



**Local Government Official
Information and Meetings Act
compliance and practice**

Auckland Council

LGOIMA compliance and practice at Auckland Council

Office of the Ombudsman

August 2019

ISBN: 978-0-473-49023-2 (print)

978-0-473-49024-9 (online)

Cover image courtesy Auckland Council

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Report of the Chief Ombudsman

August 2019

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Foreword

My investigation into Auckland Council's practices under the Local Government Official Information and Meetings Act 1987 (LGOIMA) is one of a number of local authority investigations I have recently conducted.

As Chief Ombudsman, I have been tasked by Parliament with monitoring agencies' official information practices, resources and systems. I do this by undertaking targeted investigations and publishing reports of my findings. This year I decided to focus on local authority LGOIMA practices.

There are 78 local authorities in New Zealand. In selecting which local authorities to include in this initial series of investigations, I wanted to ensure a mix of different council structures, levels of resource, and regions of the country. I considered the nature of complaints received by my Office, and whether a council had been dealing with any high-profile issues that had increased the number of information requests received.

The 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. Without access to information held by local authorities and to public meetings, the ability of New Zealanders to participate in the democratic process is curtailed. An effective official information regime sits at the very heart of local government practice and should be closely connected with governance, community engagement and communications functions.

The Council has a strong culture of openness, led by the Chief Executive, who demonstrates a commitment to LGOIMA and transparency more generally. In particular, the Council proactively publishes information such as transparency reports, restated meeting minutes, LGOIMA responses, resident survey results and performance measures.

The Council has a number of useful resources to guide staff in responding to requests for information, assisted by a very experienced Privacy and LGOIMA team. The Council's partly centralised model for handling LGOIMA requests appears to work well. I was pleased to see the Council has good practice in relation to the administration of public meetings and there appears to be a good working relationship between Council staff and elected members.

The Council has accepted all but one of my action points. I note that Mayoral Office staff are included in the Council's LGOIMA Review Group. In order to avoid any perception of political interference, I suggested the Council ensure the Review Group does not include a representative from the Mayor's Office. The Council has not agreed to this action point as it considers it worthwhile to retain a Mayoral Office representative because they work across the organisation and have knowledge of the location of information. I urge the Council to reconsider its position on including Mayoral Office staff in the Review Group.

I will be following up on a quarterly basis to check in on the Council's progress in implementing the agreed action points.

I want to acknowledge the Council for the positive and open way it engaged with this investigation. I would particularly like to thank the staff who took time to prepare the response to the detailed questionnaire. I also acknowledge all of the staff members who participated in the employee surveys and took the time to meet with my investigators to discuss their role and share their views on the Council's LGOIMA practices. I was impressed with the level of commitment shown by staff to their work in local government, and with the passion they have for their community.

I acknowledge members of the public, including journalists, regular requesters, and regular council meeting attendees for the views they shared in our public survey.

I look forward to continuing my engagement with the Council as it works through implementing my suggested actions.

Peter Boshier
Chief Ombudsman
August 2019

Introduction

This report sets out my opinion on how well Auckland Council (the Council)¹ is meeting its obligations under the Local Government Official Information and Meetings Act 1987 (LGOIMA).

My investigation has included consideration of the Council's supporting administrative structures, leadership and culture, and processes and practices. It also included information management, public participation, and proactive release of information to the extent that these relate to achieving the purposes of the LGOIMA.

One of the purposes of the LGOIMA is to increase the availability of information held by local authorities and to promote the open and public transaction of business at meetings. This ensures people can:

- effectively participate in the actions and decisions of local authorities;
- hold local authority members and their officials to account for any decisions; and
- understand why decisions were made which will enhance respect for the law and promote good local government in New Zealand.

The LGOIMA also protects official information and the deliberations of local authorities from disclosure but only to the extent consistent with the public interest and the need to protect personal privacy.

As Chief Ombudsman, I am committed to improving the operation of the LGOIMA to ensure its purposes are realised. Key to achieving this is Parliament's expectation that I regularly review the LGOIMA practices and capabilities of councils.

I have initiated this practice investigation using my powers under the Ombudsmen Act 1975 (OA). This provides me with the tools needed to investigate matters I consider important to improve administrative decision making across the public sector.² The full terms of reference for my investigation are in Appendix 1.

I have considered the information gathered through my investigation against an assessment framework consisting of the following five areas:

- Leadership and culture
- Organisation structure, staffing and capability
- Internal policies, procedures, resources and systems
- Current practices
- Performance monitoring and learning

¹ Note that throughout this report, 'the Council' refers to the Council organisation only, not elected members unless specifically stated.

² See s 13(1) and 13(3) OA

Appendix 2 provides a set of good practice indicators for each of these areas. These indicators are not exhaustive and do not preclude an agency demonstrating that good practice in a particular area is being met in other ways.

Reporting the outcome of these investigations promotes a council's accountability, and gives the public an insight into their council's ability to promote openness and transparency.

My opinion

I have not identified any conduct by the Council that is currently wrong, unreasonable or contrary to law and, as such, I have not made any formal recommendations.³ Through the investigation process, areas of good practice have been identified and improvement opportunities suggested where there are areas of vulnerability. The Council has advised that it accepts all but one of the action points, and will develop a plan to implement these action points over the next 18 months. I refer to the Council's specific responses in the body of the report.

I address each of the five dimensions listed above setting out:

