

Meeting and workshop practices at

Timaru District Council

 **Ombudsman**

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October 2023



Final opinion of the Chief Ombudsman
Meeting and workshop practices at Timaru District Council

Te Kaitiaki Mana Tangata Aotearoa | The Ombudsman New Zealand

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Terminology

- Timaru District Council (the Council) - When I use the term 'the Council' this primarily relates to the operational arm of the organisation, unless the context suggests otherwise. When I am referring to the governance function, I use the term 'elected members'.
- [Infocouncil](#) – An automated local government meeting workflow system used by the Council to manage its processes for report writing and approval; agenda compilation; publishing; minute compilation and minute taking; and actions creation, tracking and reporting.
- A key aspect of information gathering involved seeking information from the Council via a questionnaire. I refer to this throughout my report as 'my questionnaire'.
- Surveys of staff, elected members and the public were undertaken, these are referred to as my 'staff survey', 'elected member survey' or 'public survey'.
- Staff and elected member meetings were a part of information gathering. I refer to the people attending these meetings as 'staff meeting attendees' or 'elected member meeting attendees'.

Legislation referred to in this report

- [Local Government Act 2002](#) (LGA)
- [Local Government Official Information and Meetings Act 1987](#) (LGOIMA)
- [Ombudsmen Act 1975](#) (OA)
- [Public Records Act 2005](#) (PRA)

My opinion

As Chief Ombudsman, I have been tasked by Parliament to monitor agencies' Official Information and meeting practices, resources and systems. I have jurisdiction to investigate *'any decision or recommendation made or any act done or omitted'*¹ by a local authority.² One way I do this is by undertaking targeted investigations and publishing reports of my findings.

LGOIMA is an important tool for fostering transparency and accountability in local government. It allows people to request information held by local authorities, it provides a right to complain to the Ombudsman in certain circumstances, and it has provisions governing the administration of local authority meetings. This investigation was focused on Councils' compliance with the meetings provisions in the LGOIMA, and their practices around meetings and workshops. Without timely access to the information discussed in workshops and meetings, the ability of New Zealanders to participate in the democratic process is reduced.

I announced this investigation in August to test concerns raised in the media, and by the public, about councils using workshops to discuss issues and make decisions behind closed doors. In addition, the investigation looked at the councils' general approach to notifying and organising meetings, and their use of reasons in the LGOIMA to exclude the public from meetings. I was also concerned about the quality of record-keeping during informal workshops.

Timaru District Council (the Council) is one of eight councils that was selected for this investigation. The councils represent a cross section of different types of local authorities. This report sets out my opinion on how the Council is meeting its obligations under part 7 of the LGOIMA, particularly in relation to council meetings. It also considers the Council's obligations to adhere to the purposes and principles of the LGA and the LGOIMA in relation to workshops, briefings and informal meetings.³

The Council has recently taken some positive steps toward operating with greater transparency, such as livestreaming Council meetings and holding workshops which are open to the public by default. It also appears to have good organisational resilience in terms of meeting administration, and it is very pleasing that the Council intends to take notes in its workshops and to make these publicly available where no good reason exists to withhold them.

My opinion is that the Council has acted unreasonably in not consistently communicating with report authors about changes made to reports for meetings. However, I have not considered it necessary to make a recommendation in this instance because of the Chief Executive's advice that he is taking immediate action to address this.

¹ Pursuant to section 13(1) and 13(3) of the Ombudsmen Act 1975.

² 'Local Authority' in the context of this investigation refers to all City, District and Regional Councils referred to in Part 3 of Schedule 1 of the Ombudsmen Act 1975.

³ Any organised or scheduled meeting attended by Council staff and elected members which fall outside the definition of 'meeting' in section 45(1) of the LGOIMA.

I have identified other issues of concern and opportunities for improvement, including in the Council's culture and leadership. This has resulted in 21 suggested action points. I encourage the Council to take this opportunity to recognise the potential for improvement in its culture and practices, thereby enhancing its effectiveness and better promoting openness, transparency and accountability.

Peter Boshier
Chief Ombudsman
June 2023

Summary

Leadership and culture

The perception among staff of the Council's overall commitment to openness and transparency of meetings was lower than that of the other councils I surveyed during this current series of investigations.

Throughout my investigation, a variety of Council staff raised concerns about the communication they received in respect of changes made to reports for meetings by the 'agenda review' team, comprising senior leaders. Some staff advised they have felt compromised by the lack of feedback about why changes have been made. Some staff also expressed that they did not feel safe raising these concerns with senior leaders.

The Chief Executive states that while edits to reports are made to provide accurate and clear information, senior managers do not seek to defer, downplay, modify or curate the advice provided to elected members. The Chief Executive also notes a number of measures have recently been taken to create more transparency, such as advertising and opening workshops and live streaming meetings. However, the Chief Executive acknowledges that any such perceptions by staff need to be taken seriously and addressed. To that end the Chief Executive has proposed to alter the agenda review procedure to ensure effective senior manager engagement and feedback under a clear framework.

The Council's leaders are ultimately responsible for its culture, and for creating an environment where staff are able to raise concerns and suggestions. Senior leaders play a key role in the perceptions that staff form about whether the Council conducts its business with transparency and accountability in mind. Council leaders, and especially the Chief Executive, must take responsibility for building a culture of openness and transparency and establishing meeting and workshop practices that promote transparency and accountability.

My opinion is that the Council has acted unreasonably in not consistently communicating with report authors about changes made to reports for meetings. However, I have not made a recommendation in this instance because the Chief Executive advised that action has been taken to address this issue. I have included an action point to address this.

It should also be a priority of the Council to ensure that an environment exists where staff feel able to raise concerns and make suggestions about Council practices.

The issues raised by staff in respect of changes made to reports for meetings may indicate a misalignment between the Chief Executive's expectations of report writers and the senior leaders who are expected to provide them feedback; and the practices employed by those staff. Ultimately, it is the Chief Executive's responsibility to ensure staff are aware of, and have the capability to fulfil, his expectations.

Local authority meetings

The Council releases some information heard in the public excluded portion of local authority meetings at a later date, but the practice is ad hoc. I suggest the Council formalise the practice of revisiting and considering for release material heard in the public excluded part of Council meetings.

The Council uses its own template within Infocouncil to record public exclusion resolutions, rather than using the form set out in schedule 2A of the LGOIMA. The Council should either adopt the '*Resolution to exclude the public*' form in Schedule 2A of the LGOIMA, or amend the Infocouncil template to ensure it contains all information required in the Schedule 2A form.

Although the Council's template records the '*General subject of each matter to be considered*', and is generally compliant, the Council should ensure the topic is detailed enough to give the public a clear sense of the matter being discussed. The Council promptly effected this change after receiving my provisional opinion.

The Council's template also records the '*Plain English reason*', but the Council should ensure it provides enough details to give the public a clear sense of the harm the Council is trying to avoid by hearing the item in a public excluded meeting (except where explaining the harm itself might create a prejudice to the protected interest), and the reason(s) why it is considered the public interest in release does not outweigh the harm.

The confirmation of previous public excluded minutes also takes place in the public excluded part of a Council meeting, but the minutes do not restate the actual topic(s) of the item(s) heard in public excluded in the previous meeting. I suggest the Council restate the topic(s) of previous public excluded minutes when confirming them.

The decision making process on items heard in the public excluded part of council meetings is also not being recorded. I suggest the Council record the reasoning behind public excluded decisions, including consideration of the public interest. This may be achieved through adding a field to the *Public Excluded Reporting* spreadsheet. I am pleased the Council is now developing a policy on public excluded meetings, and I encourage it to incorporate my suggestions and provide me with a draft before finalising.

In terms of resources and training, staffing arrangements for meeting administration appear to be sufficient. The Council's minutes record voting divisions, including the names of elected members. The review group provides advice to elected members on public excluded items.

The Council is investing in LGOIMA training, which includes training from my Office. I suggest that regular LGOIMA refresher training be available to both elected members and staff. There should also be targeted LGOIMA refresher training on reasons to exclude the public from meetings held under Part 7 of the LGOIMA, as well as the proper application of the public interest test, to elected members and relevant staff.

Accessibility of meetings

The Council advertises its meetings on its website, social media and in local newspapers. I suggest the Council consider additional ways of making meeting dates and times more visible to the public so they are able to be better informed of when meetings are held. The Council also livestreams its meetings, and plans to livestream its workshops in the future, which is excellent. After receiving my provisional opinion, the Council confirmed it is now audio visually recording workshops and proactively releasing the recording to the public.

