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10 December 2010

Mr John Burrows  
Law Commissioner  
PO Box 2590  
WELLINGTON

Dear Mr Burrows

**RE: REVIEW OF OFFICIAL INFORMATION LEGISLATION**

Thank you for providing the Kāpiti Coast District Council with the opportunity to consider the Issues Paper, *The Public's Right to Know: Review of the Official Information 1982 and Parts 1-6 of the Local Government Official Information and Meetings Act 1987*, and provide our further comments on the questions that this paper has raised.

Please find attached Council's answers to each of your specific questions regarding the areas of reform currently being considered.

If you have any questions regarding our submission please contact Linda Guerin, Corporate Support Officer, Corporate Planning and Reporting Team, on (04) 296-4838 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

delivering on the community's plan

**KĀPITI COAST DISTRICT COUNCIL'S RESPONSE TO THE LAW  
COMMISSION'S ISSUES PAPER QUESTIONS**

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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**

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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**

Q5 Do you agree that the Parliamentary Counsel Office should be brought within the scope of the OIA? **Yes**

Q6 Do you agree that the OIA should specify what information relating to the operation of the Courts is covered by the Act? **Yes**

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Q7 Should any further categories of information be expressly excluded from the OIA and the LGOIMA? **Not that we are aware of.**

Q8 Do you agree that the OIA and the LGOIMA should continue to be based on a case-by-case model? **Yes**

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Q9 Do you agree that more clarity and more certainty about the official information withholding grounds can be gained through enhanced guidance rather than through prescriptive rules, redrafting the grounds or prescribing what information should be released in regulations? **Yes, assuming that the guidance comes from the Office of the Ombudsmen and is therefore recognised to be 'best practice'.**

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**Q10** Do you agree there should be a compilation, analysis of, and commentary on, the casenotes of the Ombudsmen? **Yes**

**Q11** Do you agree there should be greater access to, and reliance on, the casenotes as precedents? **Yes**

**Q12** Do you agree there should be a reformulation of the guidelines with greater use of case examples? **Yes**

**Q13** Do you agree there should be a dedicated and accessible official information website? **Yes**

**Q14** Do you agree that the “good government” withholding grounds should be redrafted? **Yes**

**Q15** What are your views on the proposed reformulated provisions relating to the “good government” grounds? **Proposed provisions seem reasonable.**

**Q16** Do you think the commercial withholding ground should continue to be confined to situations where the purpose is to make a profit? **Believe there would be value in broadening this to include non-profit organisations.**

**Q17** If you favour a broader interpretation, should there be a statutory amendment to clarify when the commercial withholding ground applies? **We would support something like the Ontario freedom of information legislation’s definition of commercial information.**

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

**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?  
**Yes**

Q20 Do you have any comment on the application of the OIA to research work, particularly that commissioned by third parties? **No comment.**

Q21 Do you think the public interest factors relevant to disclosure of commercial information should be included in guidelines or in the legislation? **Believe that guidelines would be preferable.**

Q22 Do you experience any other problems with the commercial withholding grounds? **It can be difficult for other parties to understand our need to balance public interest against their belief that the information relevant to them is commercially sensitive and therefore should be withheld.**

Q23 Which option do you support for improving the privacy withholding ground:

Option 1 – guidance only, or; - **Yes**

Option 2 – an “unreasonable disclosure of information” amendment while retaining the public interest balancing test, or;

Option 3 – an amendment to align with principle 11 of the Privacy Act 1993 while retaining the public interest test, or;

Option 4 – any other solutions?