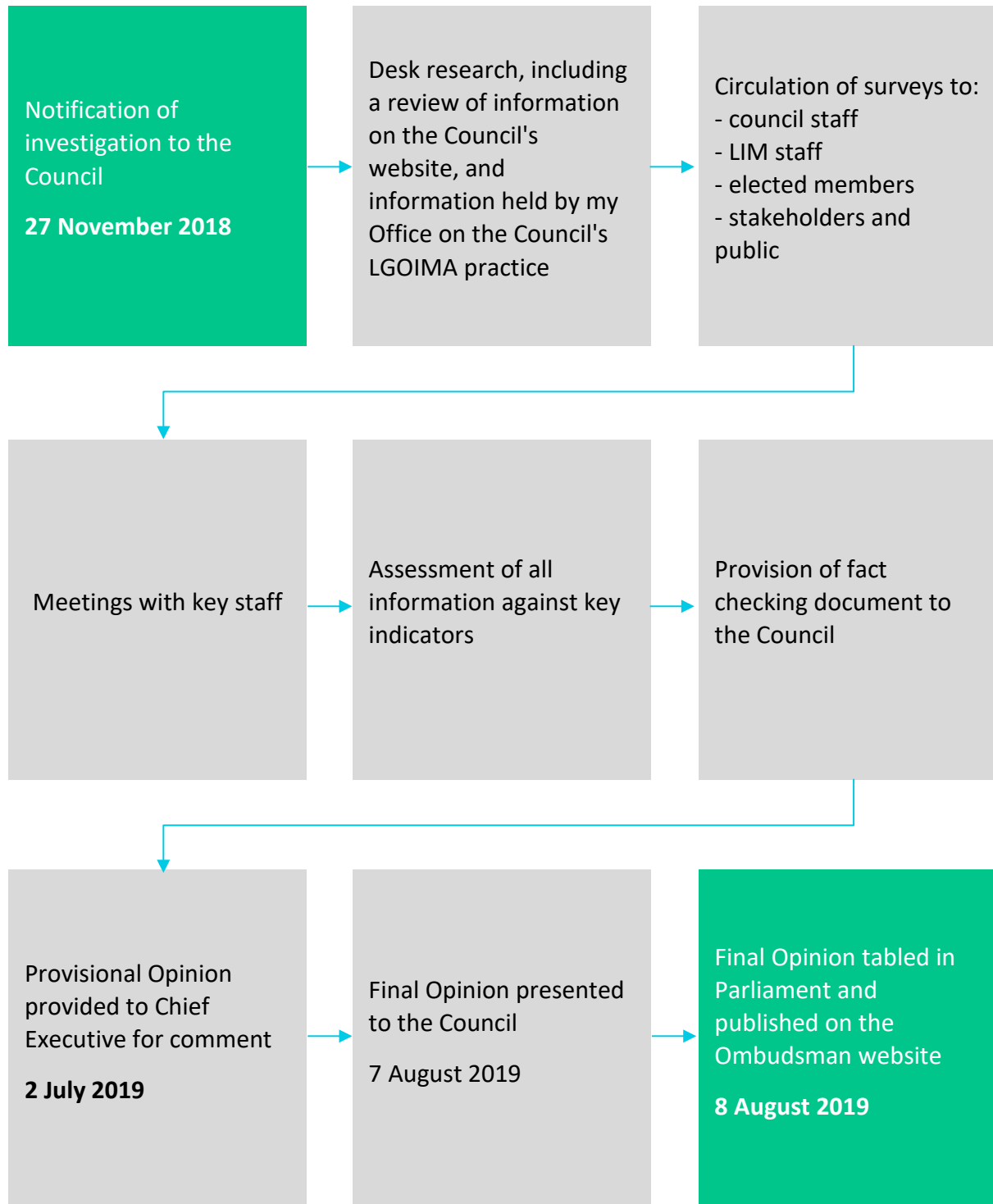
- an overview of my findings;
- aspects that are going well; and
- opportunities to improve the Council's LGOIMA compliance and practice.

My opinion relates only to the Council's practice during the period in which my investigation took place.⁴

³ Formal recommendations under the OA may only be made if I form an opinion that a decision, recommendation, act, or omission by the agency was wrong, unreasonable or contrary to law, etc. under s 22 of the OA.

⁴ On occasion I may look at material from outside the investigation period where particular issues warrant further investigation.

Timeline and methodology



Auckland Council: a snapshot

The Auckland Region is situated between the Northland and Waikato regions in New Zealand's North Island, with a land area of 4938 kilometres. The Council region covers the Auckland metropolitan area, towns, rural vicinities, and the islands of the Hauraki Gulf.

The local authority, Auckland Council, has 20 elected Councillors and one elected Mayor. Elections are held every three years.

The Council's responsibilities include infrastructure, community support, and environmental management. The Local Government Official Information and Meetings Act (LGOIMA) both requires and encourages the Council to be open and transparent in its decision making and activities.

The Council was established in 2010, combining the functions of the previous regional council and the region's seven territorial authorities into one 'super council' or 'super city'. The Council's governance is unique. It is the only local authority in New Zealand with a two-tier governance structure comprising the governing body and 21 local boards, with decision-making responsibilities of Auckland Council shared between the governing body and local boards.



In 2017/18, Auckland Council:

- Served 1.66 million residents
- Received \$1707 million in rates
- Employed approximately 9500 staff
- Received 960 requests under LGOIMA
- Handled 90 percent of these requests within the legislative timeframe
- Processed approximately 28 800 LIM requests
- Handled 99.71 percent of LIM applications within the legislative timeframe



Image courtesy of the Department of Internal Affairs

MAYOR Phil Goff

DEPUTY MAYOR Bill Cashmore

CHIEF EXECUTIVE Steven Town

ELECTED COUNCILLORS 20

WARDS Albany, Albert-Eden-Roskill, Franklin, Howick, Manukau, Manurewa-Papakura, Maungakiekie-Tāmaki, North Shore, Ōrākei, Rodney, Waitākere, Waitematā and Gulf, Whau

COMMUNITY BOARDS Albert-Eden, Devonport-Takapuna, Franklin, Great Barrier, Henderson-Massey, Hibiscus and Bays, Howick, Kaipātiki, Māngere-Ōtāhuhu, Manurewa, Maungakiekie-Tāmaki, Ōrākei, Ōtara-Papatoetoe, Papakura, Puketāpapa, Rodney, Upper Harbour, Waiheke, Waitākere Ranges, Waitematā, Whau (149 elected members between 21 local boards)

Executive Summary

This summary draws together the key findings and suggested actions from my investigation. The diagram on page 14 further summarises the action points into a ‘snapshot view’ of those aspects I consider will further lift LGOIMA performance at the Council.

Leadership and Culture

I have been impressed by the strong culture of openness at the Council and, in particular, the Chief Executive’s leadership in this respect. There is evidence of internal messaging, both tacit and explicit, from senior leadership to staff about the importance of the LGOIMA, and openness and transparency more generally. It is also pleasing to see this commitment expressed in external messaging: for example, reference in the Annual Report to the Council’s intentions around openness and transparency, and the development of ‘*trust in council*’ and ‘*availability of information to have a say in shaping Auckland*’ measures as part of its Auckland Council Performance Plan 2017-19.

I applaud the Council for its recent enhancements to local authority meetings processes, in particular the introduction of transparency reports for public excluded meetings, and the policy and practice of ‘restating’ items heard in the public excluded portion of meetings.

Councils are statutorily required to release a range of information. In addition to fulfilling these requirements, the Council goes further, publishing information such as the transparency reports and restated meeting minutes mentioned above, along with LGOIMA responses, residents survey results and performance measures.

There are opportunities for improvement in relation to the Council’s website. While it appears generally easy to use, the section specifically related to LGOIMA requests may benefit from some amendments, including its location on the website, which may aid its utility for requesters.

As a result of my July 2018 opinion of the Council’s processing of a request for information, the Council committed to develop a work plan to make improvements to its LGOIMA practice, with clear leadership commitment. The Council has made some progress toward its implementation, though I suggest some further work is required.