Meeting agendas and minutes published in PDF format on the Council's website are searchable, but sometimes reports or other documents within the agendas are not in a searchable format. Therefore, the Council should ensure the full agenda, including any reports and supporting materials, is in a searchable format.

The Council's website has a helpful accessibility feature called 'ReadSpeaker' which allows text to be read aloud to the user. This is helpful for people who may have difficulty seeing or reading documents. I also note the Council's chambers are wheelchair accessible, which is important to facilitate inclusivity and participation in the Council's processes.

Workshops

The Council's workshops are open to the public, and it was evident staff understood that, as per the LGOIMA, decisions were to be made in formal council meetings and not in workshops. The Council advertises its workshops on its website and in local newspapers, which is good practice. Through the course of this investigation, I identified opportunities for improvement in relation to the Council's workshops, which included:

- ensuring the public are informed of closed workshops (including the date, the topic(s) and the reason(s) as to why the workshop is closed);
- establishing a practice of publishing workshop materials on the Council's website in advance of a workshop being held;
- ensuring details about previous workshops (including any related materials) are available to the public; and
- considering ways of making workshops more visible to the public, and actively promoting them to media or special interest groups.

The Council advised me that it has effected these changes after receiving my provisional opinion.

Other than the Council's Standing Orders, there was no further internal guidance for staff on workshops. However, I am pleased the Council is now developing a workshop policy, and I encourage it to incorporate my suggestions and provide me with a draft before finalising. There has been little training on workshops; the Council should provide training to both elected members and staff who are involved in workshops.

It is only recently that the Council has started taking notes at workshops. I suggest the Council review its Standing Orders to ensure compliance with the Public Records Act (PRA), which requires the Council to create and maintain a full and accurate record of its affairs, in accordance with normal, prudent business practice; and to maintain records in an accessible form to enable use for subsequent reference. Part of the review should include seeking advice from Archives New Zealand about whether the Council's practices (including its Standing Orders) are compliant with section 17 of the PRA.

I am pleased that presentations and notes from workshops will be kept and made publicly available (where reasons for public exclusion do not apply). The Council should formalise the process of revisiting, and where appropriate, releasing material heard in closed workshops.

Leadership and culture

My expectations

Achieving the purposes of the LGOIMA depends significantly on the culture of a council, and the attitudes and actions of its leaders. Elected members, chief executives and senior managers should take the lead in developing an environment that promotes openness and transparency. This environment should champion positive engagement with those who want to know and understand what work the Council is doing. It should also enable compliance with the principles, purposes and provisions of the LGOIMA and the LGA.

Councils' senior leaders must role model open and transparent behaviour by ensuring that Council practices and processes around conducting meetings and workshops are transparent, and promote accountability. They should also demonstrate clear knowledge and support of the requirements of the LGOIMA. It is my expectation that council Chief Executives make clear, regular statements to staff and stakeholders in support of the principle and purposes of official information legislation, reminding staff of their obligations. Consistent, clear messaging and behaviours communicate a real expectation that the Council is committed to openness and transparency.

Internal perceptions of openness and transparency

The attitudes of senior leaders are crucial in promoting a culture that supports compliance with the LGOIMA and facilitates openness and transparency in a council. As part of my investigation, I conducted a survey of staff about leaders' attitudes to promoting openness in meetings and workshops.⁴

Sixty-eight percent of respondents said they perceive that the Council is strongly or moderately pro-openness and public participation in meetings and workshops.⁵ This is the lowest rating of the eight councils currently under investigation in relation to meeting and workshop practices, with the average across the other councils under investigation being 83 percent. Seventeen percent of staff survey respondents rated the Council's overall commitment to openness and participation as strongly or moderately anti-openness. The average across the councils under investigation is seven percent.

Staff impressions of the Council's overall commitment to a strong culture of openness and public participation in Meetings and workshops.

Strongly or moderately pro-openness	They are silent on the issue or 'I don't know'	Strongly or moderately anti-openness
68%	15%	17%

⁴ I received 65 responses to my staff survey. According to the Council's [Annual Report 2020/2021](#), the Council has approximately 201 full-time equivalent staff.

⁵ Numbers have been rounded to the nearest percentage.

Staff survey respondents made the following comments, which are also reflective of the concerns raised in meetings by a variety of staff members across the organisation:

I have concerns about transparency... Reports are often deferred due to political reasons (causing public furore or if the content is contentious). I feel like this may be a matter of presenting only when it's politically palatable at times.

Matters that might have potential to show division, cause public criticism are kept away from public meetings.

There have been too many instances in the past of closed room deals and private discussions that absolutely should not happen.

My impression is that there is overuse of public excluded to the point that there is very little proper debate in a public meetings - things are worked out in either public excluded or workshops beforehand

A similar comment came from a respondent to my survey of elected members:

Often used if controversial, budget blowouts and anything that may reflect poorly on council. About every third meeting [an elected member has] challenged something that has been put in public excluded or a workshop.

There is a strongly held view among a number of staff who participated in my investigation through my online survey or through meeting with my investigators, that the Council has sought to control the flow of information to elected members—and, by extension, to the public—by limiting the information presented in meetings and workshops. A broad range of staff, as well as some elected members, described the Council's culture, generally, and the Chief Executive's approach, in particular, as 'risk averse'. This is not necessarily a negative trait; however, in some staff's view, this risk aversion leads to a reluctance by the Council to release information to elected members and the public which may not portray the Council in a positive light. Some staff said this sometimes occurred through hearing items in the public excluded part of meetings (which I will address further under [Local authority meetings](#)), but staff's main concern was a perception of senior leaders amending reports authored by Council staff in a manner that they considered impacted the tone and accuracy of reports presented to elected members in local authority meetings.

Before being presented to elected members at council meetings, reports authored by staff are compiled into meeting agendas by a 'review group' comprising the Senior Leadership team (the Chief Executive, General Managers and Directors) and the Governance and Executive Support Manager. A variety of staff indicated that they held serious concerns about the practices of the review group in terms of the changes they made to reports, and the feedback given to staff about why the review group made changes. One staff member considered that a report was amended in a way that downplayed the risk involved in options presented to elected members; another said that changes were made which they considered misrepresented the strength of statistical evidence, in an attempt to keep negative information away from elected members and the public. One staff member was so concerned that their expert advice would be diluted by senior leaders in the agenda review process that they felt

compelled to communicate directly with the Mayor to ensure their full and frank advice would be heard.

Staff and an elected member noted that a report writer was so surprised by significant changes made to a report they authored, that they felt they were presenting a report to elected members which was substantially different to the one they submitted through the agenda review process.

In response to my provisional opinion, the Chief Executive stated that he *'emphatically refute(s) the notion that there is a practice where senior officers, including myself, seek to control the flow of information or the narrative to elected members. We certainly do not seek to defer, downplay, modify or curate the advice provided to elected members on a particular topic.'* In support of this, the Council provided further agenda and reports which it considers *'demonstrates that changes made to draft reports have all been directed to ensure quality control, appropriate analysis of options and clarity of expression.'* The Council also invited me to speak with the independent Chair of its Audit and Risk Committee, who said that he had no doubts about the Chief Executive's drive for quality information to be included in reports. I thank the Council for this additional evidence and I acknowledge its confidence in the integrity of its practices. However, I need to stress that my concerns relate to the **perceptions** held by a range of staff from across the organisation through both my survey and meetings with staff. The Council also acknowledged this in its response to my provisional opinion, stating that *'if any employees have (a negative) perception, this matter clearly needs to be addressed.'*

Also during the course of my investigation, some staff expressed that they did not feel safe raising concerns with senior leaders about amendments to reports. They believed their concerns would be dismissed, or even that their job would be at risk. Unmanaged negative perceptions can quickly become pervasive in an organisation. The Chair of the Audit and Risk Committee acknowledged that providing staff with pathways to raise concerns about Council practices was a matter to *'work on'* for the Council, and added that he considers that the correct steps are being put in place by the Council to address staff perceptions. It should be a priority of the Chief Executive to create an environment where staff feel safe raising issues or suggestions. Failing to take adequate and swift action to address these perceptions may be considered unreasonable.

