



# **Local Government Official Information and Meetings Act compliance and practice**

**Christchurch City Council**

*LGOIMA compliance and practice at Christchurch City Council*

Office of the Ombudsman

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Cover image courtesy Christchurch City Council

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Opinion of the Chief Ombudsman

November 2019

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## Foreword

As Chief Ombudsman, I have been tasked by Parliament with monitoring agencies' official information practices, resources and systems. I do this by undertaking targeted investigations and publishing reports of my findings.

New Zealand has 78 local authorities. In selecting which of these to include in the first investigations into local government official information practices, I wanted to ensure a mix of different council structures, levels of resource and regions of the country. I considered the nature of complaints received by my Office, and whether a council had been dealing with any high-profile issues that had increased the number of information requests received.

The Local Government Official Information and Meetings Act 1987 (LGOIMA) is an important tool for fostering transparency and accountability in local government. It allows people to request information held by local authorities, it provides a right to complain to the Ombudsman in certain circumstances, and it has provisions governing the administration of local authority meetings. Without access to information held by local authorities, and to public meetings, the ability of New Zealanders to participate in the democratic process is diminished. An effective official information regime sits at the very heart of local government practice and should be closely connected with governance, community engagement and communications functions.

Achieving the purposes of LGOIMA depends significantly on the culture of a council and the attitudes and actions of its leaders. It is imperative that the Chief Executive and Senior leaders demonstrate a commitment to meeting LGOIMA obligations and actively foster a culture of openness.

My investigation identified serious concerns about the Council's leadership and culture, and its commitment to openness and transparency. As part of this investigation, a number of Council staff raised concerns about the behaviour of some members of the then Executive Leadership Team, and alleged methods to control certain types of information in order to keep negative information about the Council from the public and/or elected members. This led to a perception amongst staff that some members of the Executive Leadership Team were not supportive of openness and transparency.

I have found that the previous Chief Executive's failure to take appropriate and adequate action in relation to concerns expressed by staff, was unreasonable. Accordingly, I have made one recommendation, which I have not done lightly. I have recommended the Chief Executive review the practice of the Executive Leadership Team's involvement in controlling the flow of information to elected members and the public to ensure an approach is adopted that is consistent with the purposes of the LGOIMA; in particular, openness and transparency.

In August 2019, the Council provided comments on my provisional opinion. The previous Chief Executive also provided comments and I have taken this feedback into account in my final opinion. I understand the Council's Acting Chief Executive has discussed my opinion with the incoming Chief Executive and I note that it is her clear expectation that, as an organisation, Christchurch City Council is committed to openness and transparency. The Acting Chief

Executive also acted swiftly and has provided me with a draft improvement plan addressing the recommendation, and accepting all 39 suggested actions to improve its practices, with corresponding time frames. Some of my action points have already been completed. I will be following up with the Council on a regular basis over the next year to check in on the progress of the remaining action points.

The draft improvement plan is reproduced in full as an appendix to this report (Appendix 3). I am encouraged by the responses both by the Acting Chief Executive and the incoming Chief Executive. It is clear to me that the leadership team is serious about ensuring the behaviours identified as part of this investigation will not be tolerated at Christchurch City Council. I am confident that the Council has put the building blocks in place to regain the trust of staff, elected members and the public and it is committed to creating an environment that promotes openness and transparency, and this is championed by leaders at all levels.

I wish to acknowledge Council staff for the positive way they engaged with this investigation. In particular, I wish to thank those staff who came forward and raised concerns with me during my investigation. This highlights the importance of staff feeling able to raise issues with their senior leaders in order to speak freely without fear of reprisal. It is imperative that senior leaders take the time to listen and be open to hearing bad news. This includes providing feedback loops to staff so they are kept informed of progress and the outcome of their report of concern. The Council has advised me that it is putting increased focus on its Protected Disclosures Act policy, ensuring staff know of its existence and where to find it.