Action points: Leadership and culture

1	Incorporate a link on the Council website homepage that is clearly signposted as relating to requests for information, and goes directly to the official information request webpage
2	Review and update the content of the <i>Privacy and official information requests</i> page incorporating my suggestions
3	Leaders to champion a system for staff to identify improvements to LGOIMA policies and processes

Organisation structure, staffing and capability

The Council employs a partly centralised model for handling LGOIMA requests, with a team of Privacy Act and LGOIMA specialist ‘business partners’ who work with liaisons in designated portfolio groups. This structure appears to help facilitate resilience, as the business partners can be redeployed to different areas of the business in response to demand. However, Council staff note that there is a potential vulnerability in this system where a business unit lacks a designated liaison, or the liaison is unable to respond to a request from the business partner in a timely way. The latter can occur when the liaison has competing pressures from other ‘business as usual’ tasks, or there is a spike in the number of LGOIMA requests received.

Part of the Council’s LGOIMA handling process is a step in which proposed responses are appraised by a Review Group. There are potential benefits to this process, including senior leaders having a clear view of the number and type of LGOIMA requests received. I encourage the Council to also be aware of the potential vulnerabilities. In particular, to ensure timeliness standards are adhered to, the Council may consider placing Review Group consultation earlier in the process.

In addition to their role in the LGOIMA process, Senior Business Partners also offer one-on-one LGOIMA training to staff as needed. This complements a formal training course on Governance Fundamentals, and LGOIMA induction training, both of which are available to all Council staff. It is also pleasing to see the implementation of targeted training for the Communications team on their responsibilities under the LGOIMA. There remains an opportunity for the Council to further enhance its training programme by introducing targeted training to LGOIMA ‘decision makers’ at tiers three and four.

Training on information management has recently been introduced at the Council, in the form of an e-learning module that will be mandatory for new staff to complete.

As with processing requests for official information, the processing of LIMs and property file requests and the administration of Council meetings are governed by the LGOIMA. The Council’s centralised model for processing LIMs and property file requests appears to work effectively, based on the high rate of compliance with their LGOIMA obligations. The administration of Council meetings and the flow of information by the Governance Support team also works well.

Action points: Organisation structure, staffing and capability

1	Re-examine the Review Group process to ensure it does not adversely impact adherence with LGOIMA timeliness obligations
2	Review processes around signing out documents to ensure that the decision maker on the request is not misrepresented
3	Confirm protocols around accountability for decision making, and finalise both the Review Group’s Terms of Reference and the Appendix to the LGOIMA Guide without delay
4	Ascertain the amount of time required to handle LGOIMA requests by Business Partners and Departmental Liaisons

Action points: Organisation structure, staffing and capability

5	Ensure Departmental Liaisons are adequately supported to prioritise this aspect of their role
6	Deliver targeted formalised training for decision makers, with clear expectations set by senior leaders to attend regular refreshers

Internal policies, procedures and resources

The Council has a suite of useful resources to guide staff in responding to requests for information, and other LGOIMA processes such as meeting administration and LIM requests. The resources include a LGOIMA guidance document, guidance on logging and tracking requests through the SAP system, and template LGOIMA response letters. The resources are generally sound, though I do suggest some corrections, additions and improvements to the LGOIMA guidance.

The Council currently has a policy of withholding the names of certain officials it considers 'incidental' to a request. However, the Council has agreed to ensure the guidelines are amended to clarify that all information (including staff names) will be released, unless there is a good reason under the LGOIMA to withhold the information.

The Council has comprehensive policy and guidance material for employees that clearly outlines their obligations in relation to record keeping. I am encouraged to note that the Council is making these resources more visible for staff as one of the 'Our Charter' series of guides.

While the Council proactively releases a broad range of information in excess of statutory requirements, I consider the Council may benefit from developing a policy to underpin its practice. This will ensure consistency of approach between business units, and ensure the practice is embedded and will maintain priority, irrespective of personnel changes or workload pressures.

The Council is developing a protocol for elected members' access to Council information, which is an excellent initiative, though I make some suggestions to refine the document. I also encourage the Council to finalise the protocol for managing requests involving CCOs without delay.

Action points: Internal policies, procedures and resources

1	Amend guidelines to ensure all information (including staff names) is released unless there is good reason under LGOIMA to withhold the information
2	Update LGOIMA guidance, incorporating my suggestions
3	Prioritise the development of a proactive release policy with accountability assigned to a single, senior leader
4	Review the Access to Information Protocol for Elected Members, incorporating my suggestions
5	Seek input from my Office to ensure the Access to Information Protocol for Elected Members document aligns with the LGOIMA before the document is finalised

Action points: Internal policies, procedures and resources

6	Complete the review of the protocol for requests involving CCOs, and finalise the document without delay
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Current practices

The Council's adherence to LGOIMA timeliness obligations appears mixed, ranging from 90 percent to as low as 77 percent during busy periods. However, I was impressed by the high standard of the LGOIMA responses that I reviewed. The Council may enhance its practice further by capturing the decision-making process for each response.

I am pleased to note that, in general, there appears to be a good working relationship between Council staff and elected members. The Council has a dedicated group of Councillor Support Advisors that elected members approach directly for administrative support, research and advice. This facilitates productive relationships between the different arms of Auckland Council.

It is important that the Council ensures that the distinction between consultation and notification of elected members on LGOIMA requests is unambiguous, and that there is no perception that elected members or Mayoral Office staff have undue input on decision making on LGOIMA requests. For that reason, I consider that staff from the Mayor's office should not have a role in the Council's LGOIMA Review Group.

The Council also has good practices in relation to the administration of public meetings. In particular, I am encouraged to see the Council's practice of the 'restatement' of items heard in public excluded meetings. I encourage the Council to ensure this occurs consistently.

The Council is in the process of updating its information management system in order to implement a single system that will be used across all business units. In the meantime, different systems are used across the organisation, which may lead to risks in relation to document retrieval. Until the new information management system is in place, the Council should take mitigating steps to reduce vulnerabilities. This includes making training available, leaders championing sound information management practices, and engaging the Records Management team in the LGOIMA process as appropriate.

In addition to LGOIMA requests handled within the 'formal' process, other parts of the business such as the Media and Customer Services teams also respond to straightforward requests for information. The Council must ensure that such requests are handled in accordance with the LGOIMA.

