

## 12. Official information

This section will outline what defines a strategic asset, along with ownership, management and consultation requirements.

### 12.1 Council-held information

#### a. What is official information?

Official information includes material held in any format, such as:

- written documents, reports, memoranda, letters, notes and emails (n.b. this includes draft documents and hand written notes)
- non-written documentary information, such as material stored on or generated by computers, including databases, video or tape recordings
- information known to an agency but not yet recorded, in writing or otherwise (including knowledge of a particular matter held by an officer, employee or member of an agency in his/her official capacity)
- documents and manuals setting out decision-making policies, principles, rules or guidelines.

#### b. Applying the LGOIMA

The council must hold the information for the LGOIMA to apply. It does not matter where it originated or where it is currently located, as long as it is held by the council. For example, a third party may have created the information and sent it to the council, or it may be held in an employee's memory.

The LGOIMA applies to information already held. Therefore, the council is not obliged to form an opinion or create new information in order to answer a request; however it can create new information if it chooses to.

Information held by elected members, officers and employees in their official, rather than personal, capacities is deemed to be held by the council.[1] However, information held in a personal capacity can become official information if it is used subsequently for official purposes. Auckland Council may contract private individuals, companies or other organisations to carry out work on its behalf. Similarly, information held by these individuals is also deemed to be held by the council if it is held in an official capacity. [2]

### 12.2 Overview of the LGOIMA

#### a. Purpose

The key purposes of the Local Government Official Information and Meetings Act 1987 are to:

progressively increase the availability of official information held by agencies, and promote the open and public transaction of business at meetings to enable more effective public participation in decision-making, as well as promote the accountability of members and officials

protect official information and the deliberations of local authorities to the extent consistent with the public interest and the preservation of personal privacy and protecting it where necessary.[1]

#### **b. Information requests**

Any individual or group [2] may make a request for official information. This can be made to anyone in the council and does not need to refer to the LGOIMA. The LGOIMA contains rules for handling requests and provides a right to complain to the Ombudsman in certain situations.

#### **c. The principle of availability**

A fundamental principle is that official information should be made available unless one or more of the grounds for withholding (which are listed in LGOIMA) applies[3]. This is the 'principle of availability' and should always be kept in mind when considering how best to respond to a request.

#### **d. Meetings**

The LGOIMA also contains provisions dedicated to the conduct of council meetings. With some exceptions, Part 7 requires that:

meetings are publicly notified

agendas, reports and minutes are publicly available

meetings are open to the public unless there is good reason for excluding them.

Members of the public can ask the ombudsman to investigate if dissatisfied with the council's conduct of meetings.

### **12.3 Privacy Act**

The Privacy Act 1993 controls how agencies collect, use, disclose, store and give access to information which may lead to an individual's identification, such as names, birth dates, addresses, financial data and employment details. It does not include company or organisational information.

#### **a. Purpose**

The Privacy Act's aim is to promote and protect individual privacy. The focus is on purpose, not consent. When the council collects information, it must make it very clear why it is collecting their information and what it intends to do with it. Because the council only has to make individuals aware of what it will do with their information, it does not require their consent.

#### **b. Privacy principles**

At the heart of the Privacy Act are 12 principles:

Principle	Summary
<b>Principle 1</b> – purpose for collection	Collect information only when needed for a lawful purpose
<b>Principle 2</b> – source of information	Obtain the information directly from the person concerned if possible
<b>Principle 3</b> – what to tell an individual	Tell the person what you are doing (what is being collected, why, the recipients and the agency that holds it)
<b>Principle 4</b> – manner of collection	Do not use unfair or unreasonably intrusive means of collecting the information
<b>Principle 5</b> – storage and security	Ensure the information is stored securely against loss, unauthorised access and misuse
<b>Principle 6</b> – access	The person can ask to see the information
<b>Principle 7</b> – correction	The person can ask to correct his/her information
<b>Principle 8</b> – accuracy	Make sure the information is accurate before you use (process) it

<b>Principle 9 – retention</b>	Dispose of the information once you have finished with it
<b>Principle 10 – use</b>	Use the information only for the purpose for which it was obtained
<b>Principle 11 – disclosure</b>	Disclose the information only if this was the reason for obtaining it
<b>Principle 12 – unique identifiers</b>	Use unique identifiers in place of a person's name only where necessary

These principles reflect internationally-accepted standards for handling personal information

**a. Access requests**

Under Principle 6, individuals are entitled to know if the council holds information on them and access it if it is readily retrievable. Information is not limited to written documentation but can extend to information that is known by staff.

