

5 May 2021

[REDACTED]

[REDACTED]

Request for Official Information responded to under the Local Government and Official Information and Meetings Act 1987 (LGOIMA) – reference: 8206344 (OIR: 2021-231)

I refer to your information request we received on 9 April 2021. The information you have requested is set out below.

I am conducting some research on the charging mechanism under section 13 of the Local Government Official Information and Meetings Act 1987. Please send me the following information.

1. Any internal guidance, currently in use, that provides advice on when and how to charge a fee for responding to an OIA request.

Kāpiti Coast District Council (Council) does not have its own policy or procedure in relation to charging for requests under the LGOIMA. Council practice on charging for LGOIMA requests is guided by relevant sections of the LGOIMA, together with guidance released by the New Zealand Ombudsman and the Ministry of Justice.

Guidance on Council's approach to charging for LGOIMA requests is publicly available on the Council website and follows the New Zealand Ombudsman and Ministry of Justice guidelines:

- Kāpiti Coast District Council [Official Information Request Charges - Kāpiti Coast District Council \(kapiticoast.govt.nz\)](https://www.kapiticoast.govt.nz)
- Ministry of Justice Official Information Act Charging Guidelines <https://www.justice.govt.nz/assets/Documents/Publications/1982-Official-Information-Act-charging-guidelines.pdf>
- New Zealand Ombudsman [Charging guidelines for OIA requests | New Zealand Ministry of Justice](#)
- New Zealand Ombudsman [The LGOIMA for local government agencies: A guide to processing requests and conducting meetings | Ombudsman New Zealand](#)

Also attached as Appendix 1 is a copy of our Proactive Disclosure Policy which identifies reasons for charging versus later releasing information under the public interest test.

Council has established internal guidance, workflows and templates for managing and responding to LGOIMA requests, which prompt staff across the organisation to consider whether it is appropriate to charge for a particular request. Staff are requested to consult with the Governance and Legal Services Team and Advisor Official Information if they are considering whether to charge.

Staff have often commented that charging for information does not actually achieve anything when responding to a request for a substantial amount of information. They usually just need more time to process the response, our preference is to extend the time we take to respond to a large request, or provide a part response initially and follow it up with a second response at a later date to allow staff more time to collate the information. However, where requests are unreasonable or cannot be refined we will decline due to substantial collation.

- 2. Any documents, from the past five years, where the subject of whether or not your organisation should charge a fee for processing OIA requests and how charging could be implemented is discussed.**

We have the Official information request charges listed out on our **fees and charges schedule**, current fees for OIRs can be found on page 118 of our 2020/21 Annual Plan ([Annual Plan - Kāpiti Coast District Council \(kapiticoast.govt.nz\)](https://www.kapiticoast.govt.nz/annual-plan-2020-21)) and proposed 2021/22 OIR fees can be found on page 33 of our Schedule of user fees and charges under Financial documents ([Documents and videos - Kāpiti Coast District Council \(kapiticoast.govt.nz\)](https://www.kapiticoast.govt.nz/schedule-of-user-fees-and-charges))

- 3. Where you have charged for an OIA request and received payment within the past five years please provide the dollar amount for the three largest fees you have charged.**

Council last charged for Official Information requests in September 2016. Within the past five years, the three largest fees we have charged and received payment for in relation to Official Information requests are:

- a) \$760 (GST inclusive) – September 2016
- b) \$456 (GST inclusive) – May 2016
- c) \$456 (GST inclusive) – March 2016

- 4. If you do not charge fees for processing OIA requests please provide confirmation of this in your response letter.**

We have advised requesters many times that a charge may be required but in the last four years we have never actually charged anyone, as they have either withdrawn their request, refined it, or we have provided a part response which has sufficed. In terms of the 2020 year (1 January to 31 December 2020) we mentioned charging several times but no charge was ever processed as the requesters refined their requests.

