

9 December 2010



**BY EMAIL AND POST**

Official Information Legislation Review  
Law Commission  
PO Box 2590  
WELLINGTON  
6140

officialinfo@lawcom.govt.nz

Dear Sir/Madam

**SUBMISSION ON THE OFFICIAL INFORMATION LEGISLATION REVIEW**

Please accept this submission sent on behalf of Tauranga City Council in response to the Law Commission's Issues Paper 18 entitled *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*. Our answers to the questions in the paper only relate to the Local Government Official Information and Meetings Act 1987 ("LGOIMA"). We have indicated if a question is not applicable to LGOIMA and/or our organisation.

1. In our view, individual Council Controlled Organisations should not be listed in the Schedule because they are established and disestablished frequently and with irregularity. If they were to be listed, the Schedule would soon become out-of-date. This may result in more confusion. A generic reference in the Schedule to Council Controlled Organisations as a class would be preferable, for example: "Any Council Controlled Organisation formed by a local authority within the meaning of the Local Government Act 2002".
2. Yes. However, as specified in question 1, it would be preferable to define Council Controlled Organisations as a class rather than listing the individual organisations.
3. N/A
4. Yes. Ratepayer funds are often used to establish CCOs and the Council may provide some assistance and/or support to the organisation (such as administrative support, Council staff time, or secondments of Council staff to the organisation). As such, in our view, it would be appropriate for a CCO's operations to be open and transparent. The LGOIMA withholding grounds should be sufficient for most instances where the CCO may have a good reason for withholding information requested (such as commercial negotiations). A problem to note is that many CCOs will require advice or support from their controlling Council on how to ensure compliance with LGOIMA. Training to CCO management and staff and processes for dealing with official information requests may be lacking. However, this issue of potential non-compliance is not a reason to exclude CCOs from the ambit of LGOIMA.
5. N/A

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for harassment would be useful to protect officers in work situations from persons who may be mentally unstable or who have a personal vendetta against certain staff members.

(b) No

(c) No

28. Yes

29. Yes. We agree with the wording proposed in paragraph 7.36.

30. No – not if the ground proposed in question 29 is enacted. If it is not, then the “maintenance of the law” phrase could be further clarified or defined or guidelines provided.

31. Yes – agree.

32. No

33. Yes

34. No. This will increase the likelihood of challenge/complaints and add to compliance costs.

35. Yes

36. Yes

37. Yes

38. Yes

39. Yes

40. The Australian Freedom of Information Act 1982 provision referred to in paragraph 9.29 appears reasonable.

41. Yes

42. No

43. Yes

44. Yes – as suggested in paragraph 9.37.

45. We agree in respect of not requiring the requester to state their purpose. However, we suggest a possible amendment to LGOIMA or guidelines clarifying that in discussing with the requester the refining of a request, the agency may ask the requester’s purpose in making the request but that the requester is not obliged to specify what that is. In our view, a requester should be required to provide their real name if requested. However, we note the difficulties raised in paragraph 9.43 relating to enforcement.

46. Yes. We agree with the wording suggested in paragraph 9.46.

47. Yes

48. Yes

49. Yes
50. Yes
51. Yes
52. Yes. If a requester has agreed to an extension, she/he is highly unlikely to be so unreasonable as to then complain to the Ombudsman. However, we note that we have no objection to this matter being clarified in the relevant LGOIMA provision.
53. Yes
54. No. We agree with the Commission's view expressed in paragraph 10.26 and are of the view that LGOIMA provisions should clarify this matter accordingly.
55. N/A
56. Yes
57. Yes
58. 5 working days
59. Yes
60. N/A
61. N/A
62. Yes
63. Yes.
64. If an electronic copy is readily available and offered and the requester refuses to receive the information in that form, then, in our view, it would be reasonable to require the requester to pay the agency's costs in producing hardcopies.
65. The current provisions are sufficient. Any additional provisions or requirements (such as the statement suggested in paragraph 10.69) will only add to compliance costs and timeframes.
66. Yes.
67. A maximum hourly rate charged for the time spent in researching, collating, copying etc. There should also be some mechanism within the charging regime for the costs spent in assessing the information to determine if any of the withholding grounds are applicable. However, we recognise that this may result in a requester being required to pay a charge in respect of information that she or he is not provided with. While the suggested amendment permitting an agency to refuse a request if processing the request will involve substantial collation, research and assessment, this does not assist in the situation where the requester agrees to pay for the collation and research but where the agency is not permitted to charge in respect of the assessment portion of processing the request (which is usually the most time-consuming). Perhaps requesters could be required to pay a flat fee relating to assessment where the assessment of the information will take more than a certain number of hours (such as more than 4 hours of staff time).

68. N/A

69. Yes

70. Yes. However, we have no objection to this matter being clarified for the avoidance of doubt in the legislation.

71. Yes

72. Yes – in the case where the third party has a significant interest. However, we note the difficulty in defining what a “significant interest” is. A third party may subjectively view their interest as being significant whereas an objective person acting reasonably may think that third party’s interest is insignificant. This requirement may result in unsubstantiated complaints being made to the Ombudsman by third parties.

73. Yes

74. No

75. Yes because we are particularly concerned that a local authority may be required to meet a requester’s costs to have the local authority’s decision to veto the Ombudsman’s recommendation reviewed by the High Court (as was referred to in paragraph 11.15). If the power of veto was removed, local authorities would still have the right to apply to have the Ombudsman’s decision judicially reviewed.

76. N/A

77. Yes

78. N/A

79. Yes

80. Yes

81. Yes

82. Yes

83. No

84. N/A

85. No. We agree with the comment made in paragraph 12.56.

86. No

87. No

88. No

89. No

90. Yes



91. Yes. An agency should consider the legal and other consequences of voluntarily publishing certain information prior to its publication. However, in our view, an agency should be protected from liability in respect of publishing information it is legally required to publish (unless the particular document in question is required to meet legally prescribed levels of accuracy, such as audited financial accounts).

92. Yes

93. Yes

94. No

95. No. This will add to compliance costs.

96. Yes

97. Yes

98. Yes

99. Yes

100. LGOIMA – Department of Internal Affairs.

101. LGOIMA – Department of Internal Affairs.

102. No

103. N/A

104. Yes

105. No – the difference is not justified. The LGOIMA version should be preferred. We note that the word “access” to certain information could be interpreted to include the situation where the agency has a contractual right to require the contractor to provide information to the agency.

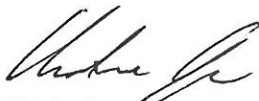
106. Yes

107. Yes

108. In our view, statutory amendments to the Public Records Act and LGOIMA in respect of the interrelationship between those two Acts, are unnecessary at this stage.

Thank you for the opportunity to provide comment. Please direct any further opportunities for comment or clarification to Cindy Gillman-Bate (Corporate Solicitor) in the first instance.

Yours sincerely



**Christine Jones**  
**ACTING CHIEF EXECUTIVE**



**Cindy Gillman-Bate**  
**CORPORATE SOLICITOR**  
**BUSINESS SERVICES GROUP**