

Chairperson and Subcommittee Members
AUDIT AND RISK SUBCOMMITTEE

5 MAY 2016

Meeting Status: **Public Excluded**

Purpose of Report: For Information

**UPDATE ON STATUTORY COMPLIANCE ISSUES,
INVESTIGATIONS AND THE STATUS OF COUNCIL BYLAWS
FOR 1 JULY 2015 TO 31 MARCH 2016**

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)(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.	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 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

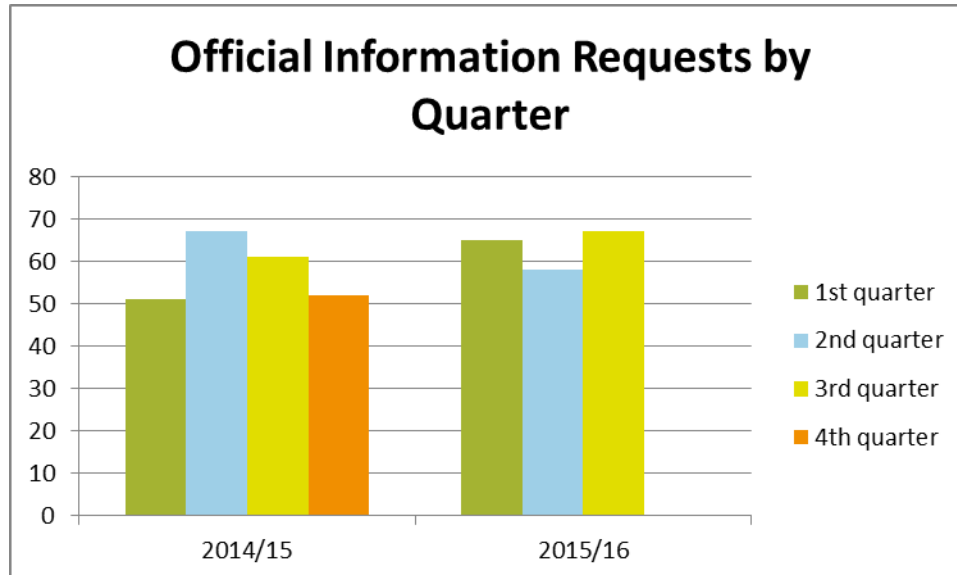
- 6 Council staff also track the receipt and management of investigations being carried out by the Ombudsman or Privacy Commissioner in relation to any complaints received about the actions of the Council.
- 7 Under the Ombudsmen Act the Ombudsman can investigate complaints about the administrative acts 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.

Year to date performance

- 10 The council received 65 requests within the first quarter, 58 within the second quarter and 67 requests within the third quarter of the 2015/16 year in comparison with 51 requests received in the first quarter, 67 requests in the second quarter and 61 within the third quarter of the 2014/15 year.



- 11 Information in relation to repeated requests received from the same individuals is contained in Appendix A.
- 12 There were no issues of statutory non-compliance declared to have occurred in relation to the 'key' acts identified by the council's external auditors during the first two quarters of 2015/16. One possible issue of non-compliance with the Local Government Act (LGA) during the third quarter of 2015/16 has been identified. A charitable trust was established, with elected members appointed as trustees, which may have triggered the LGA requirements around creation of new CCOs. Officers are currently investigating this matter further.
- 13 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 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 of the investigations still underway).
- 15 Information in relation to the current status of the bylaws is contained in Appendix B.
- 16 Information from the Ombudsman regarding LGOIMA and Ombudsman complaints is contained in Appendix D.

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 Legal Counsel team.
- 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.

RECOMMENDATIONS

- 22 That the Audit and Risk Subcommittee note there was one statutory compliance issue associated with the 'key' acts identified by the Council's external auditors in the first, second and third quarters of the 2015/16 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 first, second and third quarters of the 2015/16 year.
- 25 That this report, appendices (A and B) and resolutions be released from public excluded business.

Report prepared by	Approved for submission	Approved for submission
Sarah Lloyd Senior Advisor, Corporate Planning and Reporting	Stephen McArthur Group Manager Strategy and Planning	Wayne Maxwell Group Manager Corporate Planning

ATTACHMENTS

- Appendix A Multiple official information request statistics
- Appendix B Bylaw status
- Appendix C Ombudsman and Privacy Commissioner investigations
- Appendix D Complaint response from Ombudsman containing LGOIMA and Ombudsman Act yearly totals

Appendix A – Multiple official information request statistics

During 2014/15 five individuals made more than five requests. One individual made a record number of 44 requests during this period.

