

Chairperson and Subcommittee Members
AUDIT AND RISK SUBCOMMITTEE

2 OCTOBER 2014

Meeting Status: **Public Excluded**

Purpose of Report: For Information

**QUARTERLY UPDATE ON STATUTORY COMPLIANCE
ISSUES AND INVESTIGATIONS**

PUBLIC EXCLUDED SESSION

1 The reason for this report being considered in Public Excluded is:

General Subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Grounds under Section 48(1) for the passing of this resolution
To update the Subcommittee on statutory compliance issues reported to Audit, current Ombudsman and/or Privacy Commissioner investigations and any other external investigations or mediations.	Section 7(2)(a) – to protect the privacy of natural persons.	48(1)(a): that the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.

PURPOSE OF REPORT

- 2 This report provides the Audit and Risk Subcommittee with:
- a) an update on statutory compliance issues associated with legislative compliance declarations made to external auditors, Ernst and Young, in relation to legislation selected by them as 'key' acts; and
 - b) an overview of the progress of current investigations by the Office of the Ombudsman and/or the Office of the Privacy Commissioner.
 - c) details of any other investigations or mediations carried out by external agencies or any other matters of relevance with regards to compliance.

SIGNIFICANCE OF DECISION

- 3 This report does not trigger the Council's Significance Policy.

BACKGROUND

Legislative compliance declarations – statutory compliance issues

- 4 Each quarter the Group Managers complete a legislative compliance declaration setting out the significant legislative requirements and declaring whether or not, to the best of their knowledge, they are aware of any compliance issues or breaches of legislation during the previous three month period in respect of the acts determined as 'key' by the Council's external auditors. Those 'key' acts are the Local Government Act 2002 (LGA 2002), the Local Authorities (Members Interest) Act 1968, the Local Government (Rating Act) 2002 and the Local Government Official Information and Meetings Act 1987 (LGOIMA).
- 5 Group Managers may also declare issues that have occurred under additional pieces of legislation in instances where they believe that particular issues should be documented in this manner.

Ombudsman and Privacy Commissioner Investigations

- 6 Council staff also track the receipt and management of investigations being carried out by the Ombudsman or Privacy Commissioner in relation to any complaints received about the actions of the Council.
- 7 Under the Ombudsmen Act the Ombudsman can investigate complaints about the administrative acts and decisions of central and local government agencies. Under the Official Information Act 1982 and LGOIMA the Ombudsman can also handle complaints and investigate the administrative conduct of these agencies in relation to official information requests. Official information requests received by the Council fall under LGOIMA.
- 8 The Privacy Commissioner administers the Privacy Act 1993. The Privacy Act governs how individuals, organisations and businesses collect, use, disclose, store and give access to personal information. The Privacy Commissioner can investigate complaints about actions that may breach the provisions of the Privacy Act.

Additional Investigations/Mediations or Other Compliance Matters

- 9 Staff will also report on any additional investigations or mediations carried out by other external agencies as well as informing the subcommittee of any other relevant compliance matters.

CONSIDERATIONS

Issues

Legislative Compliance Declarations – statutory compliance issues

- 10 There was one issue of statutory non-compliance declared to have occurred in the fourth quarter of the 2013/14 financial year. Details of this breach are outlined in appendix A of this report.
- 11 The Council received a total of 56 official information requests within the fourth quarter of the 2013/14 year. Information providing comparisons between the

information requests received in the 2013/14 year and previous years is attached as appendix B. Also attached within appendix B is a copy of the Council Official Information Charges as shown in Part Two of the 2014-15 Annual Plan.

- 12 During the fourth quarter of the 2013/14 year staff became aware that a privacy breach had taken place. The breach related to personal details of a member of the public being disclosed to another party. Staff apologised to the individual concerned and the Privacy Commissioner was advised of this breach. Staff are aware of their responsibilities under the Privacy Act and further Privacy Act training is currently being considered.

