

## Council not entitled to withhold internal workshop presentation

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<b>Legislation</b>	Local Government Official Information and Meetings Act 1987, Section 7(2)(f)(i)
<b>Agency</b>	Palmerston North City Council
<b>Ombudsman</b>	Peter Boshier
<b>Case number(s)</b>	537538
<b>Date</b>	15 December 2021

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### Summary

*Council was not entitled to refuse release of PowerPoint presented at a workshop – Section 7(2)(f)(i) of LGOIMA did not apply – no evidence showing that future exchange of free and frank opinions would be inhibited – LGOIMA provisions misapplied – Chief Ombudsman recommended apology.*

### Background

Palmerston North City Council launched an infrastructure project to decide how the city's wastewater would be managed and treated for the next 35-50 years. Following technical assessments, stakeholder engagement and public consultation, a longlist of 36 options was narrowed down to a shortlist of six.

In September 2020, councillors and council project officers attended a workshop to discuss the short-listed wastewater treatment options. No decisions about the options were made.<sup>1</sup>

A journalist requested a copy of the information presented at the workshop. The Council refused the PowerPoint presentation under section 7(2)(f)(i) of the Local Government Official Information and Meetings Act 1987 (LGOIMA). The journalist complained to the Ombudsman.

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<sup>1</sup> Under section 45 of LGOIMA, a meeting is required when a decision or resolution is made by a local authority committee. With some exceptions, Part 7 LGOIMA requires that meetings are publicly notified, open to the public, and that agendas, reports and minutes are publicly available.

## Investigation

The Ombudsman investigated whether the Council was entitled to refuse the information request under section 7(2)(f)(i) of LGOIMA. This provision applies when release of the information would inhibit the exchange of the free and frank opinions that are necessary for the effective conduct of public affairs, and there is no overriding public interest in release.

The Council stated that the information was created in the midst of a complex infrastructure project. It had concerns that if information presented at workshop briefings were made public, there was a risk the flow of information from project officers to councillors would be jeopardised and decision-making would be compromised.

### Nature of information

The Ombudsman recognised that the effective conduct of public affairs required the candid and unreserved expression of opinions, and that public disclosure of those opinions could sometimes affect a person's willingness to express themselves openly, honestly and completely in the future.

The Ombudsman was not persuaded that the release of the information presented in the PowerPoint would have such an inhibiting or chilling effect. The PowerPoint presented highly technical, factual information in moderate and neutral terms. It did not offer views on which of the wastewater treatment options should be chosen or dismissed. It did not include sensitive, revealing or controversial information. It did not contain '*off the cuff*' and imprecise remarks, nor have an identifiable author.

### Maturity of information

The Ombudsman acknowledged that the information presented related to matters that had not been finalised. The shortlisted wastewater treatment options were subject to further technical assessments and aspects may be amended. However, the information was nevertheless considered, well-researched and professionally presented. It could not be considered as draft or '*brainstormed*' material. The Ombudsman did not consider the fact that the information was subject to change provided a basis for withholding.

### Context of information

The Ombudsman acknowledged that context is an important factor when assessing whether the future exchange of free and frank opinions would be inhibited. The Ombudsman noted that the infrastructure project had been operational for approximately one year at the time of the LGOIMA request. The six wastewater treatment options were already in the public domain, and nothing about the PowerPoint was radical or unknown. As noted above, nothing suggested it had been hurriedly drafted in time-sensitive circumstances. Instead, it was considered, formally presented and collated in advance for a pre-arranged briefing.

## Summary

Overall, the Ombudsman was not persuaded by the Council's comments about the nature, maturity or context of the PowerPoint. The Ombudsman considered the Council provided no meaningful evidence to demonstrate that project officers would be hesitant to provide free and frank opinion in the future if their technical analysis of the water treatment options were released. It therefore seemed highly unlikely the harm relied on by the Council would occur and that release of the information would have any chilling effect.

As the Ombudsman did not consider release would give rise to the harm protected under section 7(2)(f)(i), it was not necessary to go on to consider whether there was any overriding public interest in release.

## 'Closed' internal workshops

In general, the Ombudsman does not consider that internal workshops are necessarily inappropriate. However, it is important that workshop participants do not take any action where compliance with the meetings requirement of LGOIMA becomes necessary. If any decisions are made at workshops, the public notification and conduct requirements of the LGOIMA are breached.

In this case, the Ombudsman expressed concern that the Council's underlying motive seemed to be to keep internal workshops as private forums that were not open to public scrutiny. If so, this amounted to circumventing the purpose of the LGOIMA '*to increase progressively the availability to the public of official information held by local authorities, and to promote the open and public transaction of business at meetings of local authorities*'.

The Ombudsman said that it was fundamental to a well-functioning democracy that there was transparency around the information that councillors were basing their decisions on, and releasing information that enabled the people of New Zealand to effectively participate in decision-making. The Ombudsman stated:

*It is one thing to suggest that there may be occasions when closed-door workshops are appropriate, but it is quite another to suggest that information requested after that workshop has been carried out should be withheld simply to protect the future use of such a forum. It is fundamental to the ethos of local democracy and the LGOIMA that decision-making be as transparent and open as possible. Any position to the contrary risks eroding public trust.*

The Ombudsman noted that, if the workshop had been a '*meeting*' where decisions were to be made under Part 7 of the LGOIMA, the public could not have been excluded on the basis of section 7(2)(f)(i), as section 48(1)(a)(i) of the LGOIMA does not allow for this. The Council's claim of protection on the basis of section 7(2)(f)(i) in the context of a workshop drew attention to this point.

## Outcome

The Ombudsman formed the opinion that section 7(2)(f)(i) of the LGOIMA did not apply and the Council was wrong to have refused the information request. The Ombudsman recommended that the Council apologise to the journalist. The Council then issued a written apology to the requestor.

## Disclaimer

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