Ngā mihi



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

KĀPITI COAST DISTRICT COUNCIL – CORPORATE POLICY

Corporate Policy Title:	PROACTIVE DISCLOSURE POLICY (addendum to the CORPORATE COMMUNICATIONS POLICY)		
Policy No:	CP-20-044	Pages:	1 – 5
Group Responsible:	Corporate Services		
Approval Dates:			
– Originally approved on:	September 2020		
– Current version approved on:	September 2020		
– Next review due on:	September 2021		

1. POLICY OBJECTIVE(S)

- 1.1 The Council recognises the importance of the accessibility of information for encouraging the active participation of the public in decision making processes and is committed to being transparent and accountable.
- 1.2 The purpose of this policy is to ensure that Kāpiti Coast District Council employees have clear guidelines for the proactive disclosure of information so that the Council may progressively increase the availability of information to the public.

2. SCOPE

- 2.1 This Proactive Disclosure Policy applies to all employees and contractors (collectively referred to as the employees) of Kāpiti Coast District Council.
- 2.2 The types of information referred to in this policy include, but are not limited to:
 - Responses to official information requests;
 - Reports commissioned by the Council; and
 - Submissions made by the Council, e.g. on proposals released by central government.
- 2.3 Schedule 1 of this policy lists the types of information referred to in this policy. Additional information types may be added to Schedule 1 at any time by way of agreement by the Senior Leadership Team.

3. POLICY STATEMENT

- 3.1 This policy is based on the following principles:
 - Progressively increase the availability of information¹; and
 - Presumption in favour of publishing.

¹ This is an explicit purpose of LGOIMA (see Section 4 of LGOIMA).

- 3.2 This means that employees will seek to make information available to the public except when there are *good reasons* to withhold it. Section 3.5 includes examples of reasons for which information may be withheld.
- 3.3 When releasing information, we must balance the above principles with ensuring that we *protect official information and the deliberations of the Council to the extent consistent with the public interest and the preservation of personal privacy*².
- 3.4 If there is current media interest in the information, or if it is anticipated that media interest may be generated as a result of publishing the information, seek advice from the Communications and Engagement team about whether additional contextual information should be included at the time of publishing.
- 3.5 All material proposed for release must undergo a considered, reliable, robust, and thorough review process. The following due diligence matters should be considered by the person authoring or reviewing the material before the Group Manager gives approval to proactively release and publish material online:
- 3.5.1 Whether the document contains any information that would have been withheld if the information had been requested under the LGOIMA;
- 3.5.2 The application of the principles in the Privacy Act 2020;
- 3.5.3 Whether there is any potential liability, civil or criminal, that might result from the proactive release of material. Matters to be considered include:
- defamation: if the information proposed for release says or does something that may potentially harm the reputation of another person, group, or organisation, then seek legal advice;
 - privacy of natural persons: if personal information is contained in the material, consider whether the information should be released at all and, if released, whether there is a need to redact the information. Consult with all individuals named in any information proposed to be released. Guidance from the Office of the Ombudsman and the Privacy Commissioner should be referred to when considering the release of personal information;
 - interests of organisations: if information about an organisation is contained in the material, consider whether the information should be released at all and, if released, whether there is a need to redact information. Guidance from the Office of the Ombudsman should be referred to when considering release of information about organisations;
 - breach of copyright: if the information proposed for release is the creative work of others, their trademarks, or certain confidential business information, the owner of the information must give permission before it can be published;
 - the disclosure of commercially sensitive information: consider the type of information at issue and how it came to be in the possession of the government; and
 - breach of contract: consider whether there is a contractual interest in the information proposed for release and whether there is a need to redact information to protect contractual obligations and/or whether the information should be released at all.

² Adapted from Section 4(c) of LGOIMA.