I have also advised the Council that it must be willing to receive and appropriately handle all reports of concern, even those that are not about serious wrongdoing. In this respect, its policies and procedures should explain what to do in the event that concerns do not meet the threshold of serious wrongdoing, and the process that will apply in that situation. This is important in order to embed the Council's commitment to fostering a culture in which staff are comfortable raising concerns with senior leaders.

Finally, I wish to thank the Senior Information Advisor and staff within the Office of the Chief Executive, for the time they took to prepare the response to our detailed questionnaire; and all those staff who participated in employee surveys, and met with my investigators to discuss their role and share their views on the Council's LGOIMA practices.

I also acknowledge members of the public, including journalists, regular requesters, and regular council meeting attendees for the views they shared in our public survey.

I look forward to continuing my engagement with the Council as it works through implementing my recommendation and suggested actions.

Peter Boshier  
Chief Ombudsman  
November 2019



## Introduction

This report sets out my opinion on how well Christchurch City Council<sup>1</sup> (the Council) is meeting its obligations under the Local Government Official Information and Meetings Act 1987 (LGOIMA).

My investigation has looked at how the Council deals with requests for official information, produces Land Information Memorandum (LIM) reports, and administers Council meetings in accordance with LGOIMA.

The purposes of LGOIMA are to increase the availability of information held by local authorities and to promote the open and public transaction of business at meetings. This ensures people can:

- effectively participate in the actions and decisions of local authorities;
- hold local authority members and their officials to account for any decisions; and
- understand why decisions were made, which will enhance respect for the law and promote good local government in New Zealand.

The LGOIMA also protects official information and the deliberations of local authorities from disclosure, but only to the extent consistent with the public interest and the need to protect personal privacy.

As Chief Ombudsman, I am committed to improving the operation of LGOIMA to ensure the purposes of the Act are realised. Key to achieving this is Parliament's expectation that I regularly review the LGOIMA practices and capabilities of councils.

I have initiated this practice investigation using my power under the Ombudsmen Act 1975 (OA). This provides me with the tools needed to investigate matters I consider important to improve administrative decision making across the public sector.<sup>2</sup> The full terms of reference for my investigation are in Appendix 1.

I have considered the information gathered through my investigation against an assessment framework consisting of the following five areas:

- Leadership and culture
- Organisation structure, staffing and capability
- Internal policies, procedures and resources
- Current practices

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<sup>1</sup> When I use the term 'Council', this primarily relates to the operational arm of the organisation unless the context suggests otherwise.

<sup>2</sup> See sections 13(1) and 13(3) Ombudsmen Act 1975

- Performance monitoring and learning

Appendix 2 provides a set of good practice indicators for each of these areas. These indicators are not exhaustive and do not preclude an agency demonstrating that good practice in a particular area is being met in other ways.

Reporting the outcome of these investigations promotes a council's accountability, and gives the public an insight into their council's ability to promote openness and transparency.

## My opinion

For the reasons set out below, and based on the information before me, I consider that there was a failure by the previous Chief Executive to take appropriate and adequate action in relation to concerns expressed by staff about some members of the Executive Leadership Team's behaviour, which staff had said did not reflect the principle of availability in the LGOIMA, nor a commitment to openness and transparency. I am of the opinion that such failure was unreasonable.<sup>3</sup>

I recommend that the new Chief Executive review the practice of the Executive Leadership Team's involvement in controlling the flow of information to the public and elected members, to ensure an approach consistent with the principles and purposes of the LGOIMA; in particular, openness and transparency.

The Council has advised me it has, or will be implementing the following actions in response to my recommendation:

- The incoming Chief Executive has read my provisional opinion. She has indicated that she intends to address the issues raised, and that *"responding in an open and honest way will be the start of delivering cultural change in our organisation at all levels."*
- The incoming Chief Executive will speak about my report at the Annual Leaders' Workshop in November.
- The Acting Chief Executive will develop an Improvement Plan with agreed mitigating actions and milestones for implementation.
- Senior Leadership practices will be reviewed, noting that any recommendations from the review will be added to the plan.

