

Chairperson and Committee Members
AUDIT AND RISK COMMITTEE

27 APRIL 2017

Meeting Status: **Public Excluded**

Purpose of Report: For Information

**UPDATE ON STATUTORY COMPLIANCE ISSUES,
 INVESTIGATIONS AND THE STATUS OF COUNCIL BYLAWS
 FOR 1 JANUARY 2017 TO 31 MARCH 2017**

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 committee 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 Committee with:

- a) an update on issues associated with legislative compliance declarations made to external auditors Ernst and Young for legislation selected by the auditors as 'key' acts;
- b) an overview of the progress of current investigations by the Office of the Ombudsman and the Office of the Privacy Commissioner;
- c) an update on official information statistics for the third quarter of 2016/17;
- d) a bylaw monitoring report; and
- e) a litigation status report.

DELEGATION

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

This Committee will monitor the Council's financial management and reporting mechanisms and framework and review the audit and risk function, ensuring the existence of sound internal systems.

BACKGROUND

Legislative Compliance Declarations – Statutory Compliance Issues

- 4 Each quarter 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.
- 5 Those 'key acts' are:
- Local Government Act 2002
 - Local Authorities (Members' Interests) Act 1968
 - Local Government (Rating) Act 2002
 - Local Government (Financial Reporting and Prudence) Regulations 2014
 - Building Act 2004
 - Resource Management Act 1991
- 6 The declaration does not include instances when Council has exceeded statutory time frames for processing resource and building consent applications as reported to the Council's Operations and Finance Committee in regular quarterly reports.

Ombudsman and Privacy Commissioner Investigations

- 7 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.
- 8 Under the Ombudsmen Act 1975 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.
- 9 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.

Official Information Requests

- 10 Council monitors official information requests to ensure pertinent and timely responses are supplied. Staff provide a regular update on the number of official information requests received by Council and provide an indication of the impact of multiple requesters.

Bylaw Monitoring

- 11 In 2015, work was undertaken to strengthen the processes supporting the Council's management of its bylaws. This included a legal review undertaken to confirm the status of each bylaw, and the introduction of updated processes to ensure effective bylaw management across Council.
- 12 Council currently has 14 bylaws. Council monitors the status of these bylaws, and regularly reports on them to the committee.

Additional Investigations/Mediations or Other Compliance Matters

- 13 Staff will also report on any additional investigations or mediations carried out by other external agencies as well as informing the committee of any other relevant compliance matters including an update on the current litigation status.

CURRENT STATUS

Legislative Compliance Declarations

- 14 There was one issue of statutory non-compliance declared to have occurred in relation to the 'key' acts identified by the council's external auditors during the third quarter of 2016/17.
- 15 The issue relates to, year to date, the Council not meeting the following benchmarks, as set out in the Local Government (Financial Reporting and Prudence) Regulations 2014:
 - balanced budget; and
 - debt servicing.

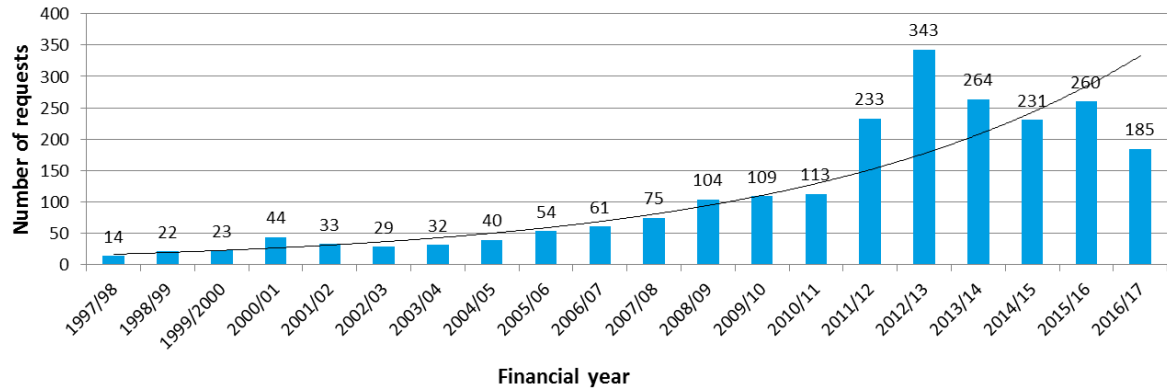
Ombudsman and Privacy Commissioner Investigations

- 16 At the time of writing this report there is one formal investigation being carried out by the Office of the Ombudsman.
- 17 At the time of writing this report there was one formal investigation that had been carried out by the Privacy Commissioner and subsequently closed. The complainant has now referred this matter to the Human Rights Tribunal.
- 18 An overview of Ombudsman and Privacy Commissioner complaints is attached as Appendix A to this report.

