

OIR: 2223/377

28 September 2022

[REDACTED]

Tēnā koe [REDACTED]

Complaint about decision under the Local Government and Official Information and Meetings Act 1987 (the Act)

Thank you for your email of 13 September 2022 raising the following concerns:

I refer to your letter of 25 August responding to my OI request. You have again refused to provide an unredacted copy of the minutes of the meeting held on 2 May. As I intend to appeal this decision to the Ombudsman I want to ensure I understand the reasons for your refusal and to give you an opportunity to reconsider.

To recap, the original reason ([REDACTED] email of 7 July) was to protect the commercial position of the person supplying the information, namely the Te Atiawa representative. When I pointed out that this was, in effect, nonsense, the reason was changed to “not wanting to cause unrest for building owners and tenants” and “negotiations could take place in the future”. I responded to those in my email of 5 August. Your letter of 25 August confirms that refusal but without commenting on my arguments.

- 1. Please confirm which part of s7 LGOIMA enables you to refuse on the ground of causing unrest.***
- 2. Please confirm which provision you rely on for the ground that “negotiations could take place in future”. I assume you rely on s7(2)(h) but that refers to “carr[ying] out, without prejudice or disadvantage, negotiations”. If then Council decided to purchase a property and this would be under the PWA, given the provisions and procedures of that Act, please explain how Council would be prejudiced. Council is as you will be aware required to be open about its valuation of the property.***
- 3. I note from the advisory Group Terms of Reference that it is unlikely that this information has been kept confidential as members are required to share information with and get feedback through their channels- that is, discuss with those who they apparently represent. And it is clear that these details have been discussed externally at the hui referred to in your letter of 25 August and the Taiao Committee. And I wouldn't for one minute believe that Mr Wilkinson isn't discussing options with his members.***

This response has been treated as a complaint under Council's Customer Complaints Policy.

We have considered the concerns you have raised and have reached the view that our original decision to withhold the location of the building from the Advisory Group minutes of 2 May 2022 was reasonable.

We relied on the following sections of the LGOIMA:

- 7(2)(b)(ii) - *to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information*
- 7(2)(h) - *to enable any local authority holding the information to carry out, without prejudice or disadvantage, commercial activities.*

We apologise that we did not reference these specific grounds in the response to you on 27 July 2022, which is Council's standard approach in dealing with LGOIMA requests.

In relation to your query about the references to "causing unrest" and "negotiations could take place in future" in Council's response to you dated 27 July 2022, this was referring to the need for Council be able to undertake commercial activities such as considering different locations for potential Council sites in a confidential matter for a variety of reasons, including protecting Council's ability to plan and carry out commercial activities ahead of any legislative process that is required (i.e. public notification under the Public Works Act 1981).

Releasing information on potential sites that may or may not be considered by Council, while Council staff and in this case the Advisory Group are still considering these matters, has the potential to cause undue unrest to owners or tenants about Council's potential commercial activities, and prejudice any negotiations that could take place in the future.

In relation to your comment about the confidentiality of the Advisory Group as required in the Terms of Reference, we are not aware of any breach of confidentiality.

You have the right to request the Ombudsman to review this decision. Complaints can be sent by email to info@ombudsman.parliament.nz, by fax to (04) 471 2254, or by post to The Ombudsman, PO Box 10152, Wellington 6143.

Ngā mihi



Janice McDougall

Group Manager People and Partnerships
Te Kaihautū, ngā Rangapū, Tāngata hoki