Ombudsman and Privacy Commissioner Investigations

- 13 At the time of writing this report there are two open investigations being carried out by the Office of the Ombudsman. An overview of these investigations along with details of the Investigations that have been closed since the last report to the Audit and Risk Subcommittee is attached as Appendix C to this report.
- 14 At the time of writing this report the Council has no investigations underway with the Privacy Commissioner (although the Ombudsman has advised that the Privacy Commissioner has been consulted regarding one investigation currently underway).

Financial Considerations

- 15 There are no financial considerations in relation to the information outlined in this report.

Legal Considerations

- 16 Council interaction with the Office of the Ombudsman and the Office of the Privacy Commissioner is managed through Council's Senior Legal Counsel in conjunction with the Group Manager, Strategy and Partnerships.
- 17 The legal requirements of LGOIMA, LGA 2002 and the Privacy Act are well established in the Council's processes. Any changes identified as a result of the issues outlined in this report will ensure improved statutory compliance.

Delegation

- 18 The Audit and Risk Subcommittee has authority under the following delegation in the Governance Structure, Section C.4.6:

Without limiting the generality of this delegation the Subcommittee has the following functions, duties and powers:

Internal Control Framework

- 6.1 *Review whether management's approach to maintaining an effective internal control framework is sound and effective.*

Policy Implications

- 19 There are no policy considerations in relation to the information provided in this report.

RECOMMENDATIONS

- 20 That the Audit and Risk Subcommittee note there was one statutory compliance issue associated with legislative compliance declarations made to external auditors, Ernst and Young for the fourth quarter of the 2013/14 year.
- 21 That the Audit and Risk Subcommittee note the current status of the Ombudsman investigations.
- 22 That the Audit and Risk Subcommittee note the status of the Council's legal compliance for the fourth quarter of the 2014/15 year.
- 23 That this report, appendices and resolutions be released from public excluded business.

Report prepared by:

Linda Guerin
Statutory Compliance Officer

Approved for submission by:

Stephen McArthur
Group Manager Strategy and Partnerships

Approved for submission by:

Wayne Maxwell
Group Manager Corporate Services

ATTACHMENTS:

- Appendix A Compliance Issues - Fourth Quarter 2013/14
- Appendix B OIA Statistics
- Appendix C Ombudsman Investigations

Appendix A – Report SP-14-1312

Statutory compliance issues associated with legislative compliance declarations made to external auditors, Ernst and Young

One issue of non-compliance was identified during the fourth quarter of the 2013/14 year. This breach occurred in relation to the Local Government Official Information and Meetings Act 1987 (LGOIMA). An overview of the circumstances surrounding this incident is detailed in the table below.

Issue No.	Act	Nature of Non-Compliance	Immediate Action Taken	Long Term Action / Mitigation
1	LGOIMA	<p>A request for information was sent by email on a Sunday. Staff opened the email and considered it to be received on the Monday morning and the 20 working day calculations were made from there.</p> <p>While the legislation counts timeframes in working days, the date received is not referred to in the legislation as needing to be a working day therefore the correct day of receipt was Sunday.</p> <p>Due to this error the OIA response went to the requester one day late.</p>	<p>No immediate action taken as response had already been sent out when staff became aware of the issue.</p>	<p>Staff are now aware that date of receipt of a request need not be a working day.</p>