Through the investigation process, areas of good practice have been identified, and improvement opportunities suggested where there are areas of vulnerability. The Council has advised that it accepts all 39 of my suggested action points, and has developed a plan to implement these action points within the current financial year. I refer to some of the Council's specific responses in the body of this report.

I deal with each of the dimensions listed above setting out:

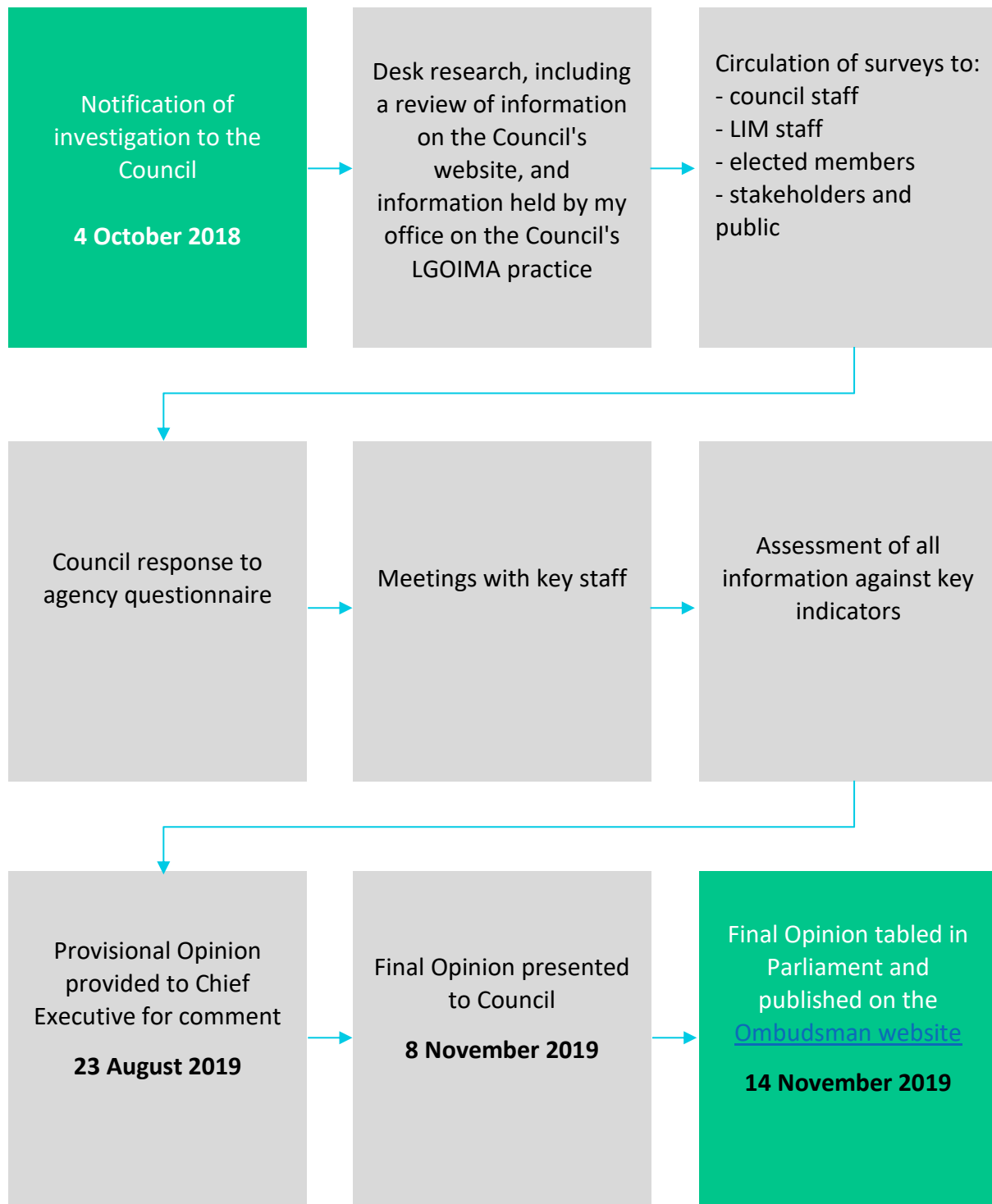
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<sup>3</sup> Formal recommendations under the OA are only made if I form an opinion that a decision, recommendation, act, or omission by the agency was wrong, unreasonable or contrary to law, etc. under s 22 of the OA.

