


OIR: 2324/939

20 June 2024



Tēnā koe 

Request for Information under the Local Government Official Information and Meetings Act 1987 (the Act) (the LGOIMA)

Thank you for your email of **22 May 2024** requesting the following information:

I am writing about the report before the Risk and Assurance Committee Meeting prepared for the 23 May 2024 meeting: Agenda item 9.6 - Legislative Compliance - 1 January to 31 March 2024

On page 94 – Table Reference “Part B” – Previously Reported Matters states Ref B-2, Breach Type Takutai Kāpiti: “Historical procurement breach relating to Takutai Kāpiti - three instances identified where no contracts or procurement paperwork are in place for two suppliers.”

1 Please list the “three instances identified where no contracts or procurement paperwork in place...”

I can confirm that there was one historical instance where we identified that no formal contract or procurement paperwork was in place for work completed. This was with the consultant Mitchell Daysh for assisting in standing up the Takutai Kāpiti project, post Council consideration of the Co-Design Working Group's recommendations. The total cost for this is set out in response to Question 3.

Further to this, there were three historical procurement issues identified where there were not contract variations reflecting work undertaken:

- Jacobs. For some aspects of Phase 1 work undertaken for Takutai Kāpiti. Further detail is outlined in Question 2.
- Maven. For some aspects of Phase 1 work undertaken for Takutai Kāpiti. Further detail is outlined in Question 2.
- Mitchell Daysh. For further facilitation services and advice provided as part of the Co-Design Working Group.

Please note that any information provided in response to your request may be published on the Council website, with your personal details removed.

2 Please provide all relevant details regarding these “three instances” - emails, memos, telephone notes, text messages, WhatsApp messages, reports, etc.

Please find attached information related to the three instances where further contract variations were not established:

- An email to the Chair of the Risk and Assurance Committee regarding the breach.
- A memo to the Chief Executive outlining a request to approve a procurement plan for the retrospective Jacobs contract variation.
- The retrospective Jacobs contract variation.
- A memo covering the contract history of Jacobs for Takutai Kāpiti.
- Retrospective Maven contract variation.

Also for completeness, the issues of non-compliance were brought to the attention of the Chief Executive through the quarterly legislative compliance survey results in Quarter 1 of 2023/2024. The excerpt from the legislative compliance survey stated:

“Relates to Takutai Kapiti and previous procurement undertaken before the project transferred to S&G. Three pieces of work with two providers have no contracts in place, or procurement paperwork. We are not clear if this is because it has not been filed and the person has left, or if it just is not in place. We are taking action to document the issue”.

Some aspects of the information you are seeking, including a breakdown of supplier costs, is commercially sensitive. On that basis I must withhold this information under section 7(2)(b)(ii) of the Act which allows for Council to withhold information in order 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. In Council's view the reasons for withholding these details are not outweighed by public interest considerations in section 7(1) favouring their release.

Some aspects of the information you are seeking contain information which has been redacted to protect the privacy of individuals. The decision to withhold this information is made under section 7(2)(a) of the Act which allows for Council to withhold information in order to protect the privacy of natural persons, including that of deceased natural persons. In Council's view the reasons for withholding these details are not outweighed by public interest considerations in section 7(1) favouring their release.

There are no records of telephone notes or text messages, and Council does not use WhatsApp as a way of communication. On that basis I must decline this part of your request as the documents alleged to contain the information requested do not exist, or despite reasonable efforts to locate them, cannot be found, section 17(e) of the LGOIMA refers.

A search of our email archive has resulted in a significant volume of emails to search through (over 3,600). The majority of these emails will not be relevant to the questions you have posed and pertain to other matters, but it is necessary for us to go through these emails to ensure we find any that are relevant to your request. That work has been started, but is not yet complete due to the high volume of emails to sort through. Accordingly, it is necessary to extend the timeframe for responding to this part of your request under section 14(1)(a) of the LGOIMA as the request is for a large quantity of official information or necessitates a search through a large quantity of information and meeting the original time limit would unreasonably interfere with the operations of the local authority. The timeframe for responding to this part of your request is extended to 31 July 2024, but we will endeavour to provide that information as soon as possible. If you no longer require a search of this information, it would be appreciated if you can advise us as soon as possible.

3 Please provide the individual costs of each of the “three instances identified” and the departments/managers responsible.

The table below sets out the individual costs of the three instances identified:

Supplier	Topic of work	Individual costs outside of agreed contract (excl GST)	Responsible department/manager
No contract variation:			
Mitchell Daysh Limited	Co-Design Working Group	\$46,710	Natasha Tod, Group Manager Strategy and Growth
Jacobs	Phase 1 of Takutai Kapiti	\$108,208	Sean Mallon, Group Manager Infrastructure
Maven	Social Impact Assessment	\$14,808	Sean Mallon, Group Manager Infrastructure
No formal contract or procurement paperwork:			
Mitchell Daysh Limited	Standing up Takutai Kapiti	\$61,999	Sean Mallon, Group Manager Infrastructure

4 Please provide the cap amount that the CEO has as a delegated authority by the Council.

The Chief Executive has financial delegation for contracts for up to \$2.4 million.