Action points: Current practices

1	Ensure that the Review Group does not include a representative from the Mayor's office
2	Review the Appendix to LGOIMA Guide incorporating my suggestions to ensure the roles of elected members are clear in the LGOIMA process and finalise the document without delay.
3	Keep a record of instances where an elected member was consulted or notified on a request

Action points: Current practices	
4	Record the reasoning behind LGOIMA decisions, including any consideration of the public interest and the results of any consultations with third parties
5	Record administrative steps behind LGOIMA responses where this may be necessary
6	Ensure all staff have completed the e-learning module on Information Management and record keeping
7	Consider adding a step in the LGOIMA handling process to involve the Corporate Records & Archives team, particularly for large or complex requests
8	Leaders to champion sound information management and record-keeping practices
9	Ensure property file requestors are advised of any grounds for refusal of information, and of their right to complain to the Ombudsman if they are not satisfied with the Council's response
10	Ensure that all information requests are handled in accordance with the provisions of the LGOIMA
11	Provide regular training refreshers to the Communications and Contact Centre teams

Performance monitoring and learning

The Council collects some data in relation to LGOIMA requests, some of which is reported to Senior Leadership in order that they have an overview of the number and type of requests received, and how they are tracking in terms of timeliness. Similarly, the Communications team collects information on media requests, which is used to inform decisions about the proactive release of information.

The Council may benefit from improving its record of the decision-making process on LGOIMA requests. While the decision-making process may be inferred or pieced together through reviewing associated documents in the LGOIMA file, there is no discrete place where the process is articulated. This can be valuable in the event an agency needs to respond to an Ombudsman investigation into a complaint, and the material can be used as a reference and a training tool for staff.

The Council has two, agency-wide performance measures related to LGOIMA obligations. They relate to LGOIMA request timeliness obligations, and the number of complaints upheld by the Ombudsman. I consider that the Council could improve its performance monitoring even further by incorporating quality assurance measures.

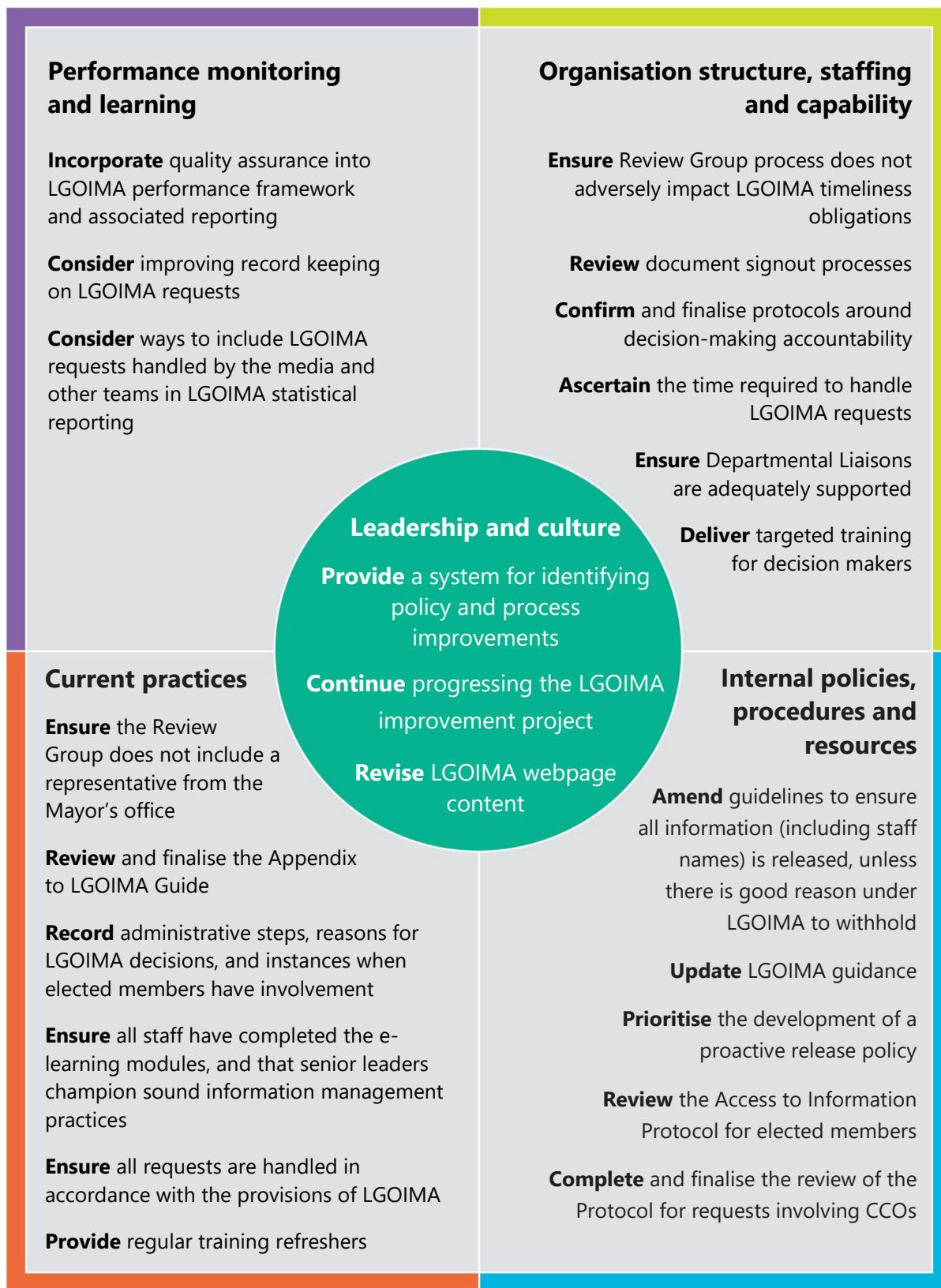
It is pleasing to see that material produced by Local Government New Zealand, the Department of Internal Affairs and my Office, such as Opinions, guidance, and case notes, is monitored and distributed to relevant staff.

Action points: Performance monitoring and learning	
1	Incorporate quality assurance into the Council's LGOIMA performance framework and associated reporting to senior leadership

