

Charge for supply of information about the closure of Naenae Pool

Legislation	Local Government Official Information and Meetings Act 1987, s 13(3)
Agency	Hutt City Council
Ombudsman	Peter Boshier
Case number(s)	504917
Date	11 September 2019

Decision to charge \$228 for supply of information about the closure of Naenae pool was unreasonable—the significance of the issue within the Lower Hutt community warranted a full waiver of that charge—Council agreed to waive the fee and change its charging policy to reflect consideration of the public interest

Background

1. The requester, a councillor, sought information relating to the closure of Naenae Pool from the Hutt City Council. The Council decided to grant the request, but fixed a charge for supply of the information.
2. The requested information consisted primarily of communications between particular Council officers about the decision to close Naenae Pool.
3. The Council acknowledged the public interest in the subject, but said there had been more work undertaken on the request than would ordinarily be the case before seeking agreement from a requester to pay a charge. Therefore, while the Council estimated the full charge would be \$988, it decided to remit part of that charge in light of the work that had already been completed, and also in acknowledgment of the public interest in the issue. This resulted in a charge of \$228.

Investigation

4. Section 13(3) of the Local Government Official Information and Meetings Act (LGOIMA) provides that any charge fixed for the supply of official information must be reasonable

and *'regard may be had to the cost of the labour and materials involved in making the information available'*.

5. The Ombudsman's role is to consider whether the decision to charge, and the amount fixed, were reasonable in the circumstances.
6. The Chief Ombudsman did not have concerns with the way in which the Council had calculated the charge, or with the Council's view on the amount of work that was required to respond to the request. The key issue, in his view, was the extent to which the charge should have been remitted in the public interest.
7. The LGOIMA clearly enables Councils to fix a charge for the supply of official information, but due regard must be had to whether there is a compelling public interest in making the information available. Such a public interest may warrant remission or waiver of any charge that might otherwise have been fixed, having regard to the resources needed to supply the information.
8. The Chief Ombudsman noted that there is nothing in the LGOIMA that prevents Councillors being charged for official information. However, Councils must be careful to consider the public interest in the availability of information to those carrying out democratic responsibilities, and must also consider any wider public interest in the information sought, as it would do for all requests where a charge is proposed. That being the case, it may not be unreasonable to charge Councillors in some cases, where a request is excessively burdensome.
9. In considering the public interest in availability of the information requested, the Chief Ombudsman referred to section 4(a)(i) of the LGOIMA, which states one of the purposes of the Act as being: *'to increase progressively the availability to the public of official information held by local authorities, ... in order ... to enable more effective participation by the public in the actions and decisions of local authorities'*.
10. This case turned on the weight of the public interest in the closure of Naenae Pool. This was a highly topical issue within the Lower Hutt community. Residents had expressed concerns around potential costs for repairing or replacing the pool, whether local business in Naenae would be adversely affected following the pool's closure, and that an important community amenity had been closed.
11. The Chief Ombudsman noted that it was important the community felt that it was a part of, or at least understood, decisions made by elected members and council staff. He acknowledged that the Council had published some information on its website concerning the closure of the pool, which included certain engineering reports, as well as a Q&A document providing information around why the pool was closed and advice on other facilities in the Lower Hutt region. The Council had continued to update the relevant page of its website.
12. The Chief Ombudsman also recognised the Council's decision to remit part of the charge in the public interest. However, the significance of the issue within the Lower Hutt community meant that it was not reasonable to impose any charge for the supply of the

information at issue in this case. Release of the communications between Council officers would promote further transparency about the decision to close the pool.

Outcome

13. The Council accepted the Chief Ombudsman's provisional opinion, and agreed to waive the charge in this case, as well as amending its charging policy to reflect consideration of the public interest.

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