Q24 Do you think there should be amendments to the Acts in relation to the privacy interests of:

(a) deceased persons? **No**

(b) children? **No**

**Q25 Do you have any views on public sector agencies using the OIA to gather information about individuals? Do not agree with the legislation being used in this manner.**

**Q26 Do you agree that no withholding grounds should be moved between the conclusive and non-conclusive withholding provisions in either the OIA or LGOIMA? Yes**

**Q27 Do you think there should be new withholding grounds to cover:**

**(a) harassment; No**

**(b) the protection of cultural values; We believe there could be some value in considering this**

**(c) anything else? No**

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

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

**Q30 Do you have any comments on, or suggestions about, the “maintenance of law” conclusive withholding ground? No**

**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**

**Q32 Can you suggest any statutory amendment which would clarify what “public interest” means and how it should be applied? No – but improved guidelines and examples would help.**

**Q33 Do you think the public interest test should be contained in a distinct and separate provision? Do not believe this is necessary.**

~~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? No – guidelines should be enough to help agencies work through this process.~~

Q35 Do you agree that the phrase “due particularity” should be redrafted in more detail to make it clearer? **Yes**

Q36 Do you agree that agencies should be required to consult with requesters in the case of requests for large amounts of information? **No, in some instances with some requesters this would not be a reasonable requirement.**

Q37 Do you agree the Acts should clarify that the 20 working day limit for requests delayed by lack of particularity should start when the request has been accepted? **Yes**

Q38 Do you agree that substantial time spent in “review” and “assessment” of material should be taken into account in assessing whether material can be released, and that the Acts should be amended to make that clear? **Yes**

Q39 Do you agree that “substantial” should be defined with reference to the size and resources of the agency considering the request? **Yes**

Q40 Do you have any other ideas about reasonable ways to deal with requests that require a substantial amount of time to process? **No**

Q41 Do you agree it should be clarified that the past conduct of a requester can be taken into account in assessing whether a request is vexatious? **Yes**

Q42 Do you agree that the term “vexatious” needs to be defined in the Acts to include the element of bad faith? **Some requesters make a string of continuous and similar requests because they either refuse to believe the answer or are cognitively unable to understand. It could not be said that their requests are in ‘bad faith’ but they certainly are troublesome and annoying.**

Q43 Do you agree that an agency should be able to decline a request for ~~information if the same or substantially the same information has been~~ provided, or refused, to that requester in the past? **Yes**

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 – but not sure of the best way to do this. In the past we have notified the Ombudsman regarding difficulties we were having with a particular requester.**

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? **Do not believe that a request can be considered to be made in good faith if the requester is not prepared to put their name to the request. While we agree that requesters should not be required to state the purpose for which they are requesting the information, it would be useful if this was an option to go back to them about if we are unable to see how public interest could outweigh a reason to withhold.**

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? **We would not have thought it was necessary to state this in the legislation.**

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**

- Q50 Do you agree that, as at present, there should be no statutory requirement to acknowledge receipt of an official information request but this should be encouraged as best practice? **Yes, agree that this should be encouraged as best practice.**
- Q51 Do you agree that 'complexity of the material being sought' should be a ground for extending the response time limit? **Yes**
- Q52 Do you agree there is no need for an express power to extend the response time limit by agreement? **Yes**
- Q53 Do you agree the maximum extension time should continue to be flexible without a specific time limit set out in statute? **Yes**
- Q54 Do you agree that handling urgent requests should continue to be dealt with by Ombudsmen guidelines and there is no need for further statutory provision? **Yes**
- Q55 Do you agree there should be clearer guidelines about consultation with ministerial offices? **This is not applicable to us.**
- Q56 Do you agree there should not be any mandatory requirement to consult with third parties? **Yes**
- Q57 Do you agree there should be a requirement to give prior notice of release where there are significant third party interests at stake? **Yes**
- Q58 How long do you think the notice to third parties should be? **Needs to be long enough to allow them to put forward a case if they disagree with the decision.**
- Q59 Do you agree there should be provision in the legislation to allow for partial transfers? **Yes**
- Q60 Do you agree there is no need for further statutory provision about transfer to Ministers? **Yes**



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

~~No~~

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

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

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

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? **No**

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

Q67 Do you have any comment as to what the framework should be and who should be responsible for recommending it? **No**

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

Q69 Do you agree that both the OIA and LGOIMA should set out the full procedures followed by the Ombudsmen in reviewing complaints? **Yes**

