

Chairperson and Subcommittee Members
AUDIT AND RISK SUBCOMMITTEE

29 SEPTEMBER 2015

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
<p>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.</p>	<p>Section 7(2)(a) – to protect the privacy of natural persons.</p> <p>Section 7(2)(f)(i) – to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to members or officers or employees of any local authority, or any persons to whom section 2(5) of this Act applies, in the course of their duty.</p>	<p>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.</p>

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 the auditors as ‘key’ acts;
 - b) an overview of the progress of current investigations by the Office of the Ombudsman and/or the Office of the Privacy Commissioner; and
 - c) an overview of official information statistics.

DELEGATION

- 3 The Audit and Risk Subcommittee has authority under the following delegation in the Governance Structure, Section C.3:

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

Internal Control Framework

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

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 (LGA2002), 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 (Privacy Act). 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.

Issues and Options

Issues

- 10 The Council received a total of 231 official information requests in the 2014/15 year. 67 official requests were received within the second quarter, 61 requests within the third quarter, and 52 requests within the fourth quarter of the 2014/15 year in comparison with 73 requests received in the second quarter, 61 requests within the third quarter, and 56 requests within the fourth quarter of the 2013/14 year.
- 11 Details of official information requests in the first quarter of the 2014/15 year were provided to the Audit and Risk Subcommittee in report SP-15-1448 on 12 February 2015.
- 12 There were no issues of statutory non-compliance declared to have occurred in the second, third or fourth quarter of the 2014/15 financial year.
- 13 One issue of statutory non-compliance did come to light in late January regarding an official information request made at the beginning of December 2014. The request was initially made to an Elected Member and was not initially recognised as an official information request. Once staff were aware of the issue a response was prepared and forwarded to the requester in four working days.
- 14 Information on the number of official information requests received in 2014/15 and earlier years along with commentary on the Council's charging for official information is contained in Appendix A.
- 15 At the time of writing this report there are three open investigations being carried out by the Office of the Ombudsman. An overview of these investigations is attached as Appendix B to this report.
- 16 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 of the investigations still underway).

Considerations

Policy Considerations

- 17 There are no policy considerations in relation to the information provided in this report.
- 18 Council interaction with the Office of the Ombudsman and the Office of the Privacy Commissioner is managed through Council's Senior Legal Counsel.
- 19 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.

Financial Considerations

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

Significance and Engagement

- 21 This report is for the purpose of providing information only and does not trigger the Council's Significance and Engagement policy. No engagement is required.

RECOMMENDATIONS

- 22 That the Audit and Risk Subcommittee note there were no statutory compliance issues associated with legislative compliance declarations for the second, third and fourth quarters of the 2014/15 year.
- 23 That the Audit and Risk Subcommittee note the current status of the Ombudsman investigations.
- 24 That the Audit and Risk Subcommittee note the status of the Council's legal compliance for the second, third and fourth quarters of the 2014/15 year.
- 25 That this report, appendices and resolutions be released from public excluded business.

Report prepared by	Approved for submission	Approved for submission
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Statutory Compliance Officer	Group Manager Strategy and Planning	Group Manager Corporate Planning