However, the right to access personal information is not absolute and the council is permitted to withhold it in certain circumstances. Grounds for withholding information are set out in sections 27-29 of the Privacy Act.

Requests for access to personal information are managed by the Privacy and LGOIMA team in the Democracy Services department. The council cannot charge for requests to access personal information.

**b. Privacy Programme**

A privacy programme was initiated in 2016 to improve Auckland Council's compliance under the Privacy Act 1993. The programme aims to raise awareness and educate staff about the council's privacy obligations, improve processes around handling personal information, implement a breach management process and measure progress through key performance indicators. The programme is led by the Privacy Programme Manager in the Democracy Services department.

A key component of the programme is the Privacy Officers' Network. The Privacy Act requires councils to have a Privacy Officer to promote compliance with the Act. Auckland Council has a Privacy Officers' Network of council and CCO staff, who advocate and advise on privacy best practice. The network provides education and

advice on issues and trends in the privacy and information areas, and can assist with requests for personal information and investigations of the Privacy Commissioner. Information for council staff on how to contact the Privacy Officers' network can be found [here](#).

### c. **What is an interference with privacy**

An 'interference with privacy' is a legal term covering a breach of the privacy principles (e.g. where personal information has been disclosed by mistake or without legal authority) and any resulting harm.

## **12.4 Ombudsmen Act**

Ombudsmen are Officers of Parliament and Commissioners for Investigations. In the local government context they have three roles:

- **LGOIMA information requests** - a requestor can ask the Office of the Ombudsman to review the council's response to their request
- **Protected Disclosures Act 2000 (or whistle-blowers' act)** – the Office of the Ombudsman receives disclosures regarding matters of serious wrongdoing by an organisation, and has the power to investigate while protecting the whistle blower
- **Maladministration** - an ombudsman has the ability to investigate and make recommendations to the council on most decisions (by both elected members and council staff) where there are no formal appeal processes for that type of decision. An investigation would focus on ascertaining whether a decision was:
  - contrary to law
  - unreasonable, unjust, oppressive, or improperly discriminatory, based wholly or partly on a mistake of law or fact or was wrong
  - A discretionary power that had been exercised for an improper purpose or on irrelevant grounds.

Legal Services respond to complaints investigated by the Office of the Ombudsman on behalf of the council.

## **12.5 Archives**

Archives are records created or received by the council or legacy councils required to be kept permanently under the Public Records Act 2005. Good information management practices and record-keeping enables the council to:

- know what information it holds
- know where that information is kept
- know that it can rely on accessing the correct version of information.

Archived collections and services are available to council staff, elected members and the public. Records can be searched via the archives database (which contains descriptions of more than 311,000 records) and viewed by visiting repositories in south, west, north and central Auckland.

The Government Chief Archivist has set out a series of principles<sup>[1]</sup> for record-keeping. These cover the:

- creation and maintenance of records
- classification and organisation of records
- assignment of metadata to records and aggregations
- provision of access to records
- appraisal of records and disposing of them appropriately
- maintaining the integrity of records
- managing records systematically.

These principles do not mean the council has to keep all the information it creates or holds indefinitely. However, the council is obliged to take a systematic approach to records management.

There are more stringent requirements for material that is defined as a protected record,<sup>[2]</sup> including agendas, minute books, records of senior management meetings and other key documents. This material must be archived for posterity.

In common with other entities, the council is also required to keep records for tax and employment purposes.

More information about our archives team can be found [here](#).

