

Request for draft report prepared by PwC on Auckland Stadium

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| Legislation | Local Government Official Information and Meetings Act 1987, ss 7(2)(b)(ii), 7(2)(c)(i) |
| Agency | Auckland Council |
| Ombudsman | Leo Donnelly |
| Case number(s) | 468905 |
| Date | May 2018 |

Report refused because it was in draft form and commercially sensitive—parts of report withholdable however no basis for blanket withholding—strong public interest in release of report in part

A journalist asked Auckland Council for a copy of a report concerning a potential downtown stadium commissioned by Regional Facilities Auckland (RFA) and prepared by PricewaterhouseCoopers (PwC). The Council responded that the report would not be made public as it was still in draft form, and much of the detail was commercially sensitive. The requester complained to the Ombudsman.

The Ombudsman accepted that parts of the report could be withheld under:

- section 7(2)(b)(ii) LGOIMA, because release would be likely unreasonably to prejudice the commercial position of third parties; and
- section 7(2)(c)(i) LGOIMA, because release of information that would identify stakeholders who had supplied information for the report would be likely to prejudice the ongoing supply of confidential information by those stakeholders.

However, he did not accept that there was good reason to withhold the report in full by virtue of its 'draft' status.

The Council explained that an initial draft was received in June 2017 and referred back to PwC for further work. The report was still in draft form when the request was received in November

2017. The draft was provided to the RFA Board in March 2018, but even so, it remained, in the Council's view, in draft form. The Council further advised that the timeline for finalisation of the report was uncertain and depended on other work.

The Council relied on section 7(2)(f)(i) of the LGOIMA, and submitted that:

...the ability of local authorities and their CCOs to freely explore options for strategies, projects and all relevant activities would be severely constrained if they are unable to procure advice from consultants on a confidential basis, accepting that there will be an appropriate point at which the advice should be made public.

The Ombudsman noted that there is no basis for a blanket withholding of drafts under the LGOIMA until they are completed and finalised. There are withholding grounds that can apply to protect draft documents, most commonly sections 7(2)(c)(i) and 7(2)(f)(i) of the LGOIMA. However, their application depends on a close analysis of the information at issue, and the harm that would flow from its release. Not all drafts are the same.

The draft at issue here was in near final form and had been submitted to the RFA Board. From PwC's perspective the report had been completed, subject to the RFA's feedback. The Ombudsman was not persuaded on the facts of this case that release of the 'draft' report would inhibit PwC or any other external assessor from providing free and frank opinions in the future. This is clearly the purpose for which the PwC report was commissioned, and it had significant time to develop the analysis provided to the Council at the time of the request.

The Ombudsman also considered that there was a strong public interest in transparency of what expert advice the Council had received to inform its future decisions on a possible national stadium. If the project progressed, it would involve significant public expenditure, either through the Council or central government.

There was also a strong public interest in the release of information within the report to enable more effective participation by the public in the decision making by Council concerning a possible national stadium.

Planned opportunities for public consultation at a later stage in the project were not necessarily an adequate alternative to release of information as early as possible to enable more effective participation by the public. The 'pre-feasibility' phase would seem to be an entirely appropriate time for the public to have an opportunity to consider the issue, and the advice that the Council had received.

The Ombudsman concluded that the release of parts of the report could satisfy the public interest, while particularly sensitive information could be redacted to prevent the specific harms that the Council had identified. The Council accepted the Ombudsman's opinion and released the report in part.

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