It is not necessarily unusual or poor practice for senior leaders to review and amend reports. It is ultimately the role of the Chief Executive to advise Councillors, and to ensure any advice is clear and contains useful analysis. However, it can become problematic if there is a perception that senior managers are concerned about controlling the narrative (as distinct from making normal, executive-level decisions on what information to present to elected members in line with the legislation). Such concerns can be heightened if amendments are being made to reports with no feedback to the author or relevant business unit as to *why* those changes have been made. A lack of feedback about amendments to reports—on which elected members base decisions which can have broad impacts for their community—creates the ideal environment for a negative perception to grow.

In my meeting with the Chief Executive, I asked him about senior leader involvement in revising reports before meetings. The Chief Executive expressed his view that senior leaders

had changed the content of reports to be more accurate and neutral. He conceded that *'significant changes'* have been made to reports, but this was in order to *'address shortcomings'*. The Chief Executive also provided examples of reports that had been amended to *'ensure quality control, appropriate analysis of options and clarity of expression'*. He also provided examples of amendments that had been made to reports to improve their accuracy. In his view, the review process ensures information in reports is comprehensive and unbiased, and options have been properly explored and that he takes this role very seriously to *'ensure officers provide advice to elected members that follows the appropriate legal structure to identify relevant options, the benefits and costs, providing accurate information in a way that is clear to elected members and the public.'* The Chief Executive also considered that staff sometimes gave opinions in their reports when they should only be giving advice.

It is the Chief Executive's responsibility to ensure staff receive adequate training and guidance on report writing so they are aware of, and can fulfil, his expectations. In my view, there appears to be a misalignment between the Chief Executive's expectations about how reports should be written, and the understanding of staff. The Council had an external provider deliver two report writing training sessions at the end of August 2022. This recent training is a good starting point, though further training and guidance would be beneficial.

Several staff meeting attendees also thought additional, targeted training on report writing would be useful, and had the following suggestions for what they thought it should include:

- a focus on the Local Government Act 2002 (LGA) and how the decision making approach should apply;
- how to assemble essential facts so reports are evidence based; and
- how to utilise the Council's report writing template, and what information should be included in each section.

Additional training on report writing will help ensure the Chief Executive's expectations of the content of reports aligns with what staff are producing.

The Chief Executive told me it is his expectation that senior leaders relay any changes made to reports, and the reasons for changes, back to staff. However, he acknowledged this feedback loop had not always happened due to time constraints. The Chief Executive acknowledges that any such perceptions by staff needs to be taken seriously and addressed. To that end the Chief Executive has proposed to alter the agenda review procedure to ensure effective senior manager engagement and feedback under a clear framework.

I consider it is important that this feedback occurs and it is the Chief Executive's responsibility to ensure senior leaders are aware of and fulfil his expectations. It is likely to improve staff perceptions of transparency when senior leaders consistently explain why changes are made, and it is an important learning opportunity for staff.

It is incumbent on senior leaders to set an example, and to role model and establish processes to promote transparency and accountability. The Chief Executive notes a number of measures have recently been taken to create more transparency, such as advertising and opening

workshops and live streaming meetings. However, if there is a risk that a perception is developing amongst staff that the Council is not being transparent in its actions, then it is up to the Council's senior leaders, and especially the Chief Executive, to acknowledge that and take steps to rectify it by promulgating clear messages to staff about their actions and decisions.

My opinion is that the Council has acted unreasonably in not consistently communicating with report authors about changes made to reports for meetings. However, I have not considered it necessary to make a recommendation in this instance because of the Chief Executive's advice that he is taking immediate action to address this. In response to my provisional opinion, he stated:

As of 4 May 2023 our Senior Leadership team has circulated a paper to alter the agenda review procedure. While the process is still being worked on, it is proposed for the Senior Leadership Team to each take a turn at chairing a meeting of agenda items for an upcoming meeting, to invite relevant officers [staff] to that meeting to present their draft report, and to enable the Senior Leadership Team to provide feedback on the draft. The purpose to build the report writing skills of officers, and also to enable direct feedback to authors on their draft reports. I consider continuing with this work will assist with direct feedback and it will enable officers to consider that directly. To formalise the purpose for the review of reports that go to meetings of Council, its Committees or Community Boards I intend to document this. This will enable me to communicate this purpose to relevant officers and additionally they will have this as a reference. This is also intended to assist with understanding about the purpose of such reviews in a transparent manner. I consider this approach will assist greatly to improve the perception about the reasons for draft papers being reviewed. I plan to cover in this communication that:

- i. reports are reviewed to ensure that the statutory framework is properly applied, in particular relevant options are identified and appropriately assessed;*
- ii. reports are framed to provide good quality and reasoned advice, not opinion, particularly on political matters;*
- iii. a reviewer can correct inaccuracies or obvious minor errors.*
- iv. A reviewer may meet with authors of draft reports to review the report and comment on it with the above principles in mind. This is an opportunity for senior officers to discuss and improve a draft report and provide feedback to guide and improve the reports of officers.*

It is positive to see these steps being taken to strengthen staff report writing skills and the feedback review loop. Implementing these actions consistently will trigger an ongoing dialogue between staff and senior leaders, which should aid in building greater trust, leading to an improvement in staffs' perception of the transparency of the Council's practices.

The Chief Executive plays a key role in how staff perceive the Council's openness and transparency, the culture within senior leadership and the culture of the Council more broadly. The effectiveness of any Chief Executive depends on enlightened and conscientious leadership.

The Chief Executive now has an opportunity to transform the culture at the Council and act as a positive role model for good practice in relation to the operation of meetings and workshops, and organisational transparency. In addition, there is an opportunity to ensure an environment where staff feel comfortable raising concerns.

There are a number of practical ways senior leaders can model an internal culture of openness and transparency. These include:

- encouraging staff to identify opportunities for improvement (and implementing those suggestions);
- establishing a 'no blame' culture where psychological safety is valued;
- establishing a clear process for staff to raise any concerns without fear of reprisal, with a feedback loop;
- addressing issues openly with staff whenever possible; and
- ensuring that risk management does not outweigh transparency.

Action point

1. Prioritise actions to ensure an environment where staff feel safe raising concerns or suggestions about Council practices.
2. Continue to strengthen communication between report authors and reviewers about changes made to reports for meetings.

Local authority meetings

My expectations

One of the purposes of the LGOIMA is to '*promote the open and public transaction of business at meetings of local authorities*' in order to enable effective public participation in decision making and promote accountability.⁶

Part 7 of the LGOIMA regulates council meetings where decisions or resolutions are made. Council's Standing Orders and the Local Government Act 2002 (LGA) also regulate aspects of some meetings. The key requirements of Part 7 are:

⁶ See s 4(a) LGOIMA

- every local authority must publicly notify all ‘meetings’ that are scheduled to take place each month, but failing to do so does not invalidate any meeting;⁷
- agendas and reports are publicly available at least two days in advance;⁸
- meetings are open to the public, unless there is good reason for excluding them;⁹ and
- minutes of a meeting must be made accessible to members of the public.¹⁰

Workshops are not regulated by Part 7 of the LGOIMA, but there are other principles which govern their administration (see [Workshops](#) for further details).

Meeting minutes should represent a full and accurate record of the content of local authority meetings. It is my expectation that minutes should record not just the final decision taken by elected members, but details of any debate or discussion preceding and informing the decision. In addition to aligning with principles of openness and accountability, recording the content of discussion and debate is a safeguard against any perception that decisions have been taken prior to the meeting, and are merely being ‘rubber stamped’ in the meeting setting. Though it is not a legislative requirement, I consider it is a matter of good practice, in the interest of accountability, to record the names of elected members who voted ‘for’ and ‘against’ a resolution.

Where good reason exists to exclude the public from a meeting, this must be effected by way of a resolution.¹¹ This may apply to the whole or a relevant part of a meeting. A resolution to exclude the public is a decision made by full council [elected members], with their decision typically being informed by advice given by council staff. In considering how the Council administers meetings, I do not have jurisdiction to consider decisions taken by full council (committee of the whole).¹² However, in relation to decisions by full council, I can review the reasonableness of any advice provided by officials or employees (on which the decision was based).

Section 48 of the LGOIMA states that a local authority may exclude the public from meetings where good reason exists under sections 6 or 7 of the LGOIMA,¹³ though it specifically excludes

⁷ See s 46 LGOIMA

⁸ See s 46A LGOIMA

⁹ See s 48 LGOIMA

¹⁰ See s 51 LGOIMA

¹¹ See ss 47 and 48 LGOIMA

¹² See s 13(1) Ombudsmen Act 1975

¹³ ‘Good reason’ to withhold information pursuant to section 7 of LGOIMA exists only where it is necessary to protect an interest as per section 7(2) of the LGOIMA and the need to withhold is not outweighed in the public interest (section 7(1) of the LGOIMA refers).

section 7(2)(f)(i).¹⁴ That is, a council cannot close a meeting to the public to have a ‘free and frank’ discussion.