- key findings;
- aspects that are going well; and
- opportunities to improve LGOIMA compliance and practice.



## Timeline and methodology



## Christchurch City Council: a snapshot

Christchurch lies between the Canterbury Plains and Pacific Ocean near the centre of the east coast of New Zealand's South Island. Its land area is 1415 kilometres.

The local authority, Christchurch City Council, has 16 elected Councillors and one elected Mayor. Elections are held every three years.

The Council's responsibilities include infrastructure, emergency management, community services and environmental management. The Local Government Official Information and Meetings Act (LGOIMA) both requires and encourages Council to be open and transparent in its decision making and activities.

The Council was established in 1862.



### In 2017/18, Christchurch City Council:

- served 388 400 residents
- received \$460 473 million in rates
- employed approximately 2135 staff
- received 600 requests under LGOIMA
- handled 98% of these requests within the legislative timeframe
- processed 11 031 LIM reports
- handled 100% of LIM applications within the legislative timeframe



*Image courtesy of the Department of Internal Affairs*

**MAYOR** Hon Lianne Dalziel

**DEPUTY MAYOR** Cr Andrew Turner

**ELECTED COUNCILLORS** 16

**WARDS** Banks Peninsula, Burwood, Cashmere, Central, Coastal, Fendalton, Halswell, Harewood, Heathcote, Hornby, Innes, Linwood, Papanui, Riccarton, Spreydon, Waimairi

**COMMUNITY BOARDS** Banks Peninsula, Coastal-Burwood, Fendalton-Waimairi-Harewood, Halswell-Hornby-Riccarton, Linwood-Central-Heathcote, Papanui-Innes, Spreydon-Cashmere (53 elected members between seven local boards)

**CHIEF EXECUTIVE** Dawn Baxendale

## Executive summary

This summary draws together the key findings, recommendation, and suggested actions from my investigation. The diagram on page 16 further summarises the action points into a ‘snapshot view’ of those aspects I consider will further lift LGOIMA performance at the Council.

### Leadership and Culture

My investigation identified serious concerns about the Council’s leadership and culture, and its commitment to openness and transparency. In particular, Council staff raised concerns with me about various methods employed by some members of the Executive Leadership Team to keep negative information about the Council from the public and/or elected members. These methods allegedly included manipulating or removing information from reports, project reporting not occurring, staff being told not to record information or to keep information in draft form. This has caused a perception to develop among staff that some members of the Executive Leadership Team wished to manipulate any messaging about the Council that might be negative.

The previous Chief Executive indicated that she was aware of some of the concerns raised by staff, particularly in relation to the Council’s performance reporting. The previous Chief Executive stated that the Executive Leadership Team had changed the process around the presentation of some reports, but it had not changed the content of those reports. She acknowledged that some staff were not comfortable with the evolving system around performance reporting, but in her view this was reflective of staff not understanding the role of the Executive Leadership Team, rather than senior leaders acting inappropriately.

I nevertheless consider that the previous Chief Executive did not take adequate and appropriate action to address staff concerns and ensure the actions and behaviours of some members of the Executive Leadership Team reflected the LGOIMA’s principle of availability and the commitment to openness and transparency, and that this was unreasonable. In my view it is imperative that the new Chief Executive review the Executive Leadership Team’s involvement in controlling the flow of information to the public and elected members to ensure an approach is adopted that is consistent with the principles and purposes of the LGOIMA, and in particular, openness and transparency.

In her response to my provisional opinion, the previous Chief Executive indicated that, where staff had expressed concerns to her about the actions of some members of the Executive Leadership Team, she had taken these very seriously. She also stated she had no knowledge of some of the issues staff raised with my investigators concerning the behaviours of some members of the Executive Leadership Team.