Official Information Request Year-to-date

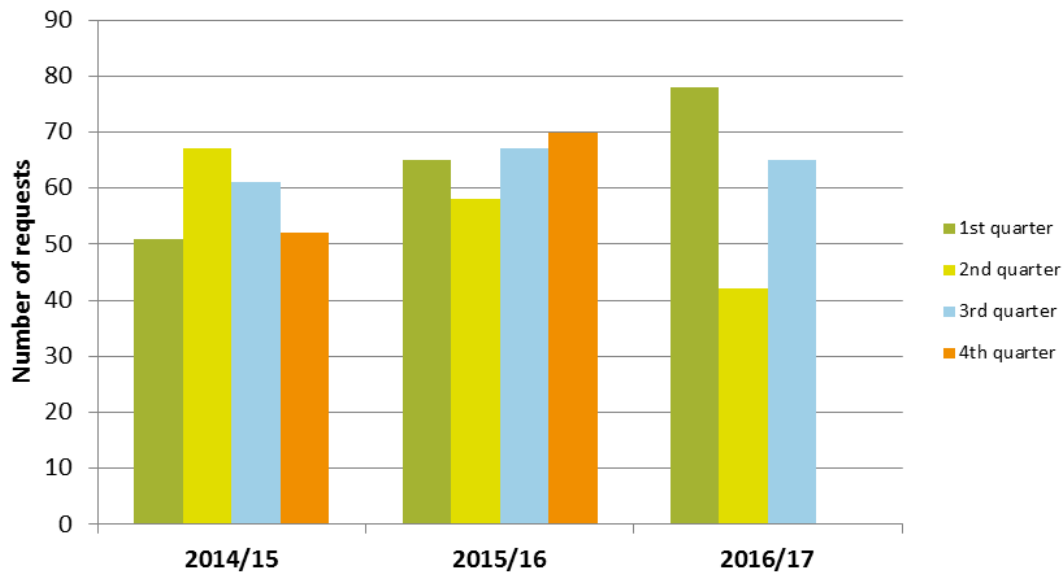
19 The Council received a total of 260 official information requests during 2015/16. Council has received 185 requests in the first three quarters of 2016/17 and is tracking slightly lower compared to 2015/16.

Total number of official information requests



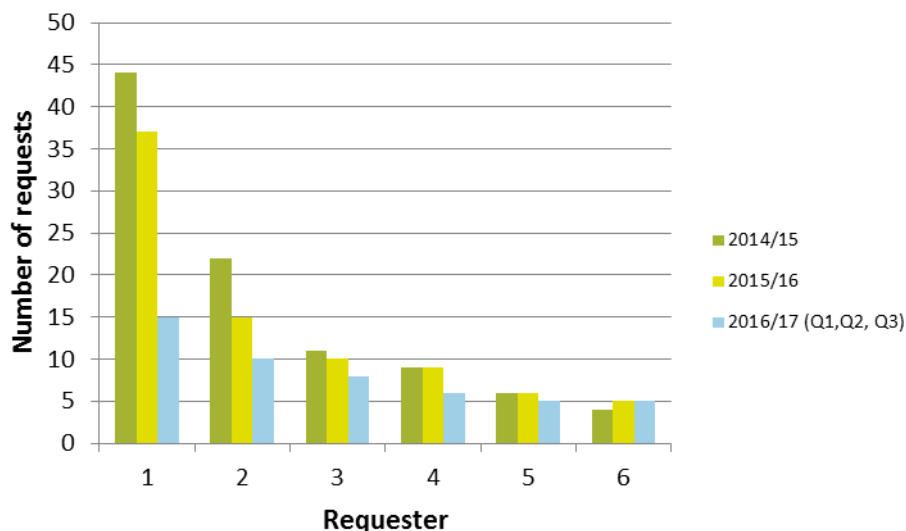
20 The below graph depicts the number of requests by quarter over the last three financial years.

21 The Council received 64 requests within the third quarter of 2016/17 in comparison with 67 in the third quarter of 2015/16 and 61 in third quarter of 2014/15.



22 The number of multiple requests received from specific individuals has decreased in 2016/17 compared to previous two financial years. The same two requesters have remained at the top of the list in 2014/15, 2015/16 and the first three quarters of 2016/17.

23 This graph shows the top 6 requesters over the last three financial years.



Bylaw monitoring

24 Information in relation to the current status of the bylaws is contained in Appendix B.

Additional Investigations/Mediations or Other Compliance Matters

25 Information in relation to the current status of litigation is contained in Appendix C.

CONSIDERATIONS

Policy considerations

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

27 Council interaction with the Office of the Ombudsman and the Office of the Privacy Commissioner is managed through Council's in-house legal team.

28 The legal requirements of LGOIMA, LGA 2002 and the Privacy Act are well established in the Council's processes.

Financial considerations

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

SIGNIFICANCE AND ENGAGEMENT

30 This report is for the purpose of providing information only and does not trigger the Council's Significance and Engagement policy.