Councils considering the application of the grounds in section 7(2) of the LGOIMA to exclude the public from a meeting, must also consider the extent of any public interest in the release of the information (the matters to be discussed). For example, there will always be a public interest in release (and therefore in the public attending) to promote accountability, transparency and public participation. If there is a public interest in release which outweighs the need to withhold the information, then the ground(s) in section 7(2) of the LGOIMA cannot be relied on as good reason to exclude the public. This weighing of competing interests is known as ‘the public interest test’.¹⁵ It is my expectation that councils weigh the public interest in their decision making on public excluded meetings, and record their considerations. The public interest considerations can be recorded by the Council in the Schedule 2A form discussed below, and I consider it would be beneficial to adopt this practice.

A resolution to exclude the public must be put forward at a time when the meeting is open to the public.¹⁶ In other words, elected members must make the decision to go into a public excluded part of a meeting in front of the public. The meeting is then closed in accordance with Standing Orders. The resolution to exclude the public must be made in the form set out in Schedule 2A of the LGOIMA, and must include:¹⁷

- the general subject of any matters to be considered while the public is excluded;
- the reasons for passing a resolution (with reference to particular prejudice relied on); and
- the actual ground in section 48(1) relied on.

The general subject of matters to be considered should be detailed enough give the public a clear sense of the matter being discussed, in the interest of being as open as possible about the work the Council is conducting. I also expect that the reason for passing a resolution should contain specific details about the harm the agency is trying to avoid, rather than simply reciting the clause from section 6 or section 7(2) as it is written in the LGOIMA. Councils can allow for specified people to remain while the public is excluded if they have knowledge that would assist. In that case, the resolution must state the particular knowledge they possess, and how it is relevant to the matter under consideration.

The public can request information heard in the public excluded part of a meeting under the LGOIMA. It is my expectation that Council guidance makes clear that if a LGOIMA request is made for information heard in a public excluded meeting, such a request must be considered on its individual merits and based on the circumstances at the time of the request; it may not

¹⁴ Section 7(2)(f)(i) allows for information to be withheld where it is necessary to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to members or officers or employees of any local authority.

¹⁵ Link to the Office of the Ombudsman’s [Public interest](#) guide

¹⁶ See s 48(4) of the LGOIMA

¹⁷ See s 48(3) of the LGOIMA

be refused under the LGOIMA on the basis the information was earlier heard in a public excluded meeting.

I also consider it is a matter of good practice to ensure there is a process for re-visiting public excluded parts of meetings to determine if any of the information heard in a public excluded part of a meeting can subsequently be released, when the reasons for withholding the information no longer apply.

Finally, it is my expectation that councils will organise their structure and resources to ensure they are able to meet their legal obligations under Part 7 of the LGOIMA, and good administrative practice generally, in a way that is fit for purpose considering their particular size and responsibilities.

Excluding the public from meetings

The decision to exclude the public from whole or part of a meeting ultimately rests with the elected members, not with council staff: Section 48 of the LGOIMA states that '*a local authority may **by resolution** exclude the public from the whole or any part of the proceedings of any meeting...*' [emphasis added].

It is the role of the Chief Executive to provide advice to the elected members (the decision makers) on whether there are grounds to close the meeting to the public, as well as to consider and advise elected members of any countervailing reasons in the public interest to hear the item in a public session.¹⁸ As stated above in [Leadership and culture](#) the Council's review group provides advice to elected members regarding excluding the public from meetings. Several staff and elected member meeting attendees said elected members are confident questioning the advice about why an item should be heard in the public excluded part of a meeting, which I consider positive. It indicates that elected members are aware the decision to exclude the public rests with them; it is not simply their role to endorse the view of the Chief Executive. In his response to my survey of elected members, the Mayor said:

...very early on in the new triennium all elected members were given accountability and oversight for public excluded by myself. They were encouraged to challenge officers if they thought something should be in public that wasn't...

I am pleased the Mayor made this statement to elected members at the beginning of the triennium as a reminder for experienced members, and as an excellent lesson for new members. Elected members' confidence in questioning the reasons to exclude the public from meetings is shown in the minutes of an Ordinary Council Meeting (dated 6 September 2022), which details a discussion about moving an item from public excluded into the open part of the meeting.¹⁹

¹⁸ See s 42(2)(b) of the LGA

¹⁹ Link to Timaru District Council's [Minutes of Ordinary Council Meeting – Tuesday, 6 September 2022](#) (see page 3)

To gain an understanding of the Council's use of reasons to exclude the public from meetings, my investigators reviewed a small number of items held in a public excluded session and the Council's reasons for excluding the public from the meeting. While it appeared from these examples that the Council relied appropriately on the public exclusion grounds in section 7(2) of the LGOIMA, there was no evidence of the Council considering any countervailing public interest in making the information available to the public (as required in section 7(1) of the LGOIMA). In addition, some staff my investigators spoke to were not confident the council uses the public exclusion grounds in the LGOIMA appropriately. Some said that the public may be excluded from meetings where a contentious topic was being discussed using ground(s) that they were concerned may not stand up to scrutiny. Two staff meeting attendees also noted that a refusal ground had been mis-cited consistently by the Council over a long period of time, until the error came to light in November 2022. I was advised by the same staff members that the Council immediately corrected its practice, which is pleasing; however, it is concerning that an unchecked error was allowed to embed into the Council's practice.

Together, the issues I outlined above might indicate that additional and ongoing training for staff—including senior staff— and elected members on how to make robust decisions in relation to public excluded meetings, would be valuable for the Council. I note the Council has requested and received LGOIMA training from my Office on reasons to exclude the public from meetings (which I discuss further below under [Resources and training](#)). This is an excellent start, though I note that training should not be a one-off exercise but regular and ongoing.

During my meeting with the Chief Executive, he advised me that the Council is starting to reassess how it considers items for inclusion in a public excluded agenda. The Council has developed a new *Public Excluded Reporting* spreadsheet and is developing a policy to guide its approach to excluding the public from meetings or parts of meetings where necessary (I will discuss this further under [Recording the decision making process around public excluded meetings](#)). The Council's pursuit of training for staff and the resources being developed to guide its processes in relation to public excluded meetings are all good first steps in the right direction to strengthen the Council's knowledge and practices.

Staff meeting attendees said the Council releases information that has been heard in the public excluded part of a meeting on occasion. For instance, it may release details of tenders, grants and loans after they have been approved. However, the practice is ad hoc. Therefore, I suggest the Council formalise the practice of revisiting public excluded material to consider for release. This practice would greatly aid transparency, and help to facilitate one of the purposes of the LGOIMA, being to *'increase progressively the availability to the public of official information held by local authorities...'*²⁰ In response to my provisional opinion, the Council stated this action point is *'underway'* and *'a spreadsheet records all items that were discussed in PX (public excluded) and the date that it is to be further considered if the information can be released.'*

²⁰ See s 5 LGOIMA

Action point

3. Formalise the process of revisiting and considering for release material heard in the public excluded part of Council meetings.

Schedule 2A form

The LGOIMA states that ‘Every resolution excluding the public from any meeting shall be in the form set out in Schedule 2A’.²¹ The Council uses its own template generated within Infocouncil, an automated local government meeting management system. While the LGOIMA states that the Schedule 2A form should be used, I consider that the content of the form is more important than the layout. Therefore, councils may use a template form of their own design, providing that it contains the same prompts as set out in the Schedule 2A form to enter information.

