



Unreasonable advice about decision to exclude public: Licensing Trust

Legislation	Local Government Official Information and Meetings Act 1987, ss 46A, 47, 48 and 7(2)(f)(ii)
Agency	Portage Licensing Trust
Ombudsman	Peter Boshier
Case number(s)	523824
Date	November 2020

Public excluded from meeting under section 48(1) of the Local Government Official Information and Meetings Act 1987 – Ombudsman found that Trust acted unreasonably – no clear basis for advice provided by Chief Executive that public should be excluded – Ombudsman recommended that Trust review practice and processes and apologise to complainant

Background

In February 2020, the Portage Licensing Trust (the Trust) passed a resolution to exclude the public from items 11 to 15 on the meeting agenda of an ordinary trust meeting.

Under section 47 and 48 of the Local Government Official Information and Meetings Act 1987 (LGOIMA), meetings of the Trust must be open to the public unless a resolution to exclude the public is passed.

The Trustees determined that conducting this part of the meeting would be likely to result in the disclosure of information covered by section 7(2)(f)(ii) of LGOIMA. This section applies where it is necessary to withhold information to maintain the effective conduct of public affairs through the protection of members, officers, employees and persons from improper pressure or harassment. This decision was based on advice provided to the Trust by the Chief Executive.

A complaint was received about the decision to exclude the public from item 13.3, which concerned the Trust's submission to the Justice and Electoral Committee for the 2019 Electoral Systems Review.

Investigation

Under section 13(1) of Ombudsmen Act 1975, an Ombudsman does not have jurisdiction to investigate decisions made by a “*committee of the Whole*”, when the entire membership of the committee is present. Accordingly, in this case, the Chief Ombudsman investigated the adequacy of advice provided to the Trustees, which informed their decision to exclude the public from part of the ordinary trust meeting.

Section 46A of the LGOIMA states:

46A Availability of agendas and reports

- (8) *The chief executive may exclude from the reports made available under subsection (1), reports or items from reports that he or she reasonably expects the meeting to discuss with the public excluded.*
- (9) *The chief executive shall indicate on each agenda the items that he or she reasonably expects the meeting to discuss with the public excluded.*

This means that, prior to the meeting, the chief executive is required to form a view as to whether the public should be excluded while the agenda item is discussed, as the information requires protection under the relevant provisions of the LGOIMA.¹

The Ombudsman requested any official record or other documentation that illustrated advice given by the chief executive about the submission. In response, the Trust commented that management had ‘*considered the case notes, the law on harassment, and formed a view*’.

The Trust did not provide any official record or other documentation that illustrated why it was considered that information about the submission posed a real risk of improper pressure or harassment.

In the absence of any supporting documents, the failure to provide any reasons for its decision, and no apparent real risk of improper pressure or harassment, the Ombudsman formed the view that the Trust had not satisfied the requirements of section 46A.

Outcome

The Ombudsman formed the final opinion that the Trust had acted unreasonably, given the absence of supporting documentation and an explanation of the advice. He recommended that the Trust provide the complainant with an apology and review its practices and guidelines for excluding the public from meetings. The Trust accepted both recommendations.

¹ The grounds for excluding the public from meetings under section 48 of the LGOIMA include where public conduct of the meeting would be likely to result in disclosure of information there would be good reason to withhold under sections 6 or 7 of the LGOIMA, excluding section 7(2)(f)(i) (the protection of free and frank opinions).

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