RECOMMENDATIONS

31 That the Audit and Risk Committee:

- i. **note** that there was one statutory compliance issue associated with the ‘key’ acts identified in the third quarter of the 2016/17 year.
- ii. **note** the current status of Ombudsman and Privacy Commissioner investigations, official information requests, bylaws and litigation;
- iii. **agree** that this report, appendix (B) and resolutions only be released from public excluded business; and
- iv. **agree** that appendices (A) and (C) be excluded from public release.

Report prepared by	Approved for submission	Approved for submission
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Kevin Black

Sarah Stevenson

Wayne Maxwell

**Manager, Corporate
Planning and
Reporting**

**Group Manager
Strategy and Planning**

**Group Manager
Corporate Services**

ATTACHMENTS

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| Appendix A | Ombudsman and Privacy Commissioner investigations |
| Appendix B | Bylaw status |
| Appendix C | Litigation report |

Appendix B - Bylaw Status Update

Name of bylaw	Owner	Date bylaw was approved by council	Review required to be completed by	Progress	Expected review timeframe	Risk	Status
Beach Bylaw 2009	Community Services	28-May-09	28 May 2019 (final date for review 28/05/21)	Initial work is not expected to start until July 2018	May 2017 – December 2018		Not currently under review
Cemeteries Bylaw 2016	Community Services	29 Sept 2016	29 Sept 2026 (final date for review 29/09/28)				Not currently under review
Control of Alcohol in Public Places Bylaw 2013	Strategy and Planning	18 Jul 2013	18 Dec 2018 (final date for review 18/12/18) Review required five years from 18 December 2013 due to section 11 of the Local Government (Alcohol Reform) Amendment Act 2012.	In the early planning stages for the bylaw, considering the connection with the possible development of the Local Alcohol Policy. These two projects are not reliant on each other and will be uncoupled if required	January 2017 – March 2018	Currently none identified by staff	On track
Dog Control Bylaw 2008	Regulatory Services	11 Dec 2008	11 Dec 2018 (final date for review 11/12/20) NB: Dog policy review must be undertaken alongside the bylaw review.	Project plan complete.	June 2017 – December 2020	Currently none identified by staff	On track
Fire Prevention Bylaw 2010	Regulatory Services	30 Sept 2010	30 Sept 2015 (final date for review 30/09/17)	Report went to Strategy and Policy Committee on 9 March and they recommended that: <ul style="list-style-type: none"> a) the review of the Kāpiti Coast District Council 2010 Fire Prevention Bylaw is stopped; and b) the Kāpiti Coast District Council 2010 Fire Prevention Bylaw is allowed to expire on 30 September 2017. c) That Council continue to work with FENZ to bring about transition 	No longer being reviewed	FENZ does not transition at time BYLAW expire on 30 September 2017	No longer under review
Food Safety Bylaw 2006	Regulatory Services	Amendment to the Food Safety Bylaw approved by Council 17 March 2016.	Approved by legal that a full review no longer required as Bylaw will have to be revoked in 2019.				Will be revoked in 2019 at the end of transition period of the Food Act 2014
General Bylaw 2010	Strategy and Planning	29 Jan 2010	28 January 2020 (final date for review 28/01/22)	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.			It is recommended that all future bylaw drafts are also written independently without referencing the General Bylaw
Keeping of Animals, Bees and Poultry Bylaw 2010	Regulatory Services	3 June 2010	3 June 2020 (final date for review 03/06/22)				Not currently under review

Name of bylaw	Owner	Date bylaw was approved by council	Review required to be completed by	Progress	Expected review timeframe	Risk	Status
Public Places Bylaw 2010	Community Services	15 Jul 2010	15 Jul 2015 (final date for review 15/07/17)	Draft bylaw and policy approved for consultation at the 2 February Strategy and Policy meeting. Consultation closed on 31 March 2017. Received 11 submissions.	Amended timeframe July 2016 – July 2017		On target
Solid Waste Bylaw 2010	Infrastructure Services	22 April 2010	22 April 2020 (final date for review 22/04/22)	Solid Waste Bylaw is to be reviewed early in line with the rest of the region. Depends on regional resource.	Likely 2017-2018	Currently none identified by staff	Not currently under review
Speed Limit Bylaw 2015	Infrastructure Services	15 Oct 2015	No legislative requirement to review				Review as required. Likely only to be triggered by change in legislation or amendment to the General Bylaw
Trade Waste Bylaw 2007	Infrastructure Services	14 Nov 2007	14 Nov 2017 (final date for review 14/11/19)	Section 148 of LGA02 has special requirements for trade waste bylaws. Scoping report completed mid June 2016. Technical review of proposed changes being undertaken currently. Apr-June 2017. Revised programme of work to be completed by end June/Early July 2018.	April 2016 – December 2018	Currently none identified by staff	On track
Traffic Bylaw 2010	Infrastructure Services	24 June 2010	24 June 2020 (final date for review 24/06/22)			Currently none identified by staff	Not currently under review
Water Supply Bylaw 2013	Infrastructure Services	29 Aug 2013	29 August 2023 (final date for review 29/08/25)				Not currently under review

Restricted