I acknowledge the previous Chief Executive considered she had dealt effectively with the concerns that were brought to her by staff. Notwithstanding this, during my investigation staff told me that issues of concern continued to occur, and a perception of secrecy existed.

The Chief Executive is ultimately accountable for staff’s perceptions of openness and transparency; the culture within the Executive Leadership Team; and the culture of the Council

more broadly. The effectiveness of any Chief Executive depends on enlightened and conscientious leadership.

The new Chief Executive now has an opportunity to transform the culture at the Council and act as a positive role model for best practice in relation to the operation of the LGOIMA, and organisational transparency. Key actions include:

- All staff should be encouraged to identify process improvements in responding to LGOIMA requests and should receive LGOIMA training in accordance with their position. Where senior leaders actively encourage staff to identify areas for improvement, and provide a system to facilitate this, the improvements are more likely to be implemented.
- The Council should review its delegation framework to ensure decision making and accountability at the senior level are clear.
- Develop a proactive release policy to support the Council's commitment to transparency.

The Council has increased its public engagement through the 'have your say' page on their website, as well as having a team tasked with ensuring the Council delivers on consultation results. The Council has a good LGOIMA request webpage, which is easy to find, and provides clear information on making a request.

Councils are statutorily required to release a range of information. In addition to fulfilling these requirements, I am pleased that the Council publishes its LGOIMA responses. Further, the Council's external messaging expresses a commitment to the principles and purposes of the LGOIMA, and to openness in general.

### Recommendation

That the Chief Executive review the practice of the Executive Leadership Team's involvement in controlling the flow of information to the public and elected members to ensure an approach is adopted that is consistent with the principles and purposes of the LGOIMA, in particular, openness and transparency

### Action points

1. Ensure the outcome of the review of the Executive Leaderships Team's practices is clearly understood by staff and any recommendations are implemented
2. Establish a process to ensure that any amendments made to documents/records are transparent, with clear lines of accountability, and a record of the amendment is made
3. Establish a clear process for staff reporting and raising concerns without fear of reprisal, and ensure outcomes are clearly communicated back to staff
4. Regular consistent positive messaging by the Chief Executive and senior leaders about the importance of the LGOIMA and openness and transparency more generally in Council wide communications
5. Senior leaders to role model behaviours consistent with a commitment to openness and transparency

### Action points

6. Complete the review of the structure of the Office of the Chief Executive to ensure the lines of decision-making and accountability are clear between the Director of the Office of the Chief Executive, the Senior Information Advisor, and the Chief Advisor to the Chief Executive
7. Ensure delegations for decisions on LGOIMA requests are clear, up to date and understood by senior leaders and staff
8. Assign a Senior Manager with specific strategic responsibility and executive accountability for official information practice
9. Senior leaders to champion a system for staff to identify and communicate opportunities for improvements to LGOIMA policies and practice, and proactive release
10. Senior leaders to set clear expectations that staff receive appropriate training on LGOIMA policies and procedures and make this expectation visible by attending training themselves
11. Include reference to LGOIMA compliance in job descriptions
12. Consider how a proactive release policy, once developed, can be incorporated into the Council's external communications strategy to further increase engagement and public participation in decision-making

## Organisation structure, staffing, and capability

The Council employs a mixed model for handling LGOIMA requests. The LGOIMA team comprises two Information Advisors (one Senior) within the Office of the Chief Executive, who work with subject matter experts in relevant business units to process requests. This collaborative approach appears to be working well, as the Council has steadily received more LGOIMA requests year by year while achieving a timeliness rating of 98 percent (from 1 July 2017 through 30 June 2018).

In my survey of Council staff, I note that many lauded the expertise held by the LGOIMA Team, who are often relied on for advice when questions arise.

The Council employs a centralised model for LIM applications, and staff in the Community Support, Governance and Partnerships Unit administer Council meetings. A Council Secretary assists the Executive Leadership Team with agendas and reports. Requests from elected members are made through the Office of the Chief Executive. There is a clear process to determine whether items should be discussed in public excluded (PX) sessions of Council meetings.

