as mentioned above, the term "will soon be publicly available" has caused some debate with us.

**3.2D *How is it decided whether the Agency or Minister makes decisions about the "good government" grounds?***

This question maybe more orientated towards central government. However, for your information our Chief Executive makes the final decision based on staff recommendations surrounding our legislative responsibilities. On occasions we will also seek legal advice regarding our stance. In some instances our Elected Members will be advised prior to, or at the same time as, the release of information.

**3.3A *What is your experience of the commercial interest withholding provisions and the way they are applied?***

These are provisions we consider regularly. We have had difficulties in situations where we need to balance the commercial interests of other parties against the public interest. The application of section 7(2)(c)(i) crops up fairly frequently in requests for information about complaints Council has received. In instances such as this we often find it possible to provide details of the complaint and actions taken but withhold any information that could identify other parties involved under section 7(2)(a). In general we find that the individual who has made the request is satisfied with this response.

**3.3B *Have you any suggestions for improvement?***

No

**3.4A *What is your experience of the privacy withholding provisions and the way they are applied?***

In general we find that we can withhold an individuals name etc from information requested which allows us to protect privacy but still release the bulk of the information requested. We generally do not find that public interest requires us to disclose details of individual parties. We do have occasions where requests from individuals includes personal information we hold about them as well as information regarding other parties. Such requests can require extra considerations, resources and time as we find the information being requested spans both the Privacy Act and LGOIMA.

**3.4B *What might improve the situation?***

We do not have problems with the privacy provisions within LGOIMA.

**3.5A *What is your experience of the provisions that enable information to be withheld because release would require substantial work?***

Prior to considering section 17(f) we do try and look at whether the information could be offered at a cost or whether it is possible to have the request refined in a manner that will make it easier and faster for us to provide a response.

**3.5B *How appropriate are they today?***

Although it is appropriate to attempt to refine the search and / or charge for the information, we consider there are instances where people will not refine their request and it may still be appropriate to decline on the basis of section 17(f). Information technology improvements do not always mean that retrieval of specific information is made easier.

**3.5C *Have you any suggestions for improvement?***

No

**3.6A Do you have comment about any other grounds for withholding information?**

We assume this question refers to refusal as well as withholding. Without seeking legal opinion it can be difficult to determine section 17(c)(i) as we are not always certain how LGOIMA's powers stand against other pieces of legislation.

**3.6B Should additional grounds for withholding information be added to those already provided for in the Acts?**

No

**3.6C Should any current grounds be removed, amended or clarified?**

No

**SCOPE OF THE ACT**

**4A Are there organisations covered by the OIA or LGOIMA that should be excluded?**

No

**4B Are there organisations not covered by the OIA or LGOIMA that should be included?**

Not that we are aware.

**4C What rationale should be applied to determine which organisations should be in the scope of OIA and LGOIMA?**

Publicly funded organisations (where the funding is a legal requirement) and organisations that provide essential services such as power companies.

**INFORMATION TECHNOLOGY**

**5A How is IT transforming information management and what will this mean for the OIA and LGOIMA?**

Some requests are much easier to compile due to the availability of electronic records. More information is now publicly available as information is posted on websites. But some organisations will be more technically advanced than others which will mean that an organisations ability to efficiently process requests will depend on that organisation's record system. It must also be remembered that as information requests are so varied, often manual searches are still required as the type of information request is sometimes not stored in a manner the can be searched and recovered by electronic means alone.

**5B** *What changes to the OIA and LGOIMA would encourage better use of the efficiencies and advantages available through IT?*

Currently we can often search for the information electronically but it may come from several sources and is not collated in a manner requested. We can provide the information in the manner we have retrieved it but it can be difficult to determine whether we should be advising under section 17(f) that to provide in the manner requested would take substantial collation, Section 17(e) – the document requested does not exist (as we do not hold that information in the format they are requesting), or, advise that for us to format the information in the manner they require (as it is information we hold) a charge will be applied. Maybe this could be incorporated in section 15 to allow us to provide the information requested as retrieved but not formatted in the manner requested without having to document a refusal but simply state that the information they have requested is incorporated into the information that we are providing.

**5C** *Should the OIA and LGOIMA include provisions to require or encourage proactive publication of information by agencies?*

LGOIMA already achieves this to a certain extent with regard to the sections requiring agendas, reports and minutes to be made publicly available. Any further legislative requirements regarding the publication of information would seem difficult to define as different organisations hold different types of information. It also seems that in most instances organisations will be doing this independently without the need for legislation as making information publicly available limits the drain on staff resources in managing information requests.

## **ADMINISTRATION COMPLIANCE**

**6.1 – 6.4 A** *What problems do you experience with timeframes, transfer of requests and charging?*

Timeframes can be difficult for us to manage when we find that the response to a request is more complicated than first anticipated. This is an internal problem we need to manage more efficiently. It must also be considered that while the timeframes are generally manageable, in some instances they do take staff away from other important core business tasks that also have tight timeframes.

Transfers have not caused us any difficulties to date.

We do find charging for our requests can at times be difficult to manage as within a very short time span we need to go out to the staff that manage the area of the request and have them estimate the time and materials that will be involved in providing a response (we often find that responses are more time consuming than expected). We then need to go back to the person who has made the request advising of the estimate

and seeking their agreement to pay before we proceed with the response. This process can be time consuming.

**6.1 – 6.4B What other problems do you find with the administration of the Acts?**

Our numbers of LGOIMA requests continue to rise on a yearly basis, as noted below.

