

6 December 2010

BY EMAIL AND POST

Official Information Legislation Review
Law Commission
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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 If they were to be listed, the Schedule would soon become out-of-date.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 "Any Council Controlled Organisation formed by a local authority listed in this Schedule" would be preferable.
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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6. N/A
7. No. The withholding grounds appear to be sufficient. Although exclusion of informal information is appealing, we agree that it would be too difficult and/or time consuming to read through and "cull" all information not relevant to the decision to which the information request relates.
8. Yes
9. Yes
10. Yes
11. Yes
12. Yes
13. Yes
14. Yes
15. We assume that only sub-paragraphs (iv) and (vi) apply to LGOIMA. We agree with the inclusion of "advice".
16. No. The ground should be extended in a similar way to Ontario (as specified in paragraph 5.27).
17. Yes. A definition of "commercial" may assist.
18. No. Precedents/guidance should be able to assist sufficiently.
19. Yes
20. It should not apply to research work commissioned by third parties. This will enable research entities owned/operated by central or local government organisations to compete on a level playing field with other commercial research organisations.
21. Guidelines
22. No
23. Option 3.
24. (a) No (b) No
25. It should not be allowed. They should be required to use the information matching principles in the Privacy Act. Information collected by one agency for one purpose should not be accessible by another agency for a different purpose.
26. Yes
27. (a) Yes. There may be uncertainty and inconsistency of approach in using the privacy ground for such a situation because it is arguable that an officer acting in his or her official capacity at work does not have a right to privacy in that situation. So a separate ground 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. Yes. However, we suggest a possible amendment to LGOIMA 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.

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 she or he is not provided. 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

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 are unnecessary at this stage.

Yours sincerely

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ACTING CHIEF EXECUTIVE

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