Action points: Performance monitoring and learning

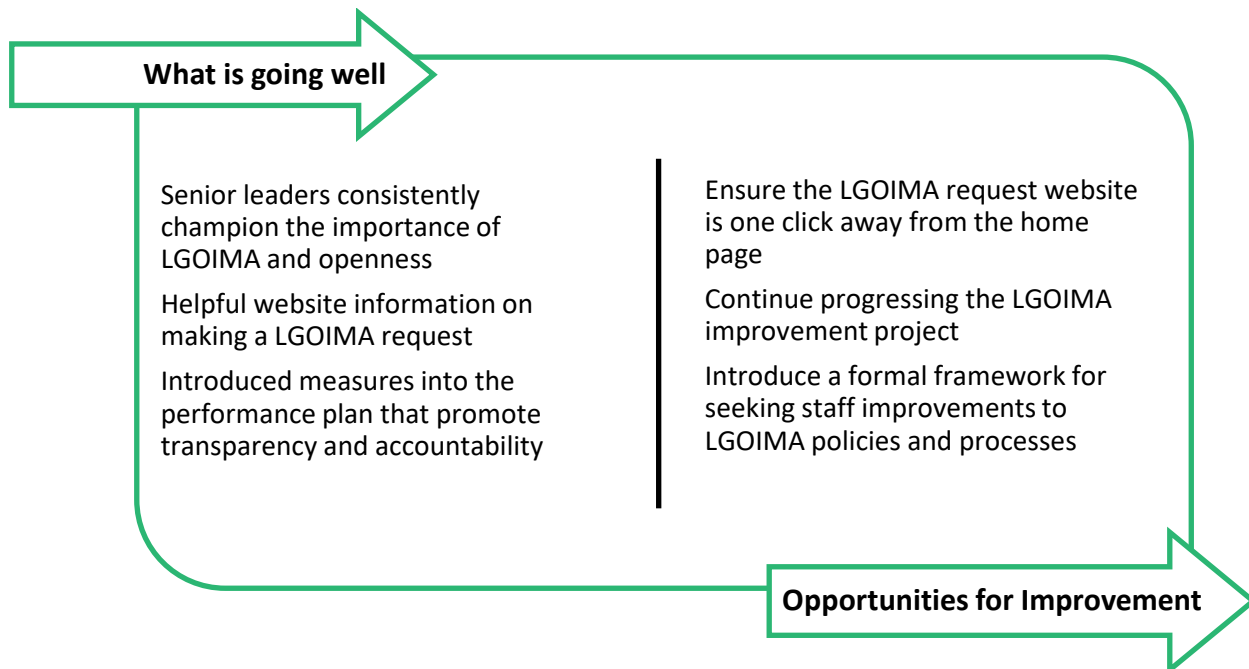
2	Consider improving the record keeping on LGOIMA requests; if the final decision is to refuse, the reasoning should include the basis for the decision, and the outcome of any consultations involved, including with elected members
3	Consider ways to include contact centre, media, elected member and property file LGOIMA requests in LGOIMA statistics

Further lifting LGOIMA performance at Auckland Council: summary of actions



Leadership and culture

At a glance:



Achieving the purposes of the LGOIMA depends significantly on the culture of the Council and the attitudes and actions of its leaders. Elected members, the Chief Executive and senior managers should take the lead in developing an environment that promotes openness and transparency; champions positive engagement with those who want to know and understand what work they are doing; and enables compliance with the principles, purposes and provisions of the legislation.

To assess Auckland Council's leadership and culture, I considered whether:

- elected members, the Chief Executive, senior leaders and managers demonstrate a commitment to the Council meeting its LGOIMA obligations and actively foster a culture of openness;
- senior leadership have established an effective strategic framework that promotes a culture open to the release of information;
- senior leaders demonstrate a commitment to proactive disclosure and public participation, with clear linkages to the agency's strategic plans creating a public perception, and genuine culture, of openness.

When it is clear to staff that their leaders view compliance with LGOIMA as an opportunity to operate in a more transparent, engaging and accountable manner, they will follow.

Aspects that are going well

A generally open culture

Leaders of larger agencies face a challenge in ensuring that the tone they intend to set from the top permeates through all layers of the organisation. While leaders may have the best intentions, the messages can become diluted when there is a large number of staff who may not be at a centralised location. Considering that the Council employs approximately 9500 staff spread across multiple sites, and these sites cover a large geographical region, I am impressed that the Council's leaders have managed to promote and maintain a generally positive culture of openness and transparency.

In April 2018, the Council introduced a principles-based guidance document called 'Our Charter,' which sets out the expectations for conduct that all staff have to meet. The document includes several references to the importance of openness and transparency, and '*We look after our information*' is one of the six foundation principles of the Charter.

The Charter states that all staff have a responsibility to 'behave openly, ethically and in a way that best serves the Council group's best interests,' and that 'as a public organisation our information must be easily accessible to the public.'

I consider that this document is a clear example of positive internal messaging to staff on the importance of openness and transparency.

There are other instances of internal messaging to staff promoting openness and LGOIMA. In September 2018, the Governance Director sent an email to his Division, in which he highlights the positive work of the Privacy and LGOIMA team in challenging times, and refers to their work as being 'important'.

The Council staff my investigators spoke with during my investigation were generally positive about the Chief Executive's commitment to openness and transparency. The Chief Executive holds quarterly meetings called 'Conversations with Stephen', where he spends up to a week visiting Council staff at all locations and holding Q&A sessions. Many staff highlighted this as an example of the Chief Executive demonstrating a culture of openness.

It is clear that the open leadership style of the Chief Executive has a positive impact on the Council's culture. When I met with the Chief Executive, he noted that '*transparency is what Local Government is about and there is a need to always be better*'. He recognised that it is important that he promotes LGOIMA, and that talking about transparency and openness is key. He noted that there are many ways he models a culture of openness, such as being open to feedback and open about his, and the Council's, performance both good and bad. He also said he communicates regularly with staff about the Leadership team's expectations.

As I note below, it is encouraging that the Council has introduced the measures '*trust in council*' and '*availability of information to have a say in shaping Auckland*' in its performance plan. These are concrete examples of how the Chief Executive is ensuring the Council is accountable.

The table below is a summary of staff responses to the survey question asking staff to rate the signals sent by leaders of the Council about the LGOIMA:⁵

Leadership level	Strongly or moderately pro-LGOIMA	Strongly or moderately anti-LGOIMA	'They are silent on this issue' or 'don't know'
Chief Executive	76%	2%	23%
Senior Leadership team	78%	3%	19%
Immediate Manager	88%	3%	9%

External messaging promoting openness and transparency

In order to promote public confidence, it is important that agencies publicly express their commitment to transparency. The Council's 2017/18 Annual Report states:⁶

We continued being open and transparent about Council activities. Last year, we received 993 requests for information, most of them from individuals, and around a third from media and organisations... Answering these requests is a way of sharing important information. Because it was an LTP year, we were proactive with publishing proposals around some changes such as the regional fuel tax, the accommodation provider targeted rate and rubbish bin bags.

In the Council's Performance Plan for 2017-2019, its first focus area is 'engaging and enabling communities.' The plan states that 'our engaging and enabling communities programme of work will increase the transparency and accessibility of the council,' and refers to better informing and engaging Aucklanders as a priority.⁷ The Council recognises that:

'Transparency is a key driver of trust and confidence, which is a critical measure for us. As stewards of Auckland and its assets, our greatest measure of success is the trust that Aucklanders have in us'.