Q70 Do you think the Acts provide sufficiently at present for failure by agencies to respond appropriately to urgent requests? **Yes**

Q71 Do you agree with the existing situation where a person affected by the release of their information under the OIA or the LGOIMA cannot complain to the Ombudsman? **Yes**

Q72 Do you agree there should be grounds to complain to the Ombudsmen if ~~sufficient notice of release is not given to third parties when their interests are~~ at stake? **Yes**

Q73 Do you agree that a transfer complaint ground should be added to the OIA and the LGOIMA? **Yes**

Q74 Do you think there should be any changes to the processes the Ombudsmen's follows in investigating complaints? **No**

Q75 Do you agree that the Ombudsmen should be given a final power of decision when determining an official information request? **No – believe that agencies give the Ombudsmen's decisions enough weighting that veto power would only ever be considered in extreme circumstances.**

Q76 Do you agree that the veto power exercisable by Order in Council through the Cabinet in the OIA should be removed? **N/A**

Q77 Do you agree that the veto power exercisable by a local authority in the LGOIMA should be removed? **No**

Q78 If you believe the veto power should be retained for the OIA and LGOIMA, do you have any comment or suggestions about its operation? **No, we have not been in a position to require this process to date.**

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? **If it is decided that changes should be made to give the Ombudsmen final power of decision then would support this option.**

Q80 Do you agree that the public duty to comply with an Ombudsman's decision should be enforceable by the Solicitor -General? **We would agree if it is determined that changes should be made to the Ombudsmen's decision making power.**

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? **Yes**

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? **Yes**

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? **N/A**

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 – believe that additional information is already being made available without the need for further legislation.**

Q86 Do you agree that the OIA and LGOIMA should require agencies to take all reasonably practicable steps to proactively release official information? **No**

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, should there be a statutory review or regulation making powers relating to proactive release of information? **We have no suggestions regarding this.**

Q89 Do you think agencies should be required to have explicit publication schemes for the information they hold, as in other jurisdictions? **No**

**Q90 Do you agree that disclosure logs should not be mandatory? Yes – although there could be value to individual agencies in keeping such a log.**

**Q91 Do you agree that section 48 of the OIA and section 41 of the LGOIMA which protect agencies from court proceedings should not apply to proactive release? No**

**Q92 Do you agree that the OIA and the LGOIMA should expressly include a function of providing advice and guidance to agencies and requesters? Yes**

**Q93 Do you agree that the OIA and the LGOIMA should include a function of promoting awareness and understanding and encouraging education and training? Yes**

**Q94 Do you agree that an oversight agency should be required to monitor the operation of the OIA and LGOIMA, collect statistics on use, and report findings to Parliament annually? Yes**

**Q95 Do you agree that agencies should be required to submit statistics relating to official information requests to the oversight body so as to facilitate this monitoring function? Yes**

**Q96 Do you agree that an explicit audit function does not need to be included in the OIA or the LGOIMA? Yes**

**Q97 Do you agree that the OIA and the LGOIMA should expressly enact an oversight function which includes monitoring the operation of the Acts, a policy function, a review function, and a promotion function? Yes**

**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**

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? **Possibly the Office of the Ombudsmen.**

Q101 What agency should be responsible for administrative oversight of the OIA and the LGOIMA? What should be included in the oversight functions? **Not sure which agency would be best to undertake this area but they would need to carry out all functions not undertaken by the Ombudsmen.**

Q102 Do you think an Information Commissioner Office should be established in New Zealand? If so, what should its functions be? **Would be helpful to have just one office overseeing OIA and LGOIMA but would depend on the cost of setting up such an office.**

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

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? **Yes**

Q105 Is the difference between the OIA and LGOIMA about the status of information held by contractors justified? Which version is to be preferred? **Not sure that the difference is justified. LGOIMA is preferred.**

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

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

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**Q108 Do you have any comment on the interaction between the PRA and the OI  
legislation? Are any statutory amendments required in your view? No**