Appendix B – Report SP-14-1312

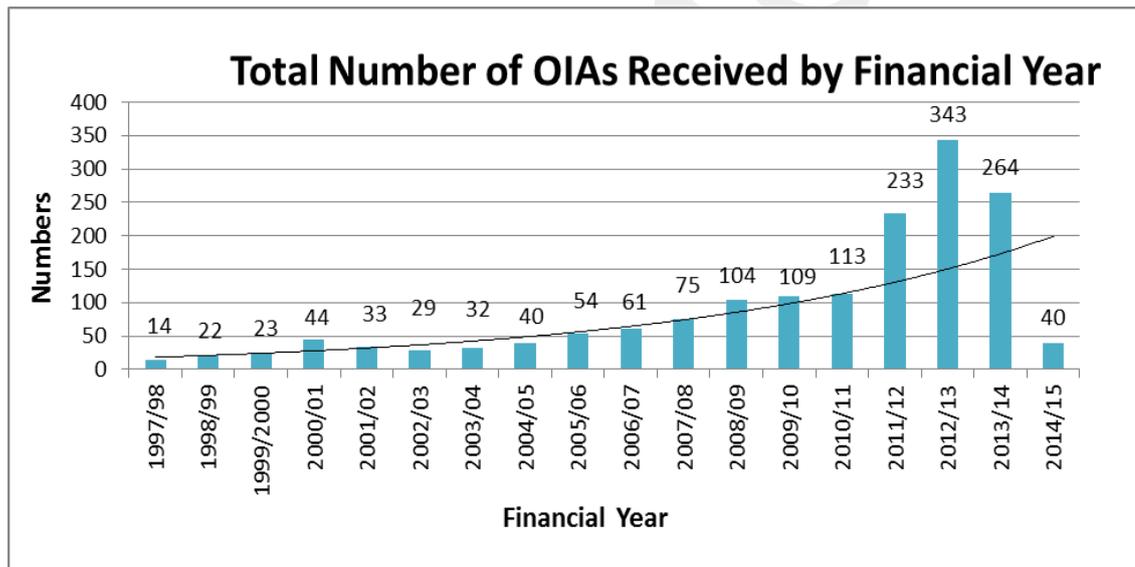
013/14 Official Information Requests (OIA's)

There were 264 Official Information Requests registered in 2013/14.

Comparison with previous years

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	Year Total
2011/12	48	47	70	68	233
2012/13	82	107	83	71	343
2013/14	74	73	61	56	264

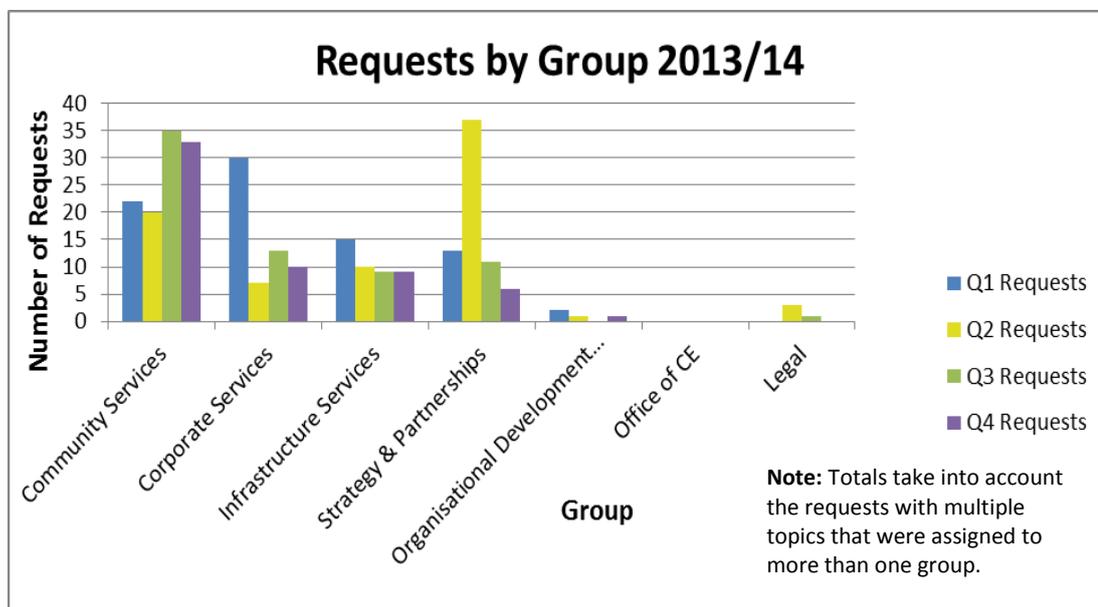
Quarterly figures are variable with no discernible pattern. Impact on figures tends to be from topical issues.



The number of information requests received has increased significantly since 2005/06. Numbers of requests received in 2012/13 were especially high due to issues being managed within the District which had a high level of public interest such as the coastal hazard issues and water meters.