Individuals with multiple requests (more than five) 2014/15	
Requester 1	44 requests
Requester 2	22 requests
Requester 3	11 requests
Requester 4	9 requests
Requester 5	6 requests




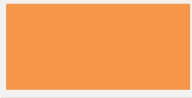



The person who made the 44 requests was predominantly asking for information in relation to services provided to Ōtaki. This mainly involved parks and reserves although there were some requests in relation to economic development and the Ōtaki iSite. The requester was interested in play equipment, outdoor furniture, bike/scooter tracks, skate parks and basketball court. They also asked for information about other parks and playgrounds in the district which appeared to be for comparison purposes.




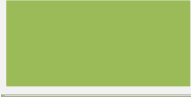

The 22 requests made by the second highest requester often seemed to be made in relation to issues that were either being considered at council meetings or had been covered in the local media. Issues that this individual repeatedly asked about included information about the kiosk, the staff car park and matters in relation to the Chief Executive's employment.

The individual who made 11 requests has predominately asked for information in relation to Proposed District Plan matters, particularly relating to coastal issues. This requester has also made a number of requests in relation to an Elected Member.

Appendix B - Bylaw status update

In July 2015 SLT were provided with an update on the status of bylaws which asked for advice about the General Bylaw as indications were that it was not likely to be reviewed. The draft 2016 Fire Prevention Bylaw was written to stand alone without reference to the General Bylaw. It is recommended that all future bylaw drafts are also written independently without referencing the General Bylaw

Name of bylaw	Owner	Date bylaw was approved by council	Review required to be completed by	Progress	Expected review timeframe	Risk	Status On track  Not on track (running behind expected timeframe)  Critical (unlikely to meet adoption deadline) 
Cemeteries Bylaw 2010	Community Services	28 Jan 2010	28 Jan 2015 (final date for review 28/01/17)	Manager and legal approved draft completed. Indicative date for council decision 28 July 2016.	October 2015 – June 2016	None identified by staff.	
Fire Prevention Bylaw 2010	Regulatory Services	30 Sept 2010	30 Sept 2015 (final date for review 30/09/17)	Submissions close 12 Feb 2016. Indicative date for council decision 23 June 2016.	October 2015 – March 2016	None identified by staff.	
Food Safety Bylaw 2006	Regulatory Services	Did not go to Council. (Adopted by Environment and Regulatory Committee on 1 Feb 2007) Approved by Council 15/10/15	Food Act 2014 requires legal review to be completed once the food regulations have been promulgated to ensure there are no inconsistencies between the act and the bylaw. No special consultative procedure will be required. Full review required by 1 Feb 2017 (final date for review 01/02/19)	In-house legal team undertook review March 2016. Amendment to the Food Safety Bylaw approved by Council 17 March 2016.		*There is a two-year gap between the full review Feb 2017 date and the revoking of the bylaw in 2019.	Approved by legal that a full review no longer required as Bylaw will have to be revoked in 2019.*
Public Places Bylaw 2010	Community Services	15 Jul 2010	15 Jul 2015 (final date for review 15/07/17)	Research and development stage.	October 2015 – September 2016	None identified by staff.	
Trade Waste Bylaw 2007	Infrastructure Services	14 Nov 2007	14 Nov 2017 (final date for review 14/11/19)	Initial reminder has been sent to group manager to help with planning future work programmes.	April 2016 – December 2018	None identified by staff.	

Name of bylaw	Owner	Date bylaw was approved by council	Review required to be completed by	Progress	Expected review timeframe	Risk	Status On track  Not on track (running behind expected timeframe)  Critical (unlikely to meet adoption deadline) 
Dog Control Bylaw 2008	Regulatory Services	11 Dec 2008	11 Dec 2018 (final date for review 11/12/20) NB: Dog policy must be undertaken alongside the bylaw review.	Initial reminder has been sent to group manager to help with planning future work programmes.	April 2016 – December 2020	None identified by staff.	
Control of Alcohol in Public Places Bylaw 2013	Strategy and Planning	18 Jul 2013	18 Dec 2018 (final date for review 18/12/18)	Initial reminder has been sent to group manager to help with planning future work programmes. Information received in relation to local alcohol policy is likely to inform the work on the draft bylaw.	January 2017 – March 2018	None identified by staff.	

Restricted