

Request for draft reports prepared by EY on Information Services

Legislation	Local Government Official Information and Meetings Act 1987, s 7(2)(c)(ii)
Agency	Auckland Council
Ombudsman	Leo Donnelly
Case number(s)	446128
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Draft reports were in fact final reports—some information publicly available—negotiations had been concluded—neither s 7(2)(c)(ii) nor s 7(2)(i) apply—significant public interest in release to promote transparency of Council’s decision making processes and accountability for expenditure of ratepayer money

In December 2016, a requester asked Auckland Council for the ‘independent review of the [Information Services (IS)] department’ prepared by Ernst & Young (EY). The Council refused the request under sections 7(2)(f)(i) (free and frank) and 7(2)(i) (negotiations) of the LGOIMA, and the requester complained to the Ombudsman.

The information at issue was two draft EY reports, dated 26 June 2015 and 29 February 2016 respectively. The Council stated that, upon reflection, section 7(2)(f)(i) was unlikely to be relevant, as the reports were expert reports commissioned by the Council and it could not be said that their withholding was necessary to maintain the effective conduct of public affairs.

However, the Council considered that section 7(2)(c)(ii) (confidentiality) of the LGOIMA applied.

Section 7(2)(c)(ii)

Section 7(2)(c)(ii) applies where the release of information that is subject to an obligation of confidence would be likely to damage the public interest.

The Council noted that the reports were marked as confidential drafts for discussion and were provided to the Council to check them for accuracy. The Council said it was in the public interest to be able to obtain specialist advice from third parties and have drafts of that advice provided in confidence, without having to release them under the LGOIMA. The Council advised that no final reports were produced by EY.

The Council acknowledged that there is a public interest in the expenditure of public money on ICT systems and that release of the information would promote the accountability of the Council. However, the Council considered that the public interest did not outweigh the need to withhold the draft reports. The Council noted that a large part of the information contained in the 29 February 2016 draft report was made publicly available in the 17 March 2016 addendum agenda for a meeting of the Finance Performance Committee. The Council considered that this satisfied the public interest.

The Ombudsman stated that while section 7(2)(c)(ii) can apply to draft documents, it did not apply to these drafts. Confidentiality can be vitiated by subsequent publication. The Council had made public a large part of the content of the 29 February 2016 draft report. It was not necessary to withhold those parts of the 29 February 2016 draft report made publicly available in order to protect information subject to an obligation of confidence.

Further, the Ombudsman did not consider that the release of the two draft reports would damage the public interest. While the reports were marked draft, no final reports were ever produced by EY. Therefore, the draft reports were in effect EY's final reports, although the Council may not necessarily have agreed with their content.

In addition, the draft reports represented the professional opinion of external consultants in relation to the Council's ICT processes. They were not the result of an investigative or audit-type process where natural justice considerations would be relevant. Further, by the time of the request in December 2016, the Council had had adequate time to consider the drafts and decide what action to take in respect of its ICT processes.

The Ombudsman concluded that section 7(2)(c)(ii) did not apply, and that in any event, there was a significant public interest in release of the reports to promote transparency of the Council's decision making processes in respect of its ICT issues, and accountability for the expenditure of ratepayer money on ICT systems.

Section 7(2)(i)

The Council also raised section 7(2)(i) as a reason for withholding. Section 7(2)(i) applies where withholding is necessary to enable the holder of the information to carry on negotiations without prejudice or disadvantage.

The Council argued that release of the reports would impair its ability to carry on negotiations with its ICT services provider. It stated that negotiations were frequently held with its ICT services provider in respect of any number of product offerings or variations to existing

contracts. However, in respect of the two reports at issue, it also conceded there were no negotiations currently underway that could be prejudiced by the material in the reports.

The Ombudsman accepted that contract negotiations between the Council and its ICT services provider occurred frequently, and that, therefore, negotiations were in a sense ongoing. However, he did not consider that release of the reports would prejudice or disadvantage the Council in respect of those *'ongoing'* negotiations. Much of the first report had already been published as part of the agenda to a Council Committee meeting. The second report related to a specific negotiation that had already taken place. The Council had confirmed there were no specific negotiations underway at the time that could be prejudiced by the material in the reports.

The Ombudsman concluded that section 7(2)(i) did not apply.

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