An example of the Council’s template (from both the agenda and minutes for an Ordinary Council Meeting dated 6 September 2022) states:²²

Recommendation

That the public be excluded from the following parts of the proceedings of this meeting on the grounds under section 48 of the Local Government Official Information and Meetings Act 1987 as follows:

<i>General subject of each matter to be considered</i>	<i>Reason for passing this resolution in relation to each matter</i>	<i>Plain English Reason</i>
<i>12.1 - Theatre Royal and Heritage Facility Preliminary Design Presentation</i>	<p><i>s7(2)(b)(ii) - The withholding of the information is necessary to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information</i></p> <p><i>s7(2)(h) - The withholding of the information is necessary to enable any local authority holding the information to carry out, without prejudice or</i></p>	<p><i>Commercial sensitivity</i></p> <p><i>To enable commercial activities</i></p>

²¹ See s 48(3) of the LGOIMA

²² Links to Timaru District Council’s [Agenda of Ordinary Council Meeting - Tuesday, 6 September 2022](#) and [Minutes of Ordinary Council Meeting – Tuesday, 6 September 2022](#)

<i>General subject of each matter to be considered</i>	<i>Reason for passing this resolution in relation to each matter</i>	<i>Plain English Reason</i>
	<i>disadvantage, commercial activities</i>	

The Council's template does not contain the necessary detail as required by Schedule 2A. It lacks:

- a prompt to enter the grounds under section 48 for excluding the public (for example, a heading stating '*Ground(s) under section 48(1) for the passing of this resolution*');
- wording around allowing specific people to remain, if they have knowledge that would assist the agency, while the public is excluded.

I suggest the Council either adopt the '*Resolution to exclude the public*' form in Schedule 2A of the LGOIMA, or amend its existing template to ensure it contains all the information as set out in the Schedule 2A form. In response to my provisional opinion the Council stated it '*will get a legal review of the precise wording*' in order to ensure compliance and '*update accordingly*'.

I note the confirmation of previous public excluded minutes also takes place in the public excluded part of a Council meeting. An example of this is from the minutes of an Ordinary Council Meeting (dated 28 June 2022).²³ Under the '*General subject of each matter to be considered*' column, the minutes state, '*13.1 - Public Excluded Minutes of the Council Meeting held on 19 May 2022*'. The minutes do not restate the actual topic(s) of the item(s) heard in public excluded in the previous meeting. In order to discover that information, a member of the public would have to check the minutes from the previous meeting. I suggest the Council restate the topic(s) heard in previous public excluded meetings when confirming them. In response to my provisional opinion, the Council said it will begin to do this from now on.

I also consider that the Council can improve its transparency by citing the topic of items heard in a public excluded part of meeting in greater detail. For example, the minutes of an Ordinary Council Meeting dated 10 May 2022 lists an item for discussion as '*South Canterbury Amateur Athletics Club*'.²⁴ This offers no helpful details for the public about what aspect of the Club or its business was being discussed. In response to my provisional opinion, the Council advised '*processes have already been changed to ensure this occurs*'.

In this same example, I found the '*Plain English Reason*' given by the Council did not align with the provision under section 7(2) being relied on to exclude the public from part of the meeting. The Council cited '*s7(2)(i) - The withholding of the information is necessary to enable the Council to carry out, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)*' but gave the plain English reason as '*To prevent use of the information for improper gain or advantage*', which appears to be a reference to a separate ground –

²³ Link to Timaru District Council's [Minutes of Ordinary Council Meeting – Tuesday, 28 June 2022](#) (see page 15)

²⁴ Link to Timaru District Council's [Minutes of Ordinary Council Meeting – Tuesday, 10 May 2022](#) (see page 6)

section 7(2)(j). However, I have not suggested an action point in this instance because, as stated above in [Excluding the public from meetings](#), the Council is implementing enhanced practices, policy and training which should ensure it will avoid such errors in the future.

I note, though, that the 'Plain English Reason' given by the Council in its template offers little detail about why the public is excluded from the meeting. In the example above, 'commercial sensitivity' would tell a member of the public nothing about which party is at risk from divulging 'sensitive' information, nor about the type of information being discussed or why it should be considered 'sensitive'. I suggest the Council provide more detailed information in this section of its template that will give the public a clear sense of the harm the Council is trying to avoid by hearing the item in the public excluded part of the meeting (except where explaining the harm itself might create a prejudice to the protected interest), and the reason(s) why it is considered the public interest in release does not outweigh the harm. In response to my provisional opinion, the Council noted this will be updated.

Action points

4. Either adopt the 'Resolution to exclude the public' form in Schedule 2A of the LGOIMA, or amend the Infocouncil template to ensure it contains all information required in the Schedule 2A form.
5. Restate the topic(s) of previous public excluded minutes when confirming them.
6. Ensure the 'Plain English reason' is detailed enough to give the public a clear sense of the harm the Council is trying to avoid by hearing the item in a public excluded meeting (except where explaining the harm itself might create a prejudice to the protected interest), and the reason(s) why it is considered the public interest in release does not outweigh the harm.

Recording the decision making process around public excluded meetings

In its response to my agency questionnaire, the Council said that the reports authored by staff to be heard by elected members in local authority meetings are produced with the use of software called Infocouncil, 'which is set up with the grounds for excluding [the] public. ... Each of these grounds populates into the report with the section under the act, the sub-clause and reason and the plain English reason.' The Infocouncil template captures the reason staff consider an item should be heard in a public excluded part of a meeting. But the decision making process behind that reason is not recorded. This includes details of weighing any countervailing public interest in hearing the item in the public part of a meeting.

It is important that a full record of the Council's decision making process is kept. Ombudsmen have consistently supported maintaining a full audit trail for advice that contributes to decisions made by an agency. Since the Council does not keep a record of the decision making process, there is no written evidence of a weighing of public interest considerations taking

place. I have a guide titled '[Public interest: a guide to the public interest test](#)' which may provide some assistance for the Council to add this step to its process.²⁵

During the course of my investigation (and as stated above in [Excluding the public from meetings](#)), the Chief Executive advised the Council will be '*developing a policy that formally addresses the issues of reports in public, the reasons and processes for items to be considered in public excluded along with proactively considering bringing matters heard in public excluded into the public forum*'. The Chief Executive offered to provide a copy of the policy. I would appreciate a draft being sent so the Council can consider any comments I have before it is finalised. In response to my provisional opinion, the Council advised a draft is under review and will soon be provided to me.

The Council also created a *Public Excluded Reporting* Excel spreadsheet to '*maintain a record of public excluded items and the considerations given to them*', which will be the responsibility of the Governance Advisor. A copy of the spreadsheet was provided to me and includes columns for the following:

- Date (Of Meeting);
- Meeting (eg. council/standing committee);
- Item (Description of report);
- PX [public excluded] Reasons (Legal Grounds for PX);
- GM [General Manager] Explanation;
- SLT [Senior Leadership team] Review;
- Council Discussion;
- Review Date (If matter remains in PX when it should be further reviewed in event position changes); and
- Final Decision.

I consider that this will be a useful resource, and I suggest that the Council adds a field to the spreadsheet where it can record the consideration of any countervailing factors in the public interest to hold the item in a public part of a meeting. In response to my provisional opinion, the Council stated '*this will be implemented with immediate effect*'.

Further, in relation to the public excluded items reviewed above in [Excluding the public from meetings](#), the Chief Executive informed me that the Council has decided to provide more detail on items already known in the public domain (from its *Issues Watch Register* and *Public Excluded Action Points* list) '*...as we consider that this more clearly identifies the matters being discussed and acknowledging that the description is not satisfactory in terms of informing the public and the requirements of the LGOIMA.*'

²⁵ Link to the Office of the Ombudsman's [Public interest](#) guide

In addition to ensuring compliance with the relevant legislation, maintaining sound record keeping disciplines will also benefit the Council by promoting transparency and openness and improving its business practices in general. Keeping records of the decision making processes will:

- help ensure transparency of the Council's decision making by providing a complete and clear record of the Council's reasoning;
- provide a reference for the Council in the event of issues around decision making processes that may arise internally;
- make it easier to respond to the Ombudsman in the event of an investigation of a complaint; and
- provide an opportunity to create a repository of knowledge about how the agency makes decisions on public excluded meetings, thereby developing a consistent approach.

I discuss incorporating record keeping into public excluded guidance below under [Resources and training](#).

Action points

7. Provide me with a draft of the Council's public excluded policy before finalising.
8. Record the reasoning behind public excluded advice and decisions, including any consideration of the public interest for hearing the item in a public meeting.

Resources and training

As stated above in [Schedule 2A form](#), the Council uses Infocouncil as a resource to streamline report and agenda preparation. It has a new Governance team comprising a Governance and Executive Support Manager, a Governance Advisor, a Governance and Executive Support Coordinator and the Executive Assistant to the Mayor. The team are still building knowledge, but are able to take minutes at meetings and provide cover for each other if required. Executive Assistants from other business groups are also available to help with minute taking. The Governance team have mostly received internal one-on-one training on minute taking, but the Governance and Executive Support Manager would like them to do an external course as well. Therefore, the staffing arrangements for meeting administration (agendas, minute taking, etc.) appear to be good, and the Council seems to be appropriately resourced in this area.