### **12.6.1 Responding to information requests**

Anyone in the council who receives an official information request needs to log it as soon as possible by sending it to the Privacy and LGOIMA team ([officialinformation@aucklandcouncil.govt.nz](mailto:officialinformation@aucklandcouncil.govt.nz)). The team is part of the Democracy Services department.

The statutory timeframe for making a decision on a request is as soon as is practicable but no later than 20 working days from the date received.

The Privacy and LGOIMA team will send an acknowledgement of receipt to the requester and contact the relevant department. The team can also advise departments on the most appropriate way to respond, and clarify any aspects of the legislation. The department that holds the information is responsible for the accuracy of the information.

Clarification will be sought from the requester if there is any uncertainty about the scope. A request may be treated as new if it is amended or clarified, replacing the original. This restarts the statutory time limit as long as the refinement is sought within seven working days of receiving the request.

If the request is likely to need substantial collation, the Privacy and LGOIMA team will have the department holding the information provide a quote for the time and costs involved. Auckland Council's policy is to charge \$38 (GST inclusive) for every half hour after the first four hours spent on the request (with certain exceptions). The Privacy and LGOIMA team will confirm with the requester if he/she wishes to pay and continue, refine the scope or cancel the request. Some discretion is available under the policy if a charge will cause the requester hardship. There may also be public interest grounds for not imposing a charge.

If work on the request proceeds, departments are given 10 working days to draft their response and collate the information. Departments must apply to the Privacy and LGOIMA team for a time extension if they cannot meet the deadline. Extensions may be granted only if the request is for a substantial amount of information needing additional time to collate or if negotiations are required to make a decision. If agreed, the Privacy and LGOIMA team will inform the requester of the delay and provide a new date.

Before making a decision, the Privacy and LGOIMA team may consult with the requester, council staff, external third parties or other agencies with an interest.

### **12.6.2 Withholding information**

The council needs to keep in mind the key principle that information must be made available unless there is good reason to withhold it.

Requests made under Part 2 of the LGOIMA can only be refused for the reasons set out in the Act, namely:

- administrative reasons (section 17)
- conclusive reasons (section 6)
- good reasons (section 7)
- neither confirming nor denying the existence or non-existence of information (section 8).

Administrative reasons for refusing a request should be considered first, ideally in the early stages of processing the request. These are that:

- making the information available would be contrary to an enactment
- making the information available would constitute contempt of Court or of the House of Representatives
- the information is, or will soon be, publicly available
- the request is made by or on behalf of a defendant for information that could be sought under the Criminal Disclosure Act 2008
- the document does not exist or cannot be found despite reasonable efforts to locate it
- the information cannot be made available without substantial collation or research
- the information is not held by the agency and there are no grounds to believe it is held by another agency or is more closely connected with the functions of another agency
- the request is frivolous, vexatious or the information asked for is trivial.

If there is no administrative issue, the council should consider whether there is any potential harm in releasing the information; this may provide a substantive reason to withhold it under the LGOIMA. In particular, whether:

- any identified harmful effect would prejudice one of the conclusive interests protected by section 6, including maintenance of the law or personal safety

- any identified harmful effect would prejudice one of the interests protected by section 7, including:
- privacy
- commercial activities
- information subject to an obligation of confidence
- free and frank opinion
- legal professional privilege.

When considering the application of section 7, the council must also consider the extent of public interest in the information's release. The request cannot be refused under section 7 if the public interest outweighs the need to withhold the information.

### **12.6.3 Communicating the decision**

A decision must be communicated to the requester as soon as reasonably practicable and no later than 20 working days after the date on which the request was received (unless the maximum time limit is extended). Notice of the decision must include whether the request will be granted and, if so, in what manner.

The council must not unduly delay making the information available.<sup>[1]</sup> It can:<sup>[2]</sup>

- give the requester a reasonable opportunity to inspect the information
- release a hard copy of the information
- release the information in electronic form or by electronic means
- arrange for the requester to hear or view the information
- provide a written transcript of the information
- provide partial disclosure of the information, e.g. release a document with some information deleted (redacted)
- release a summary of the information
- release an excerpt or particular passage from a document
- provide the requester with an oral briefing.