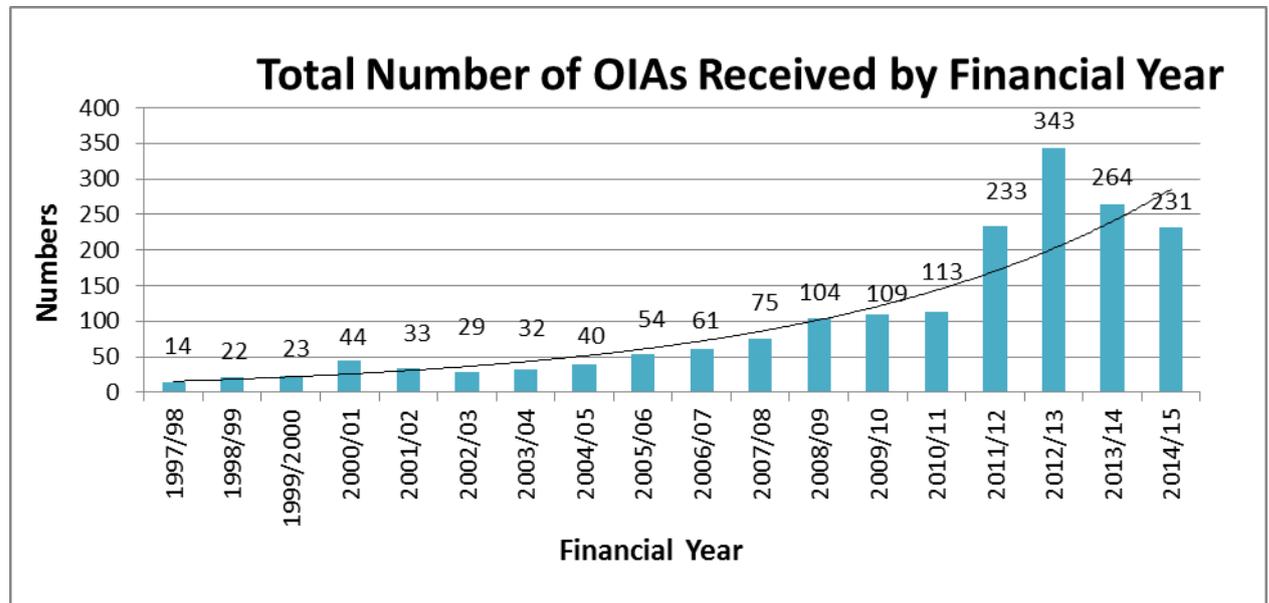
ATTACHMENTS

- Appendix A Official Information Request Statistics
 Appendix B Ombudsman Investigations

Appendix A

Official Information Requests

Number of Requests



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 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. Managing requests as OIAs allows us to monitor and respond to requests in a timely manner.

Charges

The Council may charge for information requested under the Local Government Official Information and Meetings Act 1987 (LGOIMA). A charge cannot be applied for the provision of personal information which falls under the Privacy Act 1993. The Council's charges for LGOIMA requests are published within our Annual Plan and Long Term Plan documents.

One of the purposes of LGOIMA is to provide for the availability to the public of official information. LGOIMA also states that information should be made available unless there is a good reason for withholding it.

When considering the application of a charge for information the Council must look at whether the waiver of any proposed charge may be reasonable and ensure that the application of a charge will not be working against the LGOIMA principles. Council also looks at whether giving the requester an opportunity to refine the scope of their request may reduce or remove the need to charge.

Since March 2009 the Council has applied a charge to 34 information requests. In many instances, some of the information was provided and the requester was advised that the remaining information would incur a charge. Of these 34 requests, three requesters agreed to the charge and determined to proceed with their request, and for a variety of reasons, five were provided with the information they had requested without charge. The remaining requesters either withdrew their requests, refined the information they were seeking so that a charge was no longer applicable or simply did not provide any further response in relation to proceeding with their requests.

The Council has had one complaint to the Office of the Ombudsman in relation to the decision to charge for an information request. This request required staff to search through very old emails which would be time consuming. The Ombudsman advised that the requester should not bear the costs related to the time spent by staff searching for relevant emails, which was made more time consuming due to the limitations of the Council's email searching technology. The charge was therefore recalculated but the requester still did not agree to pay for the provision of the information.

Staff are currently undertaking further work to provide clear guidelines for Group Managers as they determine whether or not charges should be applied to each information request they receive.

Appendix B – Report SP-15-1448

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> <p>Further letter received from Office of the Ombudsman 29 December 2014 advising that further progress has been made and that they hope to be in a position to write in more substantive terms in the New Year.</p>	Yet to be advised.

Reference No.	Date Received	Type of Complaint	Subject of Complaint	Actions taken by Council to date	Final Opinion from Ombudsman/Privacy Commissioner
				<p>Office of the Ombudsman contacted Tim Power in January 2015 and Tim provided additional information.</p> <p>Further letter received from Office of the Ombudsman 9 February 2015 acknowledging further information received and advising they were seeking additional comments from the Privacy Commissioner.</p> <p>Further letter received from Office of the Ombudsman 2 March 2015 advising that they were considering the additional information provided by Tim Power and the further comments provided by the Privacy Commissioner.</p>	
1415-194	14 April 2015	LGOIMA	Complaint in relation to a late response to an information request [made by a Councillor]. The Ombudsman advises that her provisional opinion is that Council should have extended the time limit for responding to the request or	Initial response letter forwarded on 14 May 2015 explaining legal reasons why the response was delayed.	Response received 5 June 2015. Ombudsman found that there was a failure to meet the statutory obligations imposed by LGOIMA. but is satisfied that Council is aware of

Reference No.	Date Received	Type of Complaint	Subject of Complaint	Actions taken by Council to date	Final Opinion from Ombudsman/Privacy Commissioner
			made a decision within 20 working days. Considers that Council failed to meet the statutory obligations.		timeliness requirements.
1415-229	29 June 2015	LGOIMA	Complaint that a Councillor failed to provide a response to an information request relating to code of conduct complaint meeting.	Response sent to the Office of the Ombudsman by email showing that a response was sent to the complainant on the same day as the request was received.	Letter from Ombudsman received 9 July 2015 acknowledging that response had been provided by the Councillor.
1516-005	9 July 2015	Ombudsmen Act Investigation	Investigating a complaint regarding the Mayor's report to Council of 7 May 2015 in relation to the code of conduct complaint.	Staff have been in contact with the Office of the Ombudsman and a response was sent to the Office of the Ombudsman 31 July 2015.	Yet to be advised.
1516-052 (relates to 1415-229 above)	27 August 2015	Ombudsmen Act Investigation	Complaint about the response a member of the public received from a Councillor in May 2015 regarding the request for information which they made to that Councillor.	Staff have been in contact with the Office of the Ombudsman. Response is currently being prepared.	