Upon reviewing the Council's meeting minutes, my investigators found practices other councils should emulate. Voting divisions (the number of elected members who voted '*In Favour*' and '*Against*' resolutions) are recorded and include the names of elected members. While it is not a legal requirement to do so, I consider this is good administrative practice in the interests of accountability. I note there are not often speakers at the Public Forum part of the Council's

meetings. However, the minutes of an Ordinary Council Meeting (dated 9 August 2022) provide a good example of a record being taken of the views shared at a Public Forum.²⁶

As stated above in both [Leadership and culture](#) and [Excluding the public from meetings](#), the Council has a review group who meet in advance of Council meetings to go through agendas and reports. Part of this process is providing advice about whether there are any items that should be heard in the public excluded part of a meeting. If an item has been marked as public excluded, there is a discussion around it, and sometimes the Chief Executive seeks external legal advice. It is through this collaborative approach that the advice is provided to elected members to make a decision.

In response to my agency questionnaire, the Council said it was introducing annual LGOIMA training for all staff from an external provider, as well as LGOIMA training for new staff at induction (focused specifically on identifying information requests). The Council had an external provider deliver two LGOIMA training sessions in mid-September 2022 which were open to all staff. The Council's Elected Member Induction on 8 November 2022 included LGOIMA training and was open to the public.²⁷ In November 2022, my Office provided LGOIMA training to new elected members and staff within Senior Leadership and the Governance team. This training included reasons for excluding the public from meetings, as well as the proper application of the public interest test.

I am pleased with the effort the Council is making to ensure both staff and elected members are knowledgeable and comply with the requirements of the LGOIMA. I suggest that regular LGOIMA refresher training also be available to elected members, and that there is targeted LGOIMA refresher training on reasons to exclude the public from meetings held under Part 7 of the LGOIMA (to include the proper application of the public interest test) for elected members and select staff. In response to my provisional opinion, the Council stated it will ensure targeted LGOIMA refresher training is delivered to elected members and relevant staff on reasons to exclude the public from meetings held under Part 7 of the LGOIMA, as well as the proper application of the public interest test.

The public can request information heard in the public excluded part of a meeting under the LGOIMA. The Council does not currently have any written guidance or policies on responding to LGOIMA requests from members of the public seeking information about public excluded meetings. If a LGOIMA request is made for information heard in a public excluded meeting, such a request must be considered on its individual merits and based on the circumstances at the time of the request; it may not be refused under the LGOIMA on the basis the information was earlier heard in a public excluded meeting.

For guidance on public excluded meetings the Council relies on its Standing Orders (particularly *Appendix 1: Grounds to exclude the public* and *Appendix 2: Sample resolution to exclude the public*). As discussed above in [Recording the decision making process around public excluded meetings](#), the Council has recently created a Public Excluded Reporting spreadsheet and is

²⁶ Link to Timaru District Council's [Minutes of Ordinary Council Meeting – Tuesday, 9 August 2022](#) (see page 2)

²⁷ Link to Timaru District Council's [Elected Member Induction: Public Session](#) webpage

developing a policy to guide its approach to public excluded meetings. I encourage the Council to ensure its policy includes information about:

- elected members having ultimate responsibility for decisions on what is to be heard in the public excluded part of a meeting;
- consideration of the public interest in making information available when deciding what is heard in the public excluded part of a meeting;
- record keeping on reasoning behind public excluded decisions;
- revisiting and, where appropriate, releasing reports and information heard in a public excluded meeting; and
- responding to LGOIMA requests for material heard in a public excluded meeting.

Action points

9. Ensure LGOIMA refresher training is available to both elected members and staff.
10. Ensure targeted LGOIMA refresher training is delivered to elected members and relevant staff on reasons to exclude the public from meetings held under Part 7 of the LGOIMA, as well as the proper application of the public interest test.
11. Incorporate my suggestions into the Council's policy on public excluded meetings.

Accessibility of meetings

My expectations

The United Nations Convention on the Rights of Persons with Disabilities (Disability Convention) is an international human rights agreement that New Zealand signed up to in 2007.²⁸ The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities. As Chief Ombudsman, I have a role as an Independent Monitoring Mechanism partner under the United Nations Convention on the Rights of Persons with Disabilities.

Councils should take all practicable steps to remove barriers to full participation in their processes. Public meetings and workshops should be made as accessible as possible to the public, keeping in mind those people with disabilities as well those with other challenges to attending meetings. This might include living a long distance from where meetings take place or being unable to attend because of the time the meeting is held.

Ideally, all councils would livestream and audio visually record their meetings, and publish the recording after the meeting. Keeping a record in this way benefits the community by enhancing the accessibility of meetings for those who are not able to attend in-person.

²⁸ Link to the [United Nations Convention on the Rights of Persons with Disabilities \(Disability Convention\)](#)

Another benefit of livestreaming is that it ensures an accurate record of the public portion of the meeting is immediately available.

Accessibility practices

The Council began livestreaming meetings in September 2022, which I consider to be good practice. The video recordings are available on the Council's YouTube page.²⁹

The Council also plans to livestream workshops in the future. Until workshops are able to be livestreamed, the Council may consider as a matter of good practice audio visually recording workshops, and either making the recordings publicly available or letting the public know they can be requested. A staff meeting attendee said a sector of the community had the perception that decisions were made behind closed doors in workshops, which formed part of the reason the Council changed their practices to make workshops open to the public by default (discussed further below under [Workshops](#)). Audio recording workshops would be a further proactive way to change that perception. In response to my provisional opinion the Council said audio visually recording workshops *'is now occurring and the recorded workshop will be saved the same as...meetings'*.

A few respondents to my public survey said they want to be better informed about when council meetings are held, and a few wanted more detailed minutes. The Council advertises its meetings on its website, social media (Facebook) and in local newspapers (the Timaru Herald and the Courier), and posts the meeting livestream on its website homepage (under *Latest news from Timaru District Council*). It was noted by a staff meeting attendee that information about meetings is not always easy to find on the Council's website, and they suggested the Council embed a link on the website homepage. As well as the measures that are already in place, I suggest the Council consider additional ways to make meeting dates and times more visible to the public, such as making the information more prominent on its website and utilising social media. In response to my provisional opinion the Council stated it is *'currently investigating a system that will enable users to subscribe to receive notifications of meeting dates.'* In addition, it would *'welcome other initiatives... for further promoting the meetings and workshops.'*

I note that meeting agendas and minutes published in PDF format on the Council's website are searchable, but sometimes reports or other documents within the agendas are not in a searchable format. Publishing or providing information in an 'image only' format (such as a scanned PDF or JPG) is not accessible for blind and low vision individuals using screen readers, or those with learning disabilities using read aloud applications. It also limits the ability to search documents using keywords. Therefore, I suggest the Council ensure the entire agenda, including any reports and supporting materials, are in searchable format. Ideally these PDF documents would be accompanied by accessible Microsoft Word versions, and the public advised that they can ask for other accessible formats, if required. In response to my

²⁹ Link to Timaru District Council's [YouTube](#) page

provisional opinion, the Council noted it will update its practice in this area, with an expected delivery at the end of the calendar year.

A helpful accessibility feature the Council has on its website is a 'Listen' button for ReadSpeaker which '*allows the text on the website to be read out loud to you*'.³⁰ This is a useful resource for people who may have difficulty seeing or reading documents. I also note the Council's chambers are wheelchair accessible, which is important to facilitate inclusivity and participation in the Council's processes.

Action points

12. Consider additional ways of making meeting dates and times more visible to the public.

13. Ensure the full agenda, including any reports and supporting materials, is in a searchable format.

Workshops

My expectations

The LGOIMA does not define or regulate workshops (or other informal meetings),³¹ but Ko Tātou LGNZ's *The guide to LGNZ standing orders* states that workshops are best described as '*informal briefing sessions where elected members get the chance to discuss issues outside of the formalities of kaunihera meeting*'.³² It is common for councils to conduct workshops about complex or technical issues on which elected members will later be required to debate and make decisions.

The purpose of workshops should be to prepare Councillors with the appropriate background and knowledge to make robust decisions for their communities, and to allow discussion and deliberation among and between elected members and council staff. Workshops are part of the educative and deliberative phases of councils' decision making process; however, final decisions and resolutions cannot lawfully be made outside the context of a properly notified and constituted meeting.