The Council introduced a new measure 'trust in council' in its performance plan, which reflects the Council's commitment to openness and transparency. The Council's most recent result for this measure was 17 percent. That this measure is published is to be commended. The result also indicates that the Council must continually look for ways in which it can build a positive reputation for openness and transparency.

⁵ Note that these numbers have been rounded throughout the report.

⁶ See <https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/our-annual-reports/docsannualreport20172018/annual-report-20172018-volume-1-overview-and-service-performance.pdf>, p. 126.

⁷ See <https://www.aucklandcouncil.govt.nz/about-auckland-council/performance-transparency/privacy-official-information-requests/Documents/auckland-council-performance-plan.pdf>, p. 8.

In order to gain a full picture of the public perception of the Council, I invited stakeholders to answer a survey about its LGOIMA practices. Due to the low number of responses relative to the size of the electorate,⁸ little can be determined conclusively from the results of this survey. However, when asked to rate Auckland Council in terms of openness compared to other local government agencies, 52 percent of respondents rated it the least open. The following comment may provide some insight into the challenges the Council faces to improve the trust that Aucklanders have in it as an organisation:

This is a very large organisation and the culture of its different departments varies. Some are excellent but a lot are not. How open and transparent a department is depends on the culture and primary intentions flowing down from top management.

This sentiment reflects the importance of clear and regular messaging to staff from Senior Leaders to promote openness and transparency and to champion positive engagement with official information legislation. I also consider there is an opportunity for the Council to develop and publish a proactive release policy, which will complement the work the Council is doing to improve transparency to increase Aucklanders' trust and confidence in the Council.

In terms of external messaging about Part 7 of LGOIMA, the Council's performance plan also refers to Auckland Council making a suite of improvements in its governance and decision-making areas. The Council states that it wants to improve the advice it provides to elected members by improving staff capability and measuring advice against quality standards.⁹

LGOIMA improvement project

Auckland Council has developed a work programme to make improvements to its LGOIMA practice as a result of an Opinion I published in July 2018.¹⁰ The work programme included:

- Reviewing the terms of reference of the LGOIMA Review Group;
- Developing internal LGOIMA protocols, including for elected member involvement in the processing of LGOIMA requests;
- Developing LGOIMA protocols with CCOs via the CCO Governance Manual review;
- Developing a protocol for elected member access to information;
- Updating the Chief Executive's Delegations register in relation to the Mayoral Office; and
- Developing a training plan for both the Council and CCOs

The General Manager, Democracy Services is leading this project and the Governance Director of the Council is sponsoring it, reflecting leadership commitment to this programme of work.

⁸ There were 55 responses to the stakeholder survey.

⁹ See <https://www.aucklandcouncil.govt.nz/about-auckland-council/performance-transparency/Documents/ac-performance-plan-20172019.pdf>

¹⁰ See <http://www.ombudsman.parliament.nz/resources-and-publications/opinions/ombudsman-act-opinions>

The Council has made some progress toward implementing these actions. However, there is still more to be done, particularly in relation to the Terms of Reference for the LGOIMA Review Group, developing internal LGOIMA protocols and a LGOIMA protocol for CCOs. These documents appear to remain in draft and should be finalised. I discuss aspects of these documents further under [Organisation structure, staffing, and capability](#), [Current practices](#), and [Internal policies, procedures and resources](#).

Delegations

The Chief Executive (CE) of a local authority is the accountable decision maker on requests for official information.¹¹ However, for practical reasons this authority is often delegated to other personnel, who should be sufficiently senior to take responsibility for the decisions made.

The Council's CE has delegated his decision-making authority on LGOIMA requests to staff at tiers two, three and four.

Although it is clear to whom the CE's authority has been delegated, some of the Council's processes may lead to confusion about who is the final decision maker on a request, as I will discuss further below, under [Organisation structure, staffing, and capability](#).

Council meetings

The Council has recently amended its processes around its administration of Council meetings under Part 7 of LGOIMA, which has led to improvements in openness and transparency.

Firstly, over the past two years the Council has introduced transparency reports for confidential sections on Council meeting agendas. This means that where there is a report in the public excluded section of an agenda, there will be a corresponding public agenda item that will ensure that, at the very least, the purpose of the report and a brief summary will be made available to the public.¹² This is a positive step, which helps to ensure that the Council is being as transparent as possible in its administration of meetings.

Secondly, the Council has introduced restatement dates for items heard in the 'public excluded' portion of open council meetings. This is where elected members indicate, where possible, when an item heard in 'public excluded' can be publically available.

Lastly, Auckland Council are including workshop material in public agendas, which helps to ensure that there is public awareness of discussions held at workshops.

I understand, based on meetings with key Council staff, that these developments have been championed by senior leaders, and I consider them to be positive examples in support of a culture of openness and transparency. I would encourage the Council to continue seeking ways to innovate and increase openness in its administration of meetings.

¹¹ See s 13(5) LGOIMA.

¹² See for example the Agenda for the Governing Body on 22 November 2018, where there are transparency reports for two confidential agenda items (http://infocouncil.aucklandcouncil.govt.nz/Open/2018/11/GB_20181122_AGN_6777_AT_WEB.htm).

LGOIMA webpage

The information published on an agency's website is another signal of its leaders' commitment to the implementation of the LGOIMA.

The Council has a dedicated LGOIMA section on its website,¹³ which includes useful information for requesters of official information, such as:

- an overview of the type of information the Council holds;
- guidance for requesting information with urgency;
- the right to refer to the Ombudsman if the requester has concerns about the Council's response;
- the fact that requesters can request to receive information in a specific way, including a discussion in person; and
- a visible 'tips' section which directs people who wish to request information from Council Controlled Organisations, Auckland Transport and Watercare, to those websites.

I am also pleased to see that the Council publishes selected responses to LGOIMA requests.

Requesters are given multiple options for how to submit their request, including filling out an online form, posting a written request, phoning the Council, or presenting in person at a customer service centre. There is also an email address given for the Council's Official Information team.

I consider there may be room for improvement, however, in the location and content of this section of the Council's website, which I will discuss further below, under [Opportunities for improvement](#).

Proactive release of information and public participation

As a large council performing a number of functions, Auckland Council releases a substantial amount of information on its website. Much of this information must be released as a statutory requirement, such as meeting agendas, minutes, consultation documents, Annual Reports, the Long Term Plan and its Significance and Engagement Policy.

Auckland Council has a Communication and Engagement Department that designs and leads engagement and consultation activities. The Council has a document available on its webpage that outlines the role of the Department.¹⁴

The Council seeks feedback using a variety of methods including drop-in events, a 'have your say' webpage, Facebook, and by sending letters to relevant parties.

¹³ See <https://www.aucklandcouncil.govt.nz/about-auckland-council/performance-transparency/Pages/default.aspx>.

