

By email

11 September 2019

File Ref: OIAP-2-1035

Mr Hugh Davenport

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Dear Mr Davenport

Request for information 2019-041

On 12 February 2019 you made a request (our reference 2019-041) to Greater Wellington Regional Council (GWRC) for:

As per Clause 1.4.5 of Schedule 5 of the Partnering Contract (page 142 of <http://www.gw.govt.nz/assets/Transport/Bus-contracts/Schedules-2-15-for-publication.pdf>), the bus operators are required to have a staff training plan for each year.

I would like to request a copy of this training plan for all bus operators under the Metlink branding for the years of 2017, 2018 and 2019.

As for whether this data is "held" by the agency, I refer to s 2(6) LGOIMA.

"Any information held by an independent contractor engaged by any local authority in his or her capacity as an independent contractor is, for the purposes of this Act, deemed to be held by the local authority.", paraphrased "Information which an independent contractor to an agency holds in that capacity is deemed to be held by the agency"

I note that all the bus contractors are independent contractors engaged by GWRC on behalf of Metlink and in their capacity of the independent contractors they hold the data of their staff training plans.

GWRC responded, after extending the time period, on 10 April 2019 advising:

The rollout of the GWRC Metlink bus service commenced in July 2018 and I have attached the training plans for the 2018/2019 year for the following operators for your information. Following consultation with operators several redactions have been made under the Local Government Official Information and Meetings Act, 1987 (the Act), these are indicated in the table below.



As the GWRC Metlink service commenced in July 2018 we do not hold any training plans from providers for the previous year (2017/2018 year), and as the training plans for 2018/2019 have not been updated for 2019/2020 this information does not exist. This part of your request is therefore refused under section 17(e) of the Act.

Operator	Plan Title	Redactions
<i>Mana Coach Services Ltd</i>	<i>Staff Training and Development Plan</i>	<i>N/A</i>
<i>Uzabus Ltd</i>	<i>Staff Training Plan - Kapiti</i>	<i>Section 7(2)(a) - to protect the privacy of natural persons.</i>
<i>NZ Bus¹</i>	<i>Staff Training Plan</i>	<i>Section 7(2)(a) - to protect the privacy of natural persons.</i> <i>Section 7(2)(b)(ii) - to protect information where the making of the information would be likely to unreasonably prejudice the commercial position of the person who supplied or who is the subject of the information.</i>
<i>Tranzit Group Ltd</i>	<i>Tranzit Staff Training and Development Plan Unit 1, 4, 7, 3. (example).</i>	<i>Section 7(2)(a) - to protect the privacy of natural persons.</i> <i>Section 7(2)(b)(ii) - to protect information where the making of the information would be likely to unreasonably prejudice the commercial position of the person who supplied or who is the subject of the information.</i>

The Ombudsman has advised that you have been in correspondence with his office in relation to GWRC's response to your request (2019-041). The Ombudsman advised that there were two elements to your correspondence with him:

- 1. That as Metlink existed before the GWRC Metlink roll out in July 2018 and as Metlink was contracted by GWRC prior to 2018; therefore the training plans for 2017 do exist and should not be withheld under section 17(e) of the LGOIMA; and*
- 2. That the GWRC's decision to partially redact some parts of the documents provided by Tranzit Group Ltd and Uzabus Ltd under section 7(2)(b)(ii) relating to commercial*

¹ Note that in previous correspondence NZ Bus was incorrectly referred to as NZ Bus Ltd. All references to NZ Bus Ltd have now been corrected to refer to NZ Bus.

sensitivity is wrong as Mana Coach Services Ltd and NZ Bus have released their full training plans, there should be no reason for the remaining two operators to withhold information due to commercial sensitivity.

With regard to this communication received from the Office of the Ombudsman we wish to first make a point of clarification in relation to the point 2, above. The Ombudsman has referred to section 7(2)(b)(ii) redactions for Uzabus Ltd. There were no section 7(2)(b)(ii) redactions for Uzabus Ltd in GWRC's original response. GWRC believes that the reference should have been to NZ Bus; in the spirit of providing assistance we have proceeded on this basis.

Our responses to the 2 points are provided below.

In relation to the first point: in 2018 GWRC implemented the Government's Public Transport Operating Model (PTOM). PTOM is a planning, procurement and business development framework. A key feature of PTOM is an emphasis on regional councils and operators taking a partnering approach to the planning and delivery of public transport services in regions. This will be achieved through mechanisms such as collaborative business planning, joint investments, financial incentives, and that "units" will be operated exclusively under contract with the regional council. This approach recognises that both parties have a stake in, and are reliant on each other for, delivering affordable urban bus, rail and ferry services that people want to use.

The Government's introduction of PTOM legislation changed GWRC's relationship with bus operators; allowing GWRC access to information such as training plans. Prior to PTOM GWRC did not have access to training plans. This change outlines why your belief, as expressed to the Ombudsman, "... that as Metlink was contracted by GWRC prior to 2018, the training plans for 2017 do exist ..." is not correct in the context of GWRC's official information. Prior to PTOM our public transport operators had no contractual obligation to supply GWRC with their organisations' training plans.

For further information on PTOM see the Cabinet paper and Regulatory Impact Statement on the Ministry of Transport website.²

In relation to the second point: after correspondence with the Ombudsman's Office (their reference 500445), consultation with bus operators, and reviewing the previous redactions against the April 2019 guidance issued by the Ombudsman on section 7(2)(b)(ii) of the Local Government Official Information and Meetings Act 1987 (the Act) GWRC has reconsidered its earlier response.

² <https://www.transport.govt.nz/land/ptom/>

Bus Operator	Outcome of GWRC's reconsideration
NZ Bus	GWRC has agreed to release the information in the training plan not previously released except for the previous privacy redactions under section 7(2)(a).
Tranzit Group Ltd	GWRC has agreed to release a significant portion of the training plan not previously released. It is noted that there are remaining redactions related to section 7(2)(b)(ii).

GWRC has considered each redaction on its own merit. GWRC does not support a blanket approach of not withholding official information because another independent third party did not withhold similar information.

We have considered whether the public interest in the requested information outweighs GWRC's need to withhold certain aspects. As a result of this consideration, we do not consider that the public interest outweighs GWRC's reason for withholding parts of the information under the grounds identified above.

Attached to this letter are:

1. NZ Bus Staff Training Plan
2. Tranzit Staff Training and Development Plan

A copy of this response has been provided to the Ombudsman's Office.

If you have any concerns with the decision(s) referred to in this letter, you have the right to request an investigation and review by the Ombudsman under section 27(3) of the Act.

Yours sincerely



Greg Pollock
General Manager, Public Transport