Because workshops cannot lawfully be used to make actual and effective decisions and are not conducted under the LGOIMA, the legal requirements in the LGOIMA that relate to council meetings—such as requirements to notify the public, to take minutes, and to exclude the public only under certain defined circumstances – do not apply to council workshops. Nonetheless, councils have a general discretion to advertise and undertake meetings that fall outside of Part 7 of LGOIMA in public. While it may be reasonable to close a workshop in a

³⁰ Link to Timaru District Council's [Accessibility](#) webpage

³¹ For the purpose of this investigation, 'workshops, briefings and informal meetings' means any organised or scheduled meeting attended by Council staff and elected members which fall outside the definition of 'meeting' in section 45(1) of the LGOIMA.

³² Link to [The guide to LGNZ standing orders](#)

particular case, I consider that a general policy of not advertising workshops or having all workshops closed to the public, is likely to be unreasonable. It is my expectation and a requirement of the LGA 2002, that *'...a local authority should conduct its business in an open, transparent and democratically accountable manner...'*³³

As a matter of good practice, workshops should be closed only where that is reasonable. What might be considered reasonable is a truly open category depending on each individual case, and may include situations where the reasons for withholding information under sections 6 and 7(2) of the LGOIMA might apply, as well as other situations. What is reasonable in a particular case will vary, however the decision to close a workshop should be made on the individual merits of each workshop, rather than being based on a blanket rule.

Even where it is reasonable to close a workshop, I encourage councils to be mindful of the public perception of secrecy this may create, and mitigate this risk through ensuring the public has access to sufficient and timely information about the purpose and content of workshops. The legislative history of the LGOIMA makes it clear that there is an expectation that full and accurate records of workshops are kept, and this is also a requirement of the Public Records Act (PRA).³⁴ Keeping full and accurate records of workshops is the safeguard against the perception that decisions are being made outside a local authority meeting; and, being able to request access to such information allows members of the public to meaningfully engage with the work of the Council. Information arising from workshops can be requested under the LGOIMA although, ideally, councils would proactively release information generated in workshops.³⁵ Creating records of workshops is a matter of good administrative practice, and it promotes a council's accountability and transparency. Councils should adopt a standard approach to recording information about workshops and ensure this is embedded in its guidance on record keeping for workshops.

All workshop attendees should be aware that workshops cannot be used for making an actual and effective 'decision.' The discussion and deliberation that takes place in a workshop can carry elected members down a path toward a decision. For example, where council staff present a range of options to elected members in a workshop, and those options are narrowed down significantly—and, in particular, where those deliberative workshops are closed to the public—it can give the appearance of a decision being made in all but name, with the public meeting merely 'rubber stamping' that decision. Using a closed workshop to do 'everything but' make a decision could be seen as undermining the principles of the LGOIMA and the LGA, which I may view as unreasonable.

I can review the reasonableness of any act or omission by a local authority under the Ombudsmen Act. This includes the reasonableness of a council advising or deciding to not

³³ See s 14 LGA

³⁴ See s 17(1) PRA 2005

³⁵ Even if no record is made at the time, information held in an official's memory as to what transpired at a workshop can also be requested under the LGOIMA, and it is preferable to have a contemporaneous account of what happened.

notify or close workshops, or using closed workshops to do ‘everything but’ make a final decision.³⁶ I expect councils to make it clear to the public that they can complain to me about workshops.

Some councils draw a distinction between ‘workshops’ and ‘briefings’ with the former being open to the public and the latter; closed. Other councils may refer to the same type of informal briefing session between elected members and staff using different terminology entirely, such as a ‘forum’ or ‘hui’. Irrespective of the title(s) a council chooses to give informal briefing sessions, the same requirements to conduct business in a transparent and accountable manner, and to keep full and accurate records apply to all.

Workshops at the Council

Most often a workshop is called by the Chief Executive, but senior leaders can suggest one be held.³⁷ The Council’s Standing Orders³⁸ provide some framework for workshops. Section 2 of the Standing Orders defines a workshop as:

Workshop means in the context of these Standing Orders, a gathering of elected members for the purpose of considering matters of importance to the local authority at which no decisions are made and to which these Standing Orders will not apply, unless required by the local authority. Workshops may include non-elected members. Workshops may also be described as briefings.

Section 4.7 of the Standing Orders states that workshops are:

... normally to inform and discuss a subject of major Council policy or interest.

A workshop is not classified as a meeting because there are to be no decisions made at workshops. If a decision is needed a formal meeting is required.

Part 7 of the LGOIMA does not apply to workshops.

As stated above in [My expectations](#), the LGOIMA makes it clear that workshops cannot be used to make decisions. Final decisions must be made in a meeting as defined in Part 7 of the LGOIMA. I am pleased that this is reiterated unambiguously in the Council’s Standing Orders. When my investigators reviewed survey responses and met with Council staff and elected members, it was evident they considered that, as per the LGOIMA, decisions were to be made in formal Council meetings and not in workshops.

Staff and elected members, in both my surveys and in meetings, said that workshops were a key part of the decision making process for elected members. Workshops are used by elected members to discuss policy options put forward by staff in order to eventually make a decision in a local authority meeting. This includes adding, removing or amending options, and ensuring

³⁶ This refers to Council staff, not a decision of full Council.

³⁷ As per *Section 4.7 Workshops* of the Standing Orders:

Workshops can be called by at the request of the Mayor, Committee Chairperson or Chief Executive

³⁸ Link to Timaru District Council’s [Standing Orders](#)

elected members have the information needed to make an informed decision on a topic. Workshops may also involve elected members giving feedback to staff where they might require further information. Provided a decision is not made, this type of deliberative discussion may appropriately take place in a workshop.

If discussion in a workshop veers toward an actual and effective decision being made, all attendees should be empowered to speak up. However, the Chief Executive is ultimately responsible for ensuring a decision that should be made at a formal Council meeting is not made in a workshop. A number of staff and elected member meeting attendees said intervention has happened and it was usually the Chief Executive or Mayor (but sometimes a Councillor) who interceded.

Open workshops

In March 2022, the Council amended its practices around workshops, making them open to the public by default. This is a laudable practice which reflects that workshops should only be closed where that is reasonable and facilitates openness and transparency. It may also help the public better understand the work of the Council, which allows them to more meaningfully participate in democratic processes.

As mentioned above in [Accessibility of meetings](#), a staff meeting attendee said part of the reason workshops became open to the public was due to members of the public forming perceptions that decisions were being made behind closed doors. Other staff and elected member meeting attendees also echoed the concern about perception, and there was evidence of this reflected in several public survey responses. The Mayor said there was a conversation between himself and the Chief Executive where they started to question whether the way the Council ran workshops was actually 'best practice'.

Some staff and elected member meeting attendees supported workshops being open to the public. Elected member meeting attendees said closed workshops hurt the perception of the Council being open. A staff meeting attendee said workshops are an important way to learn about the elected members' collective position. Another staff meeting attendee said open workshops allow the public to hear more of the discussion before the topic gets to a meeting, as well as the background and framework that informs the decision.

However, a few meeting attendees mentioned there could be some disadvantages to opening workshops to the public, including:

- Making workshops more of a 'show' at which elected members might 'grandstand', which could make the discussion last longer.
- New elected members might hesitate to speak up if they felt it would expose a limitation in their knowledge.

In respect of the concern about 'grandstanding', I note that the Council could take steps to address timeliness issues by including 'rules' to govern workshop behaviour within workshop guidance.

While I appreciate the concern that new elected members might hesitate to speak up in open workshops, elected members are there to provide a voice for the communities they serve. They should feel free to express their opinions in the same way robust exchanges occur in the debating chamber of Parliament. In the interests of accountability, elected members should have no timidity about expressing their views or asking questions publicly. While elected members should not have to endure unreasonable or harassing behaviour, the views of the community are important and elected members should have enough resilience to withstand public scrutiny. It is the job they are elected to do.

I would encourage the council to consider that where there is a technically complex issue that elected members need additional information to understand, it is equally likely members of the public would benefit from greater knowledge. Where complex matters are explained in an open workshop, the public can be educated along with elected members. This will provide the public with better awareness of the rationale behind a final decision made by elected members in a meeting. I also suggest that opening workshops could lead to elected members being more prepared when they attend. If there is an added layer of public accountability, elected members may be more likely to do pre-reading and be more inclined to ask relevant and well thought out questions.

Section 4.7 Workshops of the Council's Standing Orders states:

Workshops will be open to the public where practicable. Where reasons for public exclusion apply (under LGOIMA) or for other reasons, workshops will be closed to the public.