5 Please list the “two suppliers” the report refers to.

The reference to two suppliers initially included Maven and Jacobs. In late 2023, we identified a further instance of non-compliance related to Mitchell Daysh. Please see information in Question 1 and 3.

6 *Please provide the Council policy authorising the use of suppliers when contracts or procurement paperwork are not in place.*

Council policy for procurement is set out in our Procurement Policy, which is now attached. The reason that these issues of non-compliance were reported is because Council's standard policy aims to ensure that appropriate procurement paperwork and contracts are in place for all transactions.

7 *A copy of the authority or senior manager to (a) engage suppliers without contracts and (b) make payment for services without a contract or procurement paperwork*

I confirm that existing contracts were in place for Jacobs, Maven and Mitchell Daysh Limited (the latter, for assistance with Co-Design Working Group) as outlined in response to question 3. This aspect for non-compliance came from not establishing variations to the contracts.

Regarding the work undertaken by Mitchell Daysh for assisting with standing-up Takutai Kāpiti, there is no formal authority other than the purchase order and payments made. A retrospective contract was not established as the work was completed and predated 2023.

8 *Please provide the Council documents identifying the payment authority regarding the "three instances."*

Council staff have financial delegations which are tied to their role they are employed to do. The financial delegation is specified in the position description for the person occupying the role, and associated contractual documentation. The Group Managers for both Infrastructure and Strategy and Growth have a financial delegation of \$600,000. The same financial delegation was in place at the time authority was given for the relevant payments referred to in this question.

The extracts from the existing relevant position descriptions show the financial delegation attached to these positions:

ROLE DESCRIPTION
April 2022

Title & Reporting Relationships

Position Title:	Group Manager Strategy and Growth, Senior Leadership Team.
Grade:	SP 27
Reports to:	Chief Executive
Direct Reports:	Up to 8 FTE with approximately up to 40 staff in the Group
Delegated Authority:	<p>Financial: This position holds a financial delegation of \$600,000. The position holder is authorised to enter into any contracts in relation to the duties of the position up to this specified limit in accordance with the Council's procurement policy.</p> <p>Human Resources: This position holds a delegation at Level B. A copy of the HR Delegations is attached.</p>

ROLE DESCRIPTION
February 2024

Title & Reporting Relationships

Position Title:	Group Manager Infrastructure and Asset Management, Senior Leadership Team (SLT)
SP Grade:	27
Reports to:	Chief Executive
Direct Reports:	Up to 8 Direct Reports with approximately 104 staff across the Group
Financial Delegations:	<p>Financial: This position holds a financial delegation of \$600,000.00. The position holder is authorised to enter into any contracts in relation to the duties of the position up to this specified limit in accordance with the Council's procurement policy. When undertaking the role of Deputy Chief Executive in the absence of the Chief Executive, the full Delegations of the Chief Executive will be applied.</p> <p>Human Resources: This position holds a primary delegation at Level B. A copy of the HR Delegations is attached.</p>

- 9 Please provide documents specific to when the CEO was alerted to “three instances where no contract or procurement paperwork are in place for two suppliers.”**

Please see the response to Question 2.

10 Please provide documents specific to the Council's resolution of the issue and any documentation regarding the Office of the Ombudsman's involvement.

Please see the response to Question 2 for documents related to Council's resolution of the issue.

As the legislative non-compliance issues you are asking about are different to the issues investigated by the Office of the Ombudsman, I have been advised that we would not consider there is any documentation from the Office of the Ombudsman relevant to the issues raised. Further, investigations with the Office of the Ombudsman are subject to secrecy and confidentiality provisions under the Ombudsman Act 1975, therefore if you require information relating to ongoing or withdrawn investigations we recommend you request this from the Ombudsman in the first instance.

11 Please provide a copy of the documents briefing elected members regarding these three incidents, including the dates and times of the meeting.

I confirm that Elected members were advised about the three incidents through the quarterly Legislative Compliance Breaches and Updates public reports. The most recent one for 1 January to 31 March 2024 can be found publicly under [Risk and Assurance Committee Meeting Agenda for 23 May 2024](#). Please also see the response to Question 2.

12 Please provide a copy of the Council-held documents identifying individual staff members responsible for this and, as a result, any change in their employment status.

Given that the issues are historical in nature, I am advised that there is no specific document identifying the individuals responsible for decisions which led to these issues. However, we have looked to identify process or system gaps that have enabled the non-compliance to occur, and will look to incorporate these findings into an upcoming review of procurement practice.