The increase in requests we have received over the years may be due to a number of reasons. One reason may be that we have improved our processes over the years to ensure that we recognise and respond to requests in a timely manner. Another reason may be that we have a population that has a high level of interest in the things happening in the community and a good knowledge of how they can obtain the information they require.

Group Breakdown



Finance was amalgamated into Corporate Services from 20 January 2014.

Regulatory Services was separated out from Community Services on 13 June 2014 and will be reported on separately from the beginning of the 2014/15 financial year.

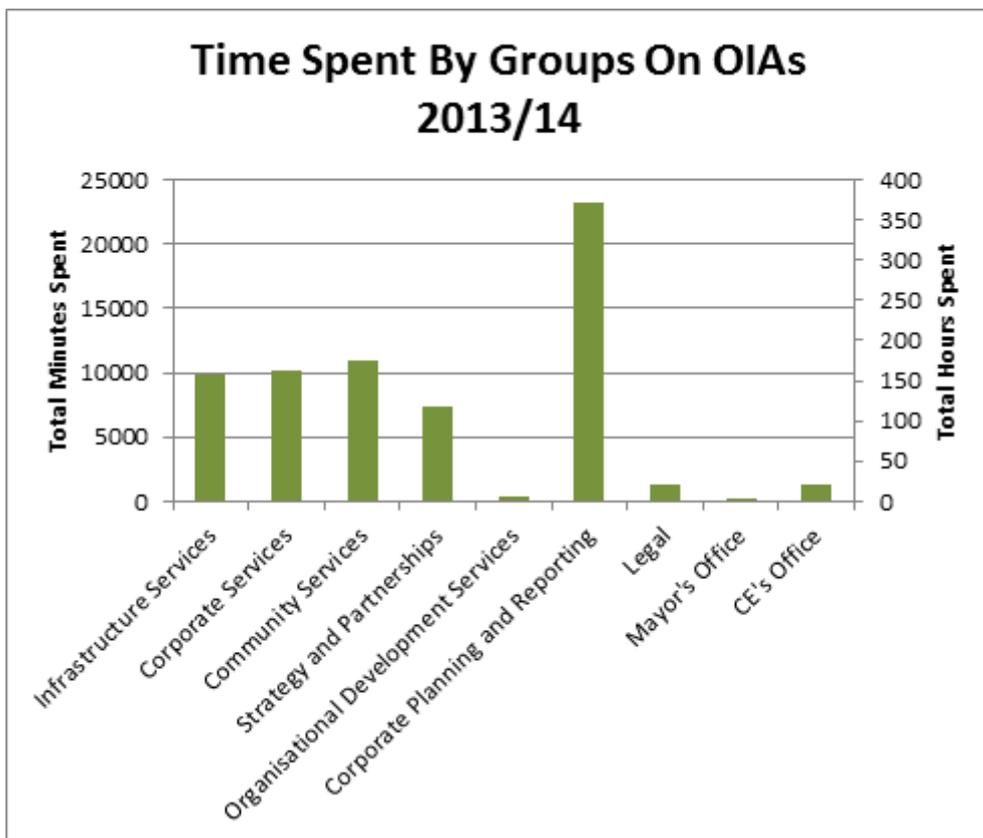
The above graph depicts the amount of requests each group dealt with by quarter.

Multiple requests

During 2013/14 eight individuals made 5 or more requests. One individual made a record number of 30 requests during this period.

Number of requests made by individuals	How many requestors
30	1
17	1
8	1
7	1
6	2
5	2
4	4
3	9
2	14
1	229
	264

Time spent on requests



The recording of time spent is approximate and in some cases estimated.