Financial Year 1 July to 30 June	2008/09	07/08	06/07	05/06	04/05	03/04	02/03
OIA requests	95	75	61	54	40	29	29

The requests received during the 2008/09 financial year mainly consist of organisations seeking information for research purposes, journalists researching stories and articles, recurring requests from individuals with personal issues they seek to address regarding Council decisions. There are also requests from lawyers or individuals disputing Council decisions. The breakdown for 2008/09 is:

2008/09	Political Parties	Media	Lawyers	Organisations	Government Departments	Universities	Individuals
OIA requests	3	13	6	10	3	2	58

We do not charge for the first two hours of time and this amount of work alone for each request is quite a large cost to the ratepayers. Work required to provide responses takes staff away from our core business and while we agree with the importance of transparency, it can be frustrating to move staff from carrying out important core business to answering an information request to ensure we meet the legislative timeframes.

We also receive general overarching requests which appear to be reporters fishing for a potential story often just before Christmas. These requests appear to be sent to all Council's and can be very time consuming – in some instances we can get three separate requests from one reporter and often at the same time have other reporters from the same newspapers also making requests looking for possible stories. Alongside this we can also have members of our community making requests about the same or similar issues. Even though these requests often have a very similar response (or in some instances a response advising that their request was considered to be frivolous or vexatious) the administration of these requests is still time consuming and costly.



**6.1 – 6.4C** *What measures might alleviate the problems you experience?*

Relax the current timeframes. People do have the opportunity to request information under urgency if they need to receive the information by a set date and we always work hard to try and meet these timeframes for people. By relaxing the current timeframes it would give staff an opportunity to work the time required for a response into their normal work schedule but would still address the needs of people who require the information more urgently. We currently attempt to send out all responses as quickly as possible within 20 working days and a more relaxed timeframe would only be required in times where staff have important core work to be completed.

In instances where requests are broad and unclear it would be helpful if we could ask the person requesting the information why they are making the request as their grounds may often help us understand what it is they are wanting.

**ADMINISTRATION ISSUES FOR OFFICIALS**

**7.1A** *What procedures are in place to ensure administrative compliance with timeframes, transfers and charges?*

We run a register that tracks requests and ensures that responses are back from staff within the required timeframes. Determination of transfers and the need to charge is made upon receipt of the request and noted in the register. One problem we do have is that in some instances staff may not initially recognise a LGOIMA request and this can mean our process is delayed.

**7.1B** *How well are the OIA and LGOIMA understood by officials responding to requests.*

Our requests are managed by two staff in the Corporate Planning and Reporting Team. They are registered and sent to the appropriate work group holding the information for responses to be drafted. Draft responses are prepared by staff within that work group, cleared by their Group Manager and then reviewed by the two Corporate Planning and Reporting Team members. These staff members have a good understanding of the legislation and also have legal support available if required. This internal quality assurance process then sees the final draft cleared by the Group Manager of the two Corporate Planning and Reporting Team members before it is forwarded to the Chief Executive for signing. Centralising the circulation of the requests allows for close monitoring of timeliness and achievement of statutory deadlines.

**7.1C** *What support and training do officials receive and what might improve skills?*

Staff managing our LGOIMA requests are provided with on the job training with the opportunity of attending training courses run locally from time to time. The Ombudsmen case notes and guidelines are used as required with the availability of

legal support if required. Our LGOIMA staff provide other staff members with information regarding legislative requirements.

**7.2A *What is the impact of OIA and LGOIMA inquiries on your other work?***

As mentioned above, information requests can have a big impact on staff work load.

**7.2B *How do you deal with wide-ranging "fishing" requests?***

As already noted in the response to question 6.1 – 6.4B, these certainly have the potential to be time consuming. While we have recently started to apply charges to requests that take a lot of time to answer, we find that many of these requests fall below our charging level as they are small requests but made frequently by some people. That aside they are usually legitimate requests in respect of the provisions of LGOIMA and are processed accordingly. It can be frustrating to see the "final results" appearing in a story featuring comparative data against other council's when we know that the responses have been prepared using data collected under different parameters.

**7.2C *Have you any suggestions for improving the situation?***

No.

**7.3A & B**

N/A

**POSSIBLE SANCTIONS**

**8A *Should sanctions be imposed for any breach of these Act?***

No, we carefully consider the legislation with each request we receive balancing the public's interest in having the information made publicly available against other issues such as the need to protect the privacy of other parties. Any breaches that may occur are not intentional. Imposing sanctions would be an unreasonable cost to our ratepayers.

**8B *If so, what sort of breaches, and what sort of sanctions?***

We do not consider that sanctions should be applied.

## **ROLE OF OMBUDSMEN**

**9A** *What is your view about the dual functions of the Ombudsmen?*

The Ombudsmen's role is useful, the investigating officers thorough and the website information is extremely helpful.

**9B** *Should the Ombudsmen continue to investigate OIA and LGOIMA complaints?*

Yes, they provide a useful service to review our interpretation and application of the legislation in instances where people are dissatisfied with the response we have provided.

**9C** *Should the Ombudsmen provide guidance and assistance with training?*

Yes, that would be helpful.

**9D** *Is a single review mechanism sufficient?*

Yes, it seems sufficient in this instance.

## **GENERAL**

**10** *Are there any other aspects of OIA or LGOIMA you wish to comment on?*

No.