¹⁴ See <https://www.aucklandcouncil.govt.nz/about-auckland-council/performance-transparency/Documents/communication-engagement-information.pdf>

The Council's website has good search capability and clear headings. It also has useful, easily understood summaries of information about various community engagement activities. However, as part of my survey of the public's experiences of the Council's LGOIMA practice, 66 percent of respondents found it somewhat difficult or very difficult to navigate the Council's website to find information before making a LGOIMA request. I discuss further how the Council can make improvements to its LGOIMA webpage under [Opportunities for improvement](#).

The Council's performance plan also recognises the importance of releasing information proactively. The plan notes:

During 2015, we began publishing more information about our activities as part of our commitment to greater openness and transparency. We'll continue to publish information about what we do at Auckland Council, and ensure it's accessible and easy for Aucklanders to understand.

Reflecting the Council's commitment to publish more information in its performance plan, Auckland Council goes further than the legal requirements placed on it, publishing a range of reports and performance data that may not always paint the Council's performance in a flattering light.

I commend the Council for demonstrating that it is committed to the proactive release of information in a number of ways, such as:

- the distribution of the publication titled *Our Auckland*,¹⁵ which shares Auckland Council events, news and improvements;
- releasing its resident survey results, such as the Peoples Panel Surveys and the results of its Citizen Insights Monitor;¹⁶
- the publishing of information regularly requested through LGOIMA and media channels;
- releasing transparency reports for confidential sections of Council meetings; and
- releasing performance measures, such as the public's *Trust in Council* and *Availability of Information to Have a Say in Shaping Auckland*.

Further, the Council has stated that its Communications team keep a record of all media requests received. Its Digital team uses Google Analytics to measure transparency, and reports this to the Digital Team Manager. This tracking of information demand allows the Council to identify if a subject has attracted a lot of public interest and to then consider publishing information in advance. This allows planning to take place from an early stage and generally relates to those subjects that receive a larger number of LGOIMA requests.

As part of its LGOIMA improvement project, the Council has said that it is considering ways to increase the proactive release of information that is of interest to the public. While this project

¹⁵ See <https://ourauckland.aucklandcouncil.govt.nz/>

¹⁶ See <https://www.aucklandcouncil.govt.nz/have-your-say/have-your-say-through-peoples-panel/Pages/results-peoples-panel-surveys.aspx> and <https://www.aucklandcouncil.govt.nz/about-auckland-council/performance-transparency/Pages/our-three-year-performance-plan.aspx>

gives some indication that senior leaders are committed to a program of proactive disclosure, there are still opportunities for improvement in this area, as I discuss under [Internal policies, procedures and resources](#).

It is encouraging to see that the Council is committed to releasing as much information as possible to the public. One positive result of this is that the public will be more likely to engage with the Council and, in turn, be better informed in order to participate in Council decision making.

Opportunities for improvement

There are opportunities for improvement in relation to:

- the location and content of the Council's LGOIMA webpage; and
- implementing a process for staff to suggest improvements to the LGOIMA handling systems and the proactive release of information.

LGOIMA webpage—location and content

The section of the Council's website that gives information on the LGOIMA, *Privacy and official information requests*, is located two clicks away from the homepage, under the section 'Performance and Transparency'. I encourage the Council to consider whether this is an intuitive place to find LGOIMA information for the average user of its website. I note that using the search function of the website to search for 'LGOIMA' does not appear to reveal the relevant page, although it does reveal published responses to previous requests.

The State Services Commission provides specific guidance to central government in respect of Official Information Act (OIA) webpages.¹⁷ One of the principles it recommends is that an agency's OIA page be accessible directly from the agency's homepage. I think it is reasonable to expect local government agencies apply a similar principle in relation to LGOIMA requests.

There are also opportunities to improve the content of the LGOIMA section by including:

- a statement of principle about the right of the public to access official information;
- more information to assist requesters, such as a more detailed description of the information the Council holds, and links to popular types of information available online, such as corporate documents;
- a link to internal LGOIMA policies and procedures; and
- a link to the Council's internal decision-making rules, as detailed in section 21 of the LGOIMA.

Finally, I note that the Council displays its charging policy and fees prominently on the *Privacy and official information requests* page. While I generally encourage agencies to make their

¹⁷ See <https://www.publicservice.govt.nz/guidance/official-information/oia-guidance-for-agencies>

official information policies publicly available, the wording of this section may imply that the Council's default position is to charge for the supply of information, which may discourage people from making requests.

The Council's webpage states that it will charge for the supply of information if it takes over four hours to process the request. Based on my understanding, it does not appear that this reflects the Council's practice. I encourage the Council to consider re-wording this section so it is clear that charging for the supply of official information is a discretion that the Council reasonably exercises in rare circumstances, and it will be balanced against reasons for the remission of charges.

Action points

Incorporate a link on the Council website homepage that is clearly signposted as relating to requests for information, and goes directly to the official information request webpage

Review and update the content of the *Privacy and official information requests* page, incorporating my suggestions

Council's response:

In response to my provisional opinion, the Council commented that it will conduct due diligence on the use of the Auckland Council home page to determine the best location for LGOIMA requests. The Council has said in the short term, it will move the official information requests link one click away from the home page, to the 'get it done' section of 'about Auckland Council'.

System for staff to suggest improvements

The Council stated that the 'Our Charter' approach empowers staff members to speak up when they consider a process is not working well. The LGOIMA Review Group also considers improvements when they meet, and there is a practice of addressing findings as a result of Ombudsman investigations.

The Council considers that the collegial approach by those who are involved in the review group process leads to continuous improvement. However, I note that the members of this group are relatively senior and are not involved in the processing of the requests.