OFFICIAL INFORMATION CHARGES

- for Requests Under the Local Government Official Information and Meetings Act (LGOIMA) 1987
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KĀPITI COAST DISTRICT COUNCIL Charges for Official Information Requests	
Charges⁽¹⁾ are for search and research and for the production and distribution of the result	Charges Effective 1 July 2014 (incl. GST)
1 For all Official Information requests involving research or collation in excess of two hours will be charged per hour (chargeable in 30 minute increments after the first 2 hours)	\$62 per hour
2 For all black and white copying A4 (the first 20 copies free) then charge per sheet	20c
3 For all black and white copying per sheet for A3	30c
4 Specialty copying (maps etc), including provision of electronic media storage devices, will be done at cost. For clarification specialty copying includes colour copying at \$2.10 charge per A4 sheet and \$3.40 charge per A3 sheet	At Cost

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-
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(1) How Official Information Charges are Determined ⁽²⁾⁽³⁾⁽⁴⁾⁽⁵⁾ Charges

- Staff time supervising requestors review of documentation at counter
- Postage/Courier
- Collection of files from source
- Reviewing files for confidential items
- Hours spent in research and compiling response in excess of two hours

Note:

- (2) The Council will provide electronic media storage devices at cost but cannot accept a device provided by the requester as this runs the risk of introducing viruses into the Council systems.
- (3) Charges may be waived or modified at the discretion of the Chief Executive or a Group Manager authorised by the Chief Executive. Waivers will be considered in situations where payment may cause financial hardship to the requestor, where the charge may become an unreasonable deterrent to seeking information and is therefore working against the LGOIMA principles.

(4) The Council in determining these charges has taken account of the Ministry of Justice Guidelines on Charging. At a general level, the Office of the Ombudsmen have taken the view that the standard charging regime set out in the government guidelines is reasonable.

(5) The Council will not charge for the following:

- involvement by Chief Executive or elected members
- any costs of deciding to release information
- costs associated with looking for a lost document
- costs of liaising with an Ombudsman
- legal or other professional advice
- liaison with any third party (e.g. informant)
- costs associated with transferring a request to a more appropriate organisation
- costs of refining application with requester, and
- correspondence or phone calls with requester.

Appendix C – Report SP-14-1312

Ombudsman and Privacy Commissioner Investigations

Reference No.	Date Received	Type of Complaint	Subject of Complaint	Actions taken by Council to date	Final Opinion from Ombudsman/Privacy Commissioner
1213-232	22 February 2013	LGOIMA Complaint	Complaint about Council's refusal to provide all information requested in February 2012 regarding the Chief Executive's contract.	<p>Response sent to the Ombudsman 21 March 2013.</p> <p>On 17/01/14 Ombudsman advised that a meeting with the Privacy Commissioner's Office had taken place and it has been agreed that a formal consultation was required so that the privacy issues raised could be thoroughly considered.</p> <p>On 08/04/14 the Ombudsman advised that they have now received a reply from the Privacy Commissioner. The Ombudsman will write again once the comments have been reviewed.</p>	Yet to be advised.
1314-029	25 July 2013	Ombudsmen Act Investigation	The Ombudsman is investigating claims that Council has failed to investigate complaints about stereo noise and panel-beating activities being carried out by the complainant's neighbour.	<p>Initial response letter sent to the Office of the Ombudsman 21 August 2013.</p> <p>The Ombudsman made several follow up requests for further information. All requests were actioned.</p> <p>The provisional opinion received on 13 April 2014 stated that the Council has not acted unreasonably in responding to the noise complaints. The Ombudsman suggested some additional actions the Council could take when responding to these noise</p>	Ombudsman's final decision received 22 Aug 2014. Council has not acted unreasonably. States it would be reasonable for noise control officers to go onto complainant's property in the future to assess noise

Reference No.	Date Received	Type of Complaint	Subject of Complaint	Actions taken by Council to date	Final Opinion from Ombudsman/Privacy Commissioner
				complaints. The Council provided further comments before receiving the final opinion.	complaints.
1415-262	30 June 2014	LGOIMA	LGOIMA complaint about Council's response to the complainant's OIA regarding the Paekākāriki tennis courts stating that the response is not very specific and has not provided non-written information relating to a meeting on 2 August 2011.	Initial response sent 17 July 2014.	Response received from Ombudsman 3 September 2014 – in light of our response and absence of any further comment by the complainant further investigation considered unnecessary. Investigation discontinued and file closed.
1415-041	4 September 2014	LGOIMA	Complaint about Council's decision to withhold Council officer names from an OIA response.	Initial response to the Office of the Ombudsman sent 24 September 2014. Council has released the staff names withheld from the documentation in question.	