A staff meeting attendee said senior leaders decide if a workshop should be closed at the review group meeting, using the same process that is used when considering whether the public should be excluded from a meeting (as discussed above in [Local authority meetings](#)). The Chief Executive said himself, the Mayor and the Governance and Executive Support Manager usually make the final decision.

Elected member meeting attendees had, in the past, thought certain workshops that were closed to the public should have been open. Now that the Council's practice is having workshops open by default, I suggest that if any future workshops are closed to the public, the Council ensures the public is still aware of when the workshop is happening, the topic(s) it covers and the reason(s) as to why the workshop is closed. In response to my provisional opinion, the Council said *'this will be implemented with immediate effect'*.

Because workshops are not conducted under Part 7 of the LGOIMA, the notification requirements for local authority meetings do not apply. However, if workshops are to be generally open to the public, it is self-evident that they must be advertised in some way so the public is aware of their occurrence. *Section 4.7 Workshops* of the Council's Standing Orders states:

...where practicable notice of workshops and known topics will be given within 14 days of the workshop date.

Although I am pleased the Council announces upcoming workshop dates in local papers³⁹ and on the Public Workshops page of its website, generally there is, according to the Council, low to no media or public attendance at workshops.⁴⁰ However, having workshops open by default can improve perceptions of openness regardless of whether the public is in attendance. This view is also held by the Mayor who, despite the low turnout, believes workshops being open has helped with public perceptions of openness.

The Public Workshops webpage includes the workshop date, time, organisation, duration, description and presenter. Workshop materials appear to only be published on this page on an ad hoc basis. I suggest the Council establish a consistent practice of publishing this information in advance of a workshop being held. In response to my provisional opinion, the Council stated *'this will be implemented with immediate effect'*.

I also suggest the Council ensures that details about previous workshops, and any related materials, are available to the public (the way past meeting agendas and minutes are continually able to be accessed). In response to my provisional opinion, the Council advised *'this will be implemented with immediate effect'*.

The Council should consider posting about workshops on social media, and actively promoting workshops to the media and relevant community groups who may have an interest in the topic. In response to my provisional opinion, the Council stated *'this will be implemented with immediate effect by promoting in the same way we do with Council meetings'*.

Action points

14. Ensure the public is informed of closed workshops (such as the date of the workshop, the topic(s) it covers and the reason(s) as to why the workshop is closed).
15. Establish a practice of publishing workshop materials on the Council's website in advance of a workshop being held.
16. Ensure details about previous workshops, and any related materials, are available to the public.
17. Consider ways of making workshops more visible to the public and actively promoting them to the media and local interest groups.

Keeping records of workshops

Workshops were not mentioned or included in the Council's previous Standing Orders, and when this investigation began, no notes were being taken in workshops. In its response to my questionnaire the Council said:

Workshops are held for the purpose of information sharing only and no decisions are made, therefore nothing to record in terms of outcomes. Often visual

³⁹ The Council currently advertises workshops in the Timaru Herald, and it has advised me of its intent in the future to use the Council Noticeboard in the Courier.

⁴⁰ Link to Timaru District Council's [Public Workshops](#) webpage

presentations are used in workshops and these are prepared by either team members or consultants and saved within our document management system.

However, the Council also said record keeping for workshops *'is something we are moving towards but have not previously recorded.'*

I was encouraged when I was advised by a staff meeting attendee that the Governance team was going to start taking notes at workshops, and that the Council had included a section on workshops in its current Standing Orders. *Section 4.7 Workshops* provides information to staff on what records should be kept:

Presentations/Notes from workshops are to be kept and will be made publicly available where reasons for public exclusion do not apply

This wording differs from the Standing Orders template used by most councils, which is more prescriptive and states:

A written record of a workshop should be kept and include:

- *Time, date, location and duration of workshop;*
- *Person present; and*
- *General subject matter covered*

As part of my investigation, I requested that the Council provide any records they held relating to a small sample of workshops. The records provided by the Council included presentations, briefings, policies, reports, summaries, letters and an internal email. Some of the information that other councils include in workshop notes (as per the standard Standing Orders template referenced above) could be found within the documents the Council provided. Some of the substantive content of the workshops was revealed in the records I reviewed, for example, a workshop held on 9 August 2022 included group exercises in which elected members and senior leaders worked together. A presentation reviewed from a workshop on 26 July 2022 included next steps and timeframes. However, there were no records taken of the discussion in the workshop, as note taking did not form a part of the Council's practice during that period. Because elected members deliberation in workshops forms an important part of the decision making process, I consider it is prudent business practice to take notes of these discussions, not only for the Council's own future reference, but so they can be proactively released, or requested by the public under the LGOIMA.

Section 17 of the PRA requires the Council to create and maintain a full and accurate record of its affairs, in accordance with normal, prudent business practice; and to maintain records in an accessible form to enable use for subsequent reference. There may be a disconnect between the requirements of record keeping as described in the Council's Standing Orders, and the requirements as prescribed by the PRA. I suggest the Council review its Standing Orders, and as part of that review I encourage the Council to seek advice from Archives New Zealand, the regulatory stewards of the PRA, to ensure the Council's record keeping practices for workshops (including the guidance within its Standing Orders) are compliant with section 17 of the PRA.

In response to my provisional opinion, the Council stated its Standing Orders were subject to a legal review after the October 2022 local government election, and prior to their adoption by the current elected members. The Council will undertake a further legal review of its Standing Orders, which will include seeking advice from Archives New Zealand.

I am pleased presentations and notes from workshops will be kept and made publicly available (where reasons for public exclusion do not apply). Similar to my suggestions above in [Local authority meetings](#), the Council should formalise the process of revisiting and considering for release material heard in closed workshops. For any material not released proactively, the Council could publish a detailed list of the items available from each workshop so the public know what they can request. In response to my provisional opinion, the Council said it will follow the same process as it does when revisiting material heard in the public excluded part of Council meetings to consider for release.

Action points

18. Review Standing Orders to ensure compliance with the Public Records Act (PRA), and as part of the review, seek advice from Archives New Zealand about whether the Council's practices (including its Standing Orders) are compliant with section 17 of the PRA.
19. Formalise the process of revisiting and, where appropriate, releasing material heard in closed workshops.

Guidance and training

The Council's Standing Orders provide some guidance to staff regarding workshops. *Section 4.7 Workshops* includes:

- the definition of a workshop;
- calling a workshop;
- that workshops are open to the public where practicable (unless it is reasonable to exclude them);
- the application of Part 7 of the LGOIMA to workshops;
- notifying workshops; and
- that presentations/notes should be kept and made publicly available (unless a good reason exists to withhold).

The Council has no further written guidance on workshops besides this information. However, in my meeting with him the Chief Executive advised the Council will be developing a policy that includes information on workshops, and offered to provide me with a copy of the policy. I would appreciate a draft being sent so the Council can consider any comments I have before it is finalised. The Council should consider including the following information in its policy on workshops:

- whether workshops will be livestreamed or audio recorded;

- that full and accurate records should be kept;
- the Council's approach to revisiting and considering for release material heard in closed workshops;
- that information about workshops can be requested under the LGOIMA;
- who is responsible for the workshop record; and
- where the workshop record should be saved.

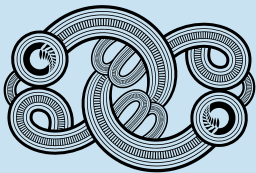
In response to my provisional opinion, the Council confirmed it would '*provide a copy of the draft policy*', which I look forward to receiving.

It is good practice for those involved in workshops to receive training. Providing targeted training on workshops to elected members (and staff who are involved) would help reinforce the difference between a workshop and a Council meeting. Training should include information on the circumstances in which a workshop is held, examples of when it may be reasonable to close the workshop and record keeping obligations.

Staff and elected members spoken to throughout my investigation noted that there was little training on workshops, aside from ad hoc guidance for staff from their manager, and an overview of workshops for elected members at their induction. Several staff meeting attendees thought training and additional guidance material on workshops would be beneficial to them, and I agree. The Council should ensure that induction and refresher training is delivered to staff and elected members involved in workshops which highlights how they should give effect to the Council's workshop policy.

Action points

20. Incorporate my suggestions into the Council's workshop policy and provide me with a draft before finalising.
21. Ensure induction and refresher training on workshops is delivered to relevant staff and to elected members.



Ombudsman

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