While the Council provides some training on the LGOIMA to staff, I believe it is essential to make some level of LGOIMA training mandatory for all staff upon induction, with refresher training offered periodically to staff who handle information requests. Of the LGOIMA training that is currently offered, the material is sound. Staff involved in writing reports for Council meetings receive training on InfoCouncil,<sup>4</sup> and information management training is compulsory for new staff at induction.

<sup>4</sup> InfoCouncil is the system that supports the end-to-end advice and decision-making process at Council for elected member meetings.

Due to the size of the Council, there could be more staff cross-trained to cover for the Information Advisors. There are only two staff members on the LGOIMA Team, which is a potential vulnerability. Cross-training includes the ability to log, track and coordinate responses, manage the LGOIMA spreadsheet and provide advice on the LGOIMA.

#### Action points

1. Develop a LGOIMA training programme tailored to the needs of all staff, including for staff at induction, the Public Information and Participation (PIP) Team and Customer Services Teams
2. Develop and implement more detailed, regular training for delegated decision makers, including senior leaders and for staff in the LGOIMA Team
3. Ensure appropriate staff have access to, and understand how to use, the LGOIMA tracking spreadsheet to ensure back up is available if necessary

## Internal policies, procedures, and resources

The Council has some useful resources to guide staff. These include guidance on LIM requests; template letters and emails for LGOIMA requests; an induction guide for elected members; and a policy on record-keeping obligations. The Council also produces a guidance document for staff who write reports, on what to consider in relation to matters that may be heard in a public excluded portion of a meeting.

I encourage the Council to ensure that its policies are kept up to date and align with actual practice. The existence of policies does not necessarily mean they will be adhered to, and leaders need to consistently champion the importance of these policies.

Some staff advised that the guidance may not be consistent across different platforms. For instance, some information on the Council's primary document management system, TRIM, does not match the information available on the intranet. The Council may benefit from consolidating LGOIMA resources, and making them more visible and accessible to staff.

Furthermore, I suggest a review of the LGOIMA resources, including template letters, to incorporate guidance on how to apply withholding grounds while considering the public interest (among other points). The Council should consider updating the 'LGOIMA Assistance' wording on the intranet so it aligns with section 13 of the Act.

It would also be advantageous for the Council to develop a proactive release policy to underpin its current practice.

#### Action points

1. Consider undertaking a review of Information Management (IM) policies and guidance to ensure they are fit for purpose
2. Ensure IM guidance is regularly reviewed and updated
3. Ensure IM guidance and policy is visible and easily accessible for staff and, if guidance is stored in more than one IM system, ensure guidance is consistent across all platforms
4. Leaders to champion sound record keeping practice



### Action points

5. Prioritise the development of a proactive release policy with accountability for its delivery assigned to a senior leader
6. Review and update LGOIMA guidance incorporating my suggestions
7. Ensure LGOIMA guidance is regularly reviewed and updated
8. Consider amending template letters to include specific consideration of the public interest, where applicable

## Current practices

My investigation found that the Council generally complies with LGOIMA obligations in terms of timeframes for responding to LGOIMA requests, timeframes for LIM reports, and meeting administration requirements. Overall, the LGOIMA responses reviewed within this investigation were generally comprehensive, but records of LGOIMA decision making were minimal. I would encourage the Council to consider keeping a record of discussions that take place in workshops and briefings.

In addition to LGOIMA requests handled within the 'formal' process, other parts of the business (such as the Public Information and Participation Team) also respond to straightforward requests for information. The Council must ensure that these requests are handled in accordance with the LGOIMA. This includes providing a reason for any information that is refused, and including the Ombudsman's contact details for making a complaint. It is crucial that regular training is provided to all Council teams that handle requests for information.

The Council may enhance its practice further by capturing the decision-making process for each response. I encourage the Council to move away from using a spreadsheet to input and track LGOIMA requests and decisions. I am concerned that the spreadsheet does not have a provision for documenting the decision-making process on a request. Implementing a formal peer review process would also assist in promoting transparency at a senior leadership level.

