



APPENDICES MINUTES

**Risk and Assurance Committee
Meeting**

Tuesday, 16 May 2023

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10.1 Update on Litigation Status, Statutory Compliance Issues and Investigations.....3

10.1 UPDATE ON LITIGATION STATUS, STATUTORY COMPLIANCE ISSUES AND INVESTIGATIONS

Kaituhi | Author: **Sarah Lloyd, Senior Advisor Warrants & Delegations**

Kaiwhakamana | Authoriser: **Janice McDougall, Group Manager People and Partnerships**

Section under the Act	The grounds on which part of the Council or Committee may be closed to the public are listed in Section 48(1)(a)(i) of the <i>Local Government Official Information and Meetings Act 1987</i> .
Sub-clause and Reason:	Section 7(2)(a), Section 7(2)(b)(ii) and Section 7(2)(g) - the withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons, the withholding of the information is necessary 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 and the withholding of the information is necessary to maintain legal professional privilege.

TE PŪTAKE | PURPOSE

- 1 This paper provides the Risk and Assurance Committee with:
 - 1.1 an update on statutory compliance declarations against key legislation relevant to local government;
 - 1.2 an overview of the progress of any current investigations by the Office of the Ombudsman and the Office of the Privacy Commissioner; and
 - 1.3 a litigation status report.

HE WHAKARĀPOPOTO | EXECUTIVE SUMMARY

- 2 Not required.

TE TUKU HAEPAPA | DELEGATION

- 3 The Risk and Assurance Committee has delegated authority to consider this report under the delegations in the [Governance Structure and Delegations 2022-2025 Triennium](#), Section C.3 which include the powers necessary to perform the following responsibilities:
 - 3.1 Considering regular reports on the status of investigations by the Office of the Ombudsman, Privacy Commission, Office of the Auditor General and other external oversight bodies into decisions and actions by the Council
 - 3.2 Ensuring that Council has in place a current and comprehensive risk management framework and making recommendations to the Council on risk mitigation
 - 3.3 Assisting elected members in the discharge of their responsibilities by ensuring compliance procedures are in place for all statutory requirements relating to their role

TAUNAKITANGA | RECOMMENDATIONS

- A. That the Risk and Assurance Committee:
 - A.1 **note** the Council's legislative compliance declarations and areas of non-compliance;
 - A.2 **note** the current status of Ombudsman and Privacy Commissioner investigations, other compliance matters and litigation;
 - A.3 **agree** that this report and resolutions only be released from public excluded business; and
 - A.4 **agree** that Attachments 2 and 3 of this report, be excluded from public release.

TŪĀPAPA | BACKGROUND

- 4 Legislative compliance with central Government's legislative and regulatory programme ensures that Council is able to carry out its core functions under section 10(1) of the Local Government Act 2002 in a fair and effective manner, managing key risks that may arise.
- 5 Each quarter, Council staff report to the Risk and Assurance Committee on:
 - 5.1 Legislative compliance against 'key' local government legislation;
 - 5.2 Investigations or mediations by the Ombudsman, Privacy Commissioner, Office of the Auditor General and other external agencies relating to the actions of the Council; and
 - 5.3 Litigation status update and other relevant risks or compliance matters.

HE KŌRERORERO | DISCUSSION

Legislative Compliance – Key Legislation

- 6 Each quarter, Council's senior leadership team complete a legislative compliance declaration against key legislative requirements and declare whether, to the best of their knowledge, they are aware of any compliance issues or breaches of legislation during the previous three-month period.
- 7 This is in respect of legislation that Council's external auditors have identified as of particular relevance, being the Local Government Act 2002, the Local Authorities (Members' Interests) Act 1968, the Local Government (Rating) Act 2002, the Local Government (Financial Reporting and Prudence) Regulations 2014, the Building Act 2004 and the Resource Management Act 1991.
- 8 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 Strategy and Operations Committee in regular quarterly reports.
- 9 As advised previously, given we have volumetric water charges, we do not fully comply with the Local Government (Rating) Act 2002 that requires the Council to fully assess each property's total rates for the rating year.
- 10 A summary of legislative compliance declarations for the fourth quarter of 2021/22 and the first three quarters of 2022/23 is set out in Attachment 1 as the Risk and Assurance Committee last considered these matters on 2 June 2022.

LGOIMA compliance

- 11 As a local authority, Council staff and elected members are governed by the Local Government Official Information and Meetings Act 1987 (LGOIMA) and must respond to official information requests within 20 working days unless an extension is granted for reasons in the Act. There is no discretion in the timeframes to account for Covid-19 impact or other factors that may arise.
- 12 In relation to the Local Government Official Information and Meetings Act 1987 there have been the following non-compliances:

2021/22 Quarter 4	Three of 62 requests (4.8%) did not meet the statutory timeframe. This was due to staff illness, delays on the part of the team responsible for the request and an ICT problem due to corrupted files.
2022/23 Quarters 1-3	Three of 174 requests (3.4%) across quarters 1-3 of the 2022/23 year did not meet the statutory timeframe. The primary reason was delays on the part of teams

	responsible for the request due to challenges in responding to the request by the deadline.
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- 13 As this is reported via Council's quarterly performance measures, this will not be included in the legislative compliance update for future reports.

Investigations by external agencies

- 14 The Office of the Ombudsman and Privacy Commissioner each have a legislative responsibility to receive complaints into and conduct investigations into the actions and decisions of local government agencies that fall within their remit. The Office of the Auditor General (OAG) has a similar oversight function and general power to make enquiries under the Public Audit Act.
- 15 Since the last update to the Audit and Risk Subcommittee in June 2022:
- 15.1 we have received six new investigation notifications from the Ombudsman. There are currently a total of six open Ombudsman complaints and investigations, with additional information set out in Attachment 2; and
- 15.2 there was also one new matter raised by the OAG which has since been resolved.

CURRENT LITIGATION

- 16 A summary of current litigation involving the Council is set out in Attachment 3.

He take | Issues

- 17 No issues are considered in this report.

Ngā kōwhiringa | Options

- 18 No options are provided in this report.

Tangata whenua

- 19 There are no direct tāngata whenua considerations in relation to the information in this report.

Panonitanga āhuarangi | Climate change

- 20 There are no climate change considerations triggered by this report.

Ahumoni me ngā rawa | Financial and resourcing

- 21 Other than what is set out in the Attachments, there are no further financial and resourcing considerations arising from this report.

Ture me ngā Tūraru | Legal and risk

- 22 There are no further legal considerations arising from this report.
- 23 Council interaction with the Office of the Ombudsman and the Office of the Privacy Commissioner is managed through Council's Legal Services team.
- 24 The legal requirements of LGOIMA, Local Government Act 2002 and the Privacy Act 2020 are well established in Council's processes.

Ngā pānga ki ngā kaupapa here | Policy impact

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

TE WHAKAWHITI KŌRERO ME TE TŪHONO | COMMUNICATIONS & ENGAGEMENT**Te mahere tūhono | Engagement planning**

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

Whakatairanga | Publicity

- 27 There are no publicity considerations.

NGĀ ĀPITI HANGA | ATTACHMENTS

1. Legislative Compliance Declarations - Key Acts
2. External Investigations
3. Litigation Status Update