The council must release the information in the way preferred by the requester unless doing so would impair efficient administration, be contrary to any legal duty the council has in respect of the information, or prejudice the interests protected by sections 6 or 7 of the LGOIMA.<sup>[3]</sup> The council must explain why<sup>[4]</sup> the information is not provided in the preferred way.

The council may also decide to release the information subject to certain conditions. For instance, it may require that the requester keep the information confidential or use the information only for a specific purpose. The council can also release the information with additional context or material it considers relevant to the request and helpful to the requester.

The notice to the requester must provide reasons<sup>[5]</sup> if information is withheld (in part or entirely) and be approved and signed off by the relevant tier 3 manager. Every decision to refuse a request must advise the requester of the right to complain to the ombudsman and to seek an investigation and review of that decision.<sup>[6]</sup>



## **12.6.4 Publishing information**

The council may, whether proactively or in response to a request, choose to publish information.

Proactive release of information to the public promotes good government, openness and transparency, and fosters public trust and confidence. It also has administrative benefits, including reducing requests for information already publicly available.

Published LGOIMA responses can be found on our website [here](#).

## **12.6.5 Good faith protection**

Releasing information in good faith in response to a request made under the LGOIMA will not expose the council to civil or criminal proceedings. The act explicitly states that:<sup>[1]</sup>

“Where any official information is made available in good faith pursuant to Part 2 or Part 3 or Part 4 by any local authority no proceedings, civil or criminal, shall lie against the local authority or any other person in respect of the making available of that information, or for any consequences that flow....”

This section effectively protects the council from any defamation, breach of confidence proceedings or complaints to the Privacy Commissioner under the Privacy Act.

However, the good faith protection under the LGOIMA is not available when the council decides to proactively release information. Similarly, protection does not extend to publication of the information by the requester or subsequent parties, such as a newspaper.<sup>[2]</sup>

## **12.7 Footnotes**

### **12.1 Council-held information**

[1] Section 2(3) LGOIMA

[2] Section 2(6) LGOIMA

### **12.2 Overview of the LGOIMA**

[1] Sections 6, 7, 8 and 17 LGOIMA

[2] Section 10(1) LGOIMA

[3] Sections 5 LGOIMA

[4] Sections 6, 7, 8 and 17 LGOIMA

### **12.5 Archives**

[1] <http://records.archives.govt.nz/managing-records2/records-management-standard/>

[2] <http://archives.govt.nz/advice/guidance-and-standards/guidance-audience/advice-local-authorities/list-protected-records-loc>  
[1] <http://archives.govt.nz/advice/guidance-and-standards/guidance-audience/advice-local-authorities/list-protected-records-loc>

### **12.6.3 Communicating the decision**

[1] Section 27(5) LGOIMA

[2] Sections 15(1), 15(1A) and 16(1) LGOIMA

[3] Section 15(2) LGOIMA

[4] Section 15(3) LGOIMA

[5] Section 18(a)(i) LGOIMA

[6] Section 18(b) LGOIMA

### **12.6.5 Good Faith Protection**

[1] Section 41 LGOIMA

[2] Section 4(a) LGOIMA

### **Key Documents**

**Appointment and Remuneration Policy for Boards Members of Council Organisation**

**Civil Defence Emergency Management Act 2002**

**Code of Conduct**

**Code of conduct for elected members**

**Interpretation Act 1999**

**Ngāti Whātua Orākei Claims Settlement Act 2012**

**Ngāti Whātua o Kaipara Claims Settlement Act 2013**

**Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008**

**Local Boards Standing Orders**

**Local Electoral Act 2001**

**Local Government Act 2002**

**Local Government (Rating) Act 2002**

**Local Government (Auckland Council) Act 2009**

**Local Government Official Information and Meetings Act 1987**

**Public Audit Act 2001**

## **Standing Orders**