



Request for the results of staff survey conducted by local authority

Legislation	Local Government Official Information and Meetings Act 1987, ss 7(2)(a), 7(2)(c), 7(2)(f)(i), 7(1)
Ombudsman	Leo Donnelly
Case number(s)	423115
Date	February 2017

Summary

A local authority ('the Council') refused a request for information relating to the results of a staff satisfaction survey. The Council considered that sections 7(2)(a) (privacy), 7(2)(c) (confidentiality), and 7(2)(f)(i) (free and frank expression of opinions) of the Local Government Official Information and Meetings Act 1987 (LGOIMA) applied.

The Ombudsman formed the opinion that the request should not have been refused in full. He considered that sections 7(2)(a), 7(2)(c), and 7(2)(f)(i) could not apply to aggregated results, where disclosure posed no risk of identifying respondents or deterring future participation in similar surveys.

The Ombudsman agreed that individual comments provided in response to the survey could be withheld on the basis of section 7(2)(c)(i) of the LGOIMA. He recommended the disclosure of only aggregated survey results, and the Council disclosed this information to the requester accordingly.

Background

1. In December 2014, Fairfax Media requested from the Council '*the full research company report on the staff satisfaction survey completed earlier this month*'. The Council refused this request, relying on sections 7(2)(a) and 7(2)(c) of the LGOIMA.
2. In February 2015, Fairfax Media responded to the Council, advising that it did not seek the identities of any individuals who had responded to the survey, and that any comments clearly attributable to individual staff members could be redacted.

3. The Council continued to refuse the request. It noted that the Chief Executive considered he had an obligation of confidence to his staff, and that the staff survey results formed a part of his performance review.
4. Fairfax Media sought the Ombudsman's review of the Council's decision.

Investigation

5. The Council provided the Ombudsman with a copy of the information at issue and a report setting out its concerns with release. The results comprised a series of responses to statements about aspects of organisational performance, to which staff responded on a pre-set scale from 'strongly agree' through to 'strongly disagree' ('aggregated results'). The surveys also included provision for free text comment by respondents.
6. In relying on sections 7(2)(a), 7(2)(c) and 7(2)(f)(i) of the LGOIMA to withhold the information, the Council submitted that:
 - a. the survey formed a part of the Chief Executive's performance assessment, in order to gauge the level of staff engagement. Disclosure would therefore breach the Chief Executive's privacy;
 - b. the privacy of staff members may be breached as some will be identifiable from the comments provided;
 - c. staff were given an assurance of confidentiality, in order to encourage participation in the survey;
 - d. the Council's reputation, as well as that of the Chief Executive, may be adversely affected if Fairfax Media were to receive the information and focus on negative aspects of the survey's results;
 - e. the Council may no longer undertake staff surveys if it considered that information collected in that process would be routinely disclosed; and
 - f. the Council considered disclosing the staff survey presentation to Fairfax Media, however it did not do so as it might have focused on negative aspects of the survey.
7. The Ombudsman then met with the Council, where it was accepted that sections 7(2)(a) and 7(2)(c)(i) of the LGOIMA were unlikely to apply to aggregated information. The Council further commented that:
 - a. it remained concerned at the prospect of internal staff survey results being released. It considered these to be different to the likes of a community survey, for which disclosure could be expected;
 - b. the local government sector is subject to ongoing negative publicity and intense scrutiny. Disclosure of survey results such as this would only promote further negative publicity;

- c. such negative publicity would have a detrimental effect on the reputation of the Council, as well as the reputation of the Council's leadership team;
 - d. it was widely understood that Councils never disclosed this type of information;
 - e. staff surveys are a valuable internal management tool, allowing the organisation to respond to issues that would not otherwise be freely disclosed to management. If required to disclose this information, the Council would no longer proceed with this type of staff survey;
 - f. the Council would need to find an alternative means of obtaining this type of information, were surveys no longer to be used, and this would have an impact on the effective running of the organisation.
8. The Ombudsman consulted with the Privacy Commissioner, who agreed that the Chief Executive had no privacy interest in the information at issue, as none of the information in the aggregated results could be identified as relating directly to his performance in that functional role. The Privacy Commissioner also agreed that there was only a minimal privacy interest in the aggregated survey results, as opposed to the individual comments provided by staff members.
 9. In considering the complaints and determining whether there were good grounds to withhold the information, the Ombudsman conveyed a series of general principles that ought to be considered by agencies when a request of this type is received.