- 3.5.4 Whether breach of any law or statute will occur if the information were released. Consider all laws or statutes that apply to the information; and
- 3.5.5 Whether a breach would constitute contempt of court.
- 3.6 If the information proposed for publishing is a response to an official information request under the LGOIMA, employees will follow the guidelines below, in addition to 3.4:
- Timing of publication: Employees should aim to publish the response no later than five working days after it is sent to the requester. Where it is more efficient, responses may be published in bulk.
 - Additional information: to place the response in the proper context and mitigate any potential harm from release, additional information should be provided in addition to the response to the request.
 - Employees will advise requesters, in the initial acknowledgement of receipt of the request, as well as in the response, that the response to their request may be published (with the requester's personal details removed). Information regarding the Council's policy on publishing responses will also be available on the information request section of the Council's website.
 - Employees should advise any relevant external parties that we are proposing to publish the response. If an external party objects to publication of a response, employees should consider whether further redaction of information specific to that party is appropriate or whether to review the timing of the publication. A response may be withdrawn from publication following an objection at the discretion of the responsible Group Manager.
 - Information that has been charged for: whilst the Council may publish information at its own discretion within the guidelines of this policy, if the Council has charged a requester for the information, consider whether it is appropriate to remit the charge (in part or in full) if the response is being published in the public interest.
- 3.7 Responses to official information requests for personal information relating to the requester made under the Privacy Act 2020 will not be published.
- 3.8 Where possible, information should be published in a searchable text format and contain metadata to allow the content to be identified through an internet search engine or a search function within the Council's website.
- 3.9 Information should be made available on the Council's website for a minimum of two years, after which it may be archived.
- 3.10 Published information that becomes out of date or is superseded should be either removed from the website, replaced, or have information added to place it in its proper context.

4. DEFINITIONS

- 4.1 *Council* refers to all employees and elected members of the Kāpiti Coast District Council.

5. BACKGROUND

- 5.1 This policy has been created on the Chief Ombudsman's recommendation³ that *agencies should ensure they have a comprehensive policy concerning the proactive release of information they hold, which includes how to maximise the benefits of proactive release while also managing risks that may arise from the release of certain types of information.*

6. REFERENCES

- [Local Government Official Information and Meetings Act 1987](#)
- [Privacy Act 2020](#)
- [Public Records Act 2005](#)
- [Ombudsman guide to processing requests and conducting meetings June 2016](#)
- [A guide to the public interest test in section 9\(1\) of the OIA and section 7\(1\) of the LGOIMA June 2017](#)
- [Report of Chief Ombudsman Beverley Wakem - Not a Game of Hide and Seek](#)
- [State Service Commission guide on proactive release of official information December 2017](#)
- [Cabinet Manual guidance on releasing information](#)

7. RELATED POLICIES

- Corporate Communications Policy

8. REVIEW

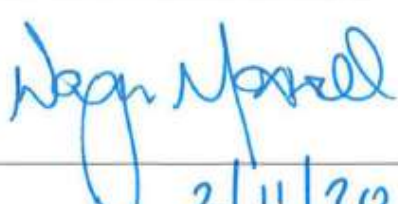
- 8.1 This policy shall be formally reviewed by the Corporate Services Group no later than 12 months after it is made operational, to identify lessons learned and recommendations for improvement. Subsequent reviews shall be undertaken every three years.

9. POLICY HISTORY

The following table lists the document history up to the date of this policy formation.

Version	Date	Policy owner	Brief description of change	Amended by	Approved by
1.0	September 2020	Corporate Services	New policy	Chris Pearce (Manager, Corporate Planning and Reporting)	SLT / CE

10. SENIOR LEADERSHIP TEAM APPROVAL

Chief Executive name:	Wayne Maxwell
Chief Executive signature:	
Date:	2/11/20

³ Office of the Ombudsman - Not a game of hide and seek, page 17

11. SCHEDULE 1 – Types of information covered by the Proactive Disclosure Policy

Type of information	Date added to Policy
Responses to official information requests under the Local Government Official Information and Meetings Act 1987	March 2020
Reports commissioned by the Council	March 2020
Submissions made by the Council	March 2020
Submissions made to the Council under the Special Consultative Procedure	March 2020