I am pleased to note that there appears to be a good working relationship between Council staff and elected members. Elected members direct their information requests to the Office of the Chief Executive, which usually supplies information under the common law, 'need-to-know' principle. Staff must be aware that information requests made by elected members are governed by LGOIMA.

It is important the Council ensures that the distinction between consultation and notification of elected members on LGOIMA requests is unambiguous, and there is no perception that elected members and/or Mayoral office staff have undue input on decision making on LGOIMA requests. Therefore, I encourage the Council to develop a protocol to clarify when and in what circumstances decision makers will consult with elected members, including the Mayor and their staff. This consultation should be recorded, as a lack of record keeping is a vulnerability that could leave the Council open to criticism. It is also not appropriate that the Mayor's advisor attends the weekly meeting where LGOIMA requests are discussed.



**Action points**

9. Ensure that all public and media information requests, as well as property file requests, are handled in accordance with the provisions of the LGOIMA
10. Provide regular training to all Council teams that handle requests for information in any capacity
11. Upgrade to a database (non-spreadsheet) system to track LGOIMA requests and decisions
12. Record the reasoning behind LGOIMA decisions, including any consideration of the public interest and the results of any consultations with third parties
13. Record the administrative steps taken in respect of LGOIMA responses where relevant
14. Establish a formalised peer review process
15. Ensure records are kept of workshops and briefings
16. Provide training to staff who are processing elected member requests to ensure consistency of practice
17. Ensure that requests from elected members are handled in accordance with LGOIMA
18. Review the practice of sending all LGOIMA requests to the Mayor's office and develop a protocol between the Council and elected members to clarify elected member involvement in LGOIMAs
19. Ensure the Mayor's advisor is not a participant in the weekly meeting where LGOIMA requests are discussed

**Performance monitoring and learning**

The Executive Leadership Team receives a weekly spreadsheet of all open LGOIMA requests (which is extracted from the LGOIMA spreadsheet). Weekly meetings are held between various teams and include discussion of LGOIMA requests and key issues. I have been informed that the meetings can trigger review of policies and practice.

Aside from the meetings, performance monitoring could be improved by providing an analysis of the data collected in the LGOIMA spreadsheet, as well as capturing additional data. A monthly report should be provided to the Executive Leadership Team for record keeping purposes and point-in-time comparisons. Such information could later be used to inform decisions about resourcing, capacity and capability, to name a few.

Media requests made to the Public Information and Participation (PIP) Team and information requests made to Customer Services Teams are not captured in the LGOIMA spreadsheet. This results in an incomplete picture of the Council's reported LGOIMA timeliness compliance. The inclusion of these requests in LGOIMA reporting would result in a more accurate representation of Council performance, as would requests from elected members and property file requests.

On a positive note, the Council engages with my Office to disperse guidance, reports and case notes to key staff. Staff are also kept informed of Ombudsman investigations into Council LGOIMA responses and their eventual outcomes.

There is no clearly defined process for the Quality Assurance (QA) of LGOIMA requests at the Council. There is merit in the Council developing a more formalised QA system to ensure consistency of decision making.

The Council does not appear to be taking adequate steps to record the decision-making process on LGOIMA requests. Failure to record the outcome of past decisions can make it difficult for other staff within the Council to locate similar, previous requests for information. The Council may wish to consider building a step into their decision-making process whereby similar requests are noted, which will help to ensure consistency of decision making.

Action points
1. Consider analysing LGOIMA request data and collecting more comprehensive data on the Council's handling of LGOIMA requests
2. Consider providing the Executive Leadership Team with a monthly report on LGOIMA requests
3. Consider ways to include requests handled by the PIP Team and Customer Services Team, as well as elected member requests and property file requests, in LGOIMA statistical reporting
4. Consider developing a formal quality assurance process for LGOIMAs
5. Consider how staff can quickly and easily access previous LGOIMA decisions