General principles

10. Irrespective of past practice in terms of agencies' responses to requests for information of this nature, one of the purposes of LGOIMA is to provide for the progressive availability of official information to the people of New Zealand.
11. The LGOIMA does not provide blanket protection for all information relating to internal staff surveys as an exempt 'class' or 'category' of information. Not all information generated within this process can be properly withheld.
12. Where a staff survey asks open-ended questions, and individual comments are provided in response, section 7(2)(c)(i) will often protect that information. This is because the disclosure of personalised comment, where potentially attributable to known individuals, would be likely to inhibit the willingness of individuals to respond candidly to requests for such feedback in the future. It is accepted that it is generally in the public interest for public organisations to engage in a process of seeking and receiving feedback from staff members.
13. Aggregated information, however, can generally be disclosed without prejudice to interests protected under the LGOIMA. Sections 7(2)(a), 7(2)(c) and 7(2)(f)(i) will not usually be accepted as applying to this type of information.

Section 7(2)(a)

14. Section 7(2)(a) applies where withholding is necessary to protect the privacy of natural persons.
15. Aggregated information, where not attributable to particular individuals, and generally representative of the organisation's results as a whole, is not likely to harm the privacy interests of respondents.
16. Where questions relate generally to the performance of senior leadership, results are similarly unlikely to harm the privacy interests of those individuals. Senior leadership members, including Chief Executives, have a lesser privacy interest as a result of their seniority within an organisation and the requisite accountability.
17. However, questions that relate directly to identifiable employees and that will be used in performance reviews, or in the employment relationship, may attract a privacy interest.

Section 7(2)(c)

18. Section 7(2)(c) applies where withholding is necessary to protect information which is subject to an obligation of confidence, where disclosure:
 - a. would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied (section 7(2)(c)(i));
 - b. would be likely otherwise to damage the public interest (section 7(2)(c)(ii)).
19. Section 7(2)(c)(i) will generally not apply to aggregated information, where that information is not attributable to particular individuals. In the absence of a risk that respondents will be identified and particular responses attributable to them, it is not likely that staff will be deterred from supplying similar information in the future.
20. Section 7(2)(c)(ii) is intended to prevent damage to the wider public interest caused by the disclosure of confidential information. Damage to the wider public interest is not likely to encompass concerns regarding organisational reputation or the inability to control the media's portrayal of that information. The LGOIMA does not operate to promote the disclosure of only positive information, and an identifiable and likely prejudice, beyond the possibility of negative publicity, is required to attract the protection of section 7(2)(c)(ii).
21. Moreover, section 7(2)(c)(ii) would not be likely to apply in circumstances where an agency states that it would no longer undertake staff surveys if required to disclose some results. Although it is acknowledged that it is in the public interest for organisations to measure and respond to organisational achievement and staff engagement, disclosure of aggregate information does not prevent or obstruct the use of staff surveys, and such a decision would be solely attributable to the will of the Chief Executive.

Section 7(2)(f)(i)

22. Section 7(2)(f)(i) applies where withholding is necessary to maintain the effective conduct of public affairs through the free and frank expression of opinions by, between or to members, officers or employees of a local authority.
23. Similar to section 7(2)(c)(i), section 7(2)(f)(i) will generally not apply to aggregated information where responses cannot be attributed to identifiable individuals. This is because section 7(2)(f)(i) requires that disclosure of the information would be likely to prejudice the expression of free and frank opinions. It is unlikely that such a deterrent effect could arise from the disclosure of unattributed information.

Public interest

24. Authorities should be mindful that, even if there were grounds for withholding aggregated information, there are countervailing public interest factors that may favour disclosing this type of information. Staff surveys provide insight into staff perceptions of leadership values, the level of engagement and confidence amongst staff, and are one indicator of the health of an organisation. Authorities are accountable to ratepayers for the use of public funds, and for the effective operation of their organisation.
25. Where there are concerns about the results of a staff survey, and the perceptions that may be created by raw aggregated data, it remains open to authorities to provide a contextual or explanatory statement outlining particular events or circumstances relevant to the results.

Outcome

26. Applying those general principles to the matter at hand, the Ombudsman formed the opinion that good reason under the OIA did not exist to withhold the aggregated survey results, except for the result to one aspect of the survey, titled 'engagement profile'. This was the result that bore directly on the assessment of the Chief Executive's performance, and was therefore confidential to the employment relationship. The Ombudsman accepted that disclosure of that information would be likely to breach the Chief Executive's privacy, and could therefore be withheld under section 7(2)(a). Disclosure of the remaining aggregated results meant that there was little further public interest favouring the additional disclosure of this discrete item of information.
27. The Ombudsman also formed the opinion that the individual responses of staff members could be withheld under section 7(2)(c)(i) of LGOIMA. These were highly personalised and sensitive comments, attributable to individual staff members. Public interest factors favouring disclosure did not outweigh the interest in maintaining confidentiality. Fairfax Media did not disagree with this opinion.
28. The Ombudsman recommended that the aggregated information be released to Fairfax Media, and the Council complied with this recommendation.