We are not able to provide information on changes to employment status or performance management of individuals. The decision to withhold this information is made under section 7(2)(a) of the Act which allows for Council to withhold information in order to protect the privacy of natural persons, including that of deceased natural persons. In Council's view the reasons for withholding these details are not outweighed by public interest considerations in section 7(1) favouring their release.



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

Ngā mihi,

A handwritten signature in black ink, appearing to read 'Kris Pervan', with a stylized, cursive script.

Kris Pervan

Group Manager Strategy and Growth
Te Kaihautū Rautaki me te Tupu

OIR: 2324/939

31 July 2024

[REDACTED]
[REDACTED]
[REDACTED]

Tēnā koe [REDACTED]

Request for Information under the Local Government Official Information and Meetings Act 1987 (the Act) (the LGOIMA)

On 20 June 2024 I wrote to you, providing a response to the majority of your request for information of 22 May 2024. Question 2 of your request required an extension of the timeframe for providing a decision on the release of the information sought. Question 2 of your request sought:

Please provide all relevant details regarding these “three instances” -emails, memos, telephone notes, text messages, WhatsApp messages, reports, etc.

Some information was provided to you on 20 June 2024. As advised in my letter of 20 June, the remainder of this question necessitated staff sorting through over 3,600 emails. Once those emails were compiled, this resulted in documents totalling more than 2,500 pages. As you will appreciate this has taken some time to check through and assess whether all of the information can be released. Due to the time required for staff to complete this work, we considered whether to decline to provide this information on the basis of substantial collusion of research under section 17(f) of the LGOIMA. However, we are mindful of the high public interest in this subject and have therefore decided to provide the information.

Under the LGOIMA, the decision to release information must be made within 20 working days or by the date of valid extension under section 14 of the Act (in this instance 31 July 2024). This letter confirms that we have made the decision to release the information to you subject to redactions of the below grounds.

Please find attached information relating to the Maven and Daysh contracts subject to the following:

Please note that any information provided in response to your request may be published on the Council website, with your personal details removed.

- Some of the information has been withheld as it involved the personal details of other parties. The decision to withhold this information is made under section 7(2)(a) of the Act which allows for Council to withhold information in order to protect the privacy of natural persons, including that of deceased natural persons. In Council's view the reasons for withholding these details are not outweighed by public interest considerations in section 7(1) favouring their release.
- Some of the information you are seeking is commercially sensitive. On that basis I must withhold this information under section 7(2)(b)(ii) of the Act which allows for Council to withhold information in order 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. In Council's view the reasons for withholding these details are not outweighed by public interest considerations in section 7(1) favouring their release.
- Some information is withheld under section 7(2)(f)(i) of the LGOIMA: the withholding of the information is necessary 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) applies, in the course of their duty.
- Some information has been withheld as it is out of scope as it relates to matters outside the scope of your question.

Where redactions are made to the documents, the sections relied upon to withhold that information will be identified within the documents.

Further documents to be supplied.

The documents relating to the Jacobs contract are currently being processed by staff and will be released to you by 16 August 2024 subject to the LGOIMA grounds specified above.

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

Ngā mihi,




Kris Pervan

Group Manager Strategy and Growth
Te Kaihautū Rautaki me te Tupu

OIR: 2324/939

16 August 2024



Tēnā koe 

Request for Information under the Local Government Official Information and Meetings Act 1987 (the Act) (the LGOIMA)

On 20 June 2024 I wrote to you, providing a response to the majority of your request for information of 22 May 2024. A further letter with our decision on the remaining response to Question 2 of your request was provided on 31 July 2024.

I advised that we would provide this documentation to you no later than 16 August. I am pleased to advise the remaining Jacobs documentation is attached now, subject to the following.

- Some of the information has been withheld as it involved the personal details of other parties. The decision to withhold this information is made under section 7(2)(a) of the Act which allows for Council to withhold information in order to protect the privacy of natural persons, including that of deceased natural persons.
- Some of the information you are seeking is commercially sensitive. On that basis I must withhold this information under section 7(2)(b)(ii) of the Act which allows for Council to withhold information in order 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.
- Some information is withheld under section 7(2)(f)(i) of the LGOIMA: the withholding of the information is necessary 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) applies, in the course of their duty.
- Some information has been withheld as it is out of scope as it relates to matters outside the scope of your question.

Please note that any information provided in response to your request may be published on the Council website, with your personal details removed.

Additional to our letter of 31 July 2024 some of the documentation has been withheld under section 7(2)(g) in order to maintain legal professional privilege.

In Council's view the reasons for withholding any of these details are not outweighed by public interest considerations in section 7(1) favouring their release.

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

Ngā mihi,

A handwritten signature in black ink, appearing to read 'Kris Pervan', with a stylized, cursive script.

Kris Pervan

Group Manager Strategy and Growth
Te Kaihautū Rautaki me te Tupu

If you require the attachments to this proactive release, please contact:
informationrequest@kapiticoast.govt.nz