

Chairperson and Subcommittee Members
AUDIT AND RISK SUBCOMMITTEE

12 FEBRUARY 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
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>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>	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;
- 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) details of any other investigations or mediations carried out by external agencies or any other matters of relevance with regards to compliance.

Delegation

- 3 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.*

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.

Issues and Options

Issues

- 10 There was one issue of statutory non-compliance declared to have occurred in the first quarter of the 2014/15 financial year. Details of this breach are outlined in appendix A of this report.
- 11 The Council received a total of 51 official information requests within the first quarter of the 2014/15 year in comparison with 74 requests received in the first quarter of the 2013/14 year.
- 12 During the first quarter of the 2014/15 year Water Permit Groundwater take consent WGN 130103[31992] required trigger monitoring works to be undertaken. Due to conflicting requirements within the consent regarding the timing of the monitoring and the approval of a monitoring plan the monitoring report was not submitted within the required minimum timeframe. As a result, Council received a technical non-compliance from Greater Wellington Regional Council.
- 13 At the time of writing this report there is one open investigation being carried out by the Office of the Ombudsman. An overview of this investigation along with details of the Investigation that has been closed since the last report to the Audit and Risk Subcommittee is attached as Appendix B 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 the investigation currently underway).

CONSIDERATIONS

Policy Considerations

- 15 There are no policy considerations in relation to the information provided 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.

Financial Considerations

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

SIGNIFICANCE AND ENGAGEMENT

- 19 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

- 20 That the Audit and Risk Subcommittee note there was one statutory compliance issue associated with legislative compliance declarations for the first quarter of the 2014/15 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 first quarter of the 2014/15 year.
- 23 That this report, appendices and resolutions be released from public excluded business.

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Approved for submission by:

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ATTACHMENTS:

- Appendix A Compliance Issues - First Quarter 2014/15
Appendix B Ombudsman Investigations

Appendix A – Report SP-15-1448

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

One issue of non-compliance was identified during the first quarter of the 2014/15 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 Number	Act	Nature of Non-Compliance	Immediate Action Taken	Long Term Action / Mitigation
1	LGOIMA	<p>A breach of LGOIMA occurred in August when an information request was not answered within the 20 working day timeframe.</p> <p>The request for information about the pools was forwarded by email to a staff member who did not initially consider it to be an information request as there had been some ongoing dialog with the requester.</p> <p>When the requester contacted the Corporate Planning and Reporting Team directly the 20th working day had already passed.</p>	<p>Staff commenced work on the response which included an apology regarding the delay.</p> <p>The response was sent out to the requester on day 27.</p>	<p>Staff involved have been reminded that we need to ensure that all requests for information are addressed.</p>

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> <p>Following further communication from the Office of the Ombudsman in early January 2015, further</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
				versions of the performance agreements along with a copy of the Chief Executive's employment agreement were forwarded to the Ombudsman on 26 January 2015	
1415-041	4 September 2014	LGOIMA	Complaint about Council's decision to withhold Council officer names from an OIA response.	On 17 September 2014 the Office of the Ombudsman was copied into a letter to complainant which released the staff names withheld from the documentation in question.	Final letter received from the Ombudsman on 2 October 2014 advising that they were taking no further action and that the file had been closed.