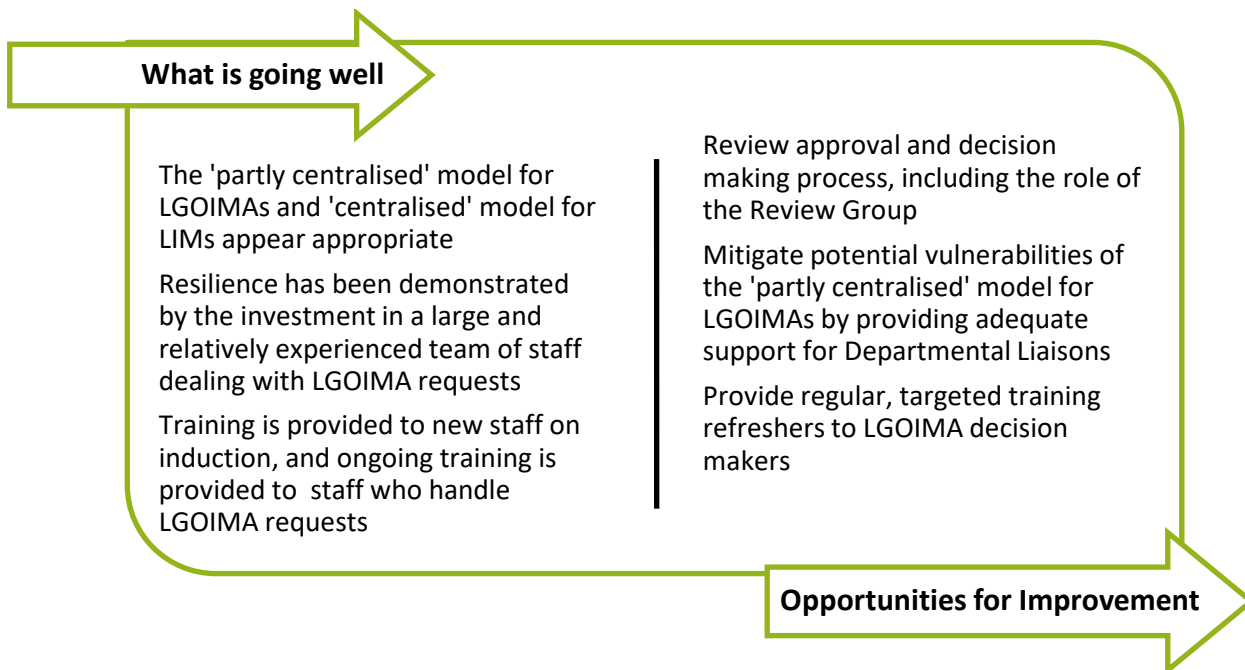
I appreciate the Council's approach to seeking improvements from staff. However, I consider a more formal framework for seeking staff improvements would be beneficial for the Council. A number of staff in response to my survey made suggestions for improvements, for example in how the Review Group works, and in signoff processes. I pick up some of these suggestions later in the report, as opportunities for improvement. I note it here because where senior leaders provide a system to encourage improvements, they are likely to be implemented. There are many different ways a system could be put in place that fits the Council's culture and ways of working. For example, the ability for staff to suggest improvements could be incorporated into the existing business partner model.

Action point

Leaders to champion a system for staff to identify improvements to LGOIMA policies and processes

Organisation structure, staffing and capability

At a glance



It is expected councils will organise their structure and resources to ensure they are able to meet their legal obligations under LGOIMA in a way that is relevant to their particular size, responsibilities and the amount of interest in the information they hold.

To assess Auckland Council's organisational structure, staffing, and capability, I considered whether:

- The Council had the capacity to discharge its LGOIMA obligations, with clear and fully functioning roles, accountabilities, reporting lines, delegations and resilience arrangements.
- The Council has the capability to discharge its LGOIMA obligations.

After discussing aspects that are going well for the Council, I identify some opportunities for improvement.

Aspects that are going well

Model for handling LGOIMA requests

The Council employs a partly centralised 'Business Partner' model for handling LGOIMA requests. The Council created the Business Partner model in 2015, moving the responsibility for processing requests from the various business units to the centralised Privacy and LGOIMA

team. The Business Partner model has enabled staff in the team to develop a good working knowledge and relationship with the departments within their portfolio. It also enables staff in the Privacy and LGOIMA team to provide advice and train staff through the Departmental Liaisons.

In the Privacy and LGOIMA team, there are six Privacy and LGOIMA Business Partners, who work with Departmental Liaisons across the Council to process requests. Each Business Partner is allocated a portfolio area, or areas, that they work with on a day-to-day basis. Business Partners also perform the administrative functions of receiving, logging and tracking the progress of LGOIMA responses, and act as expert advisors on the application of withholding grounds and any relevant statutory requirements.

The tier three or four Manager in each Department is responsible for making the decision on each request, and the Public Law team provide assistance on the details of the legislation when required. Another key part of the structure is the Corporate Records & Archives team, who provide assistance when required to find records that may be relevant to a request.

All requests on hand are discussed at a weekly Review Group meeting, which comprises key staff, including senior leaders, members of the Media/Communications teams and a representative from the Mayor's Office. The group has oversight across all requests on hand, and is able to indicate where they would like to review a particular request. My impression from meeting with Council staff is that the Review Group has some strengths, including the ability for key staff to have a 'birds' eye' view of what is happening across the organisation, but there are risks in relation to:

- ensuring the Review Group does not adversely impact on LGOIMA timeliness obligations;
- the clarity of decision making and Review Group input; and
- ensuring that the appropriate delegated decision maker has made a decision on all LGOIMA requests.

I will discuss these further below, under [Opportunities for improvement](#).

Structural resilience

Having a large and relatively experienced Privacy and LGOIMA team helps to ensure organisational resilience. The Council has confirmed that Business Partners are able to move between portfolio areas as required when there is staff absence or sudden influxes in a particular area. The Council helps to ensure resilience in the team by engaging temporary staff if necessary. Furthermore, when a decision maker is unavailable, their acting representative has the authority to make the decision on their behalf, as set out in the Auckland Council Combined Chief Executives Delegation Register.

Within the current organisational structure, the Privacy and LGOIMA team also process requests for all smaller Council Controlled Organisations (CCOs).¹⁸ One of the six Business

¹⁸ These include Auckland Tourism Events and Economic Development (ATEED), Panuku Development Auckland and Regional Facilities Auckland, but not Auckland Transport and Watercare.

Partners works with the CCOs to prepare information for release, with the Chief Executive of the CCO being the decision maker on these requests. The Council has a protocol in place to assist smaller CCOs to meet their obligations under the Act; I discuss this protocol under [Internal policies, procedures and resources](#).

Training

The Council provides training on LGOIMA responsibilities to all new staff members at induction. The Council's 'Our Charter' includes LGOIMA e-learning training modules. The Council has stated that it is starting to automate the booking of LGOIMA training through its learning portal, available to all staff.

Senior Business Partners conduct one-on-one training for existing staff, or for those staff members more regularly involved in the handling of requests. The Legal team are part of the LGOIMA Review Group and provide training when appropriate and necessary. For instance, training is provided by the Legal team when there are changes to legislation or practice, for example when the Ombudsman issues new or amended guidance.

The Council has stated that the Communications team received formal LGOIMA training in July 2018 and obtains additional informal guidance and training as required. Furthermore, senior staff members act as mentors to junior members on LGOIMA issues. The Privacy and LGOIMA Business Partners have regular one-on-one sessions with members of the Communications team.

It is pleasing to see that the Communications team have received formal training. It is important that they receive targeted training to ensure they are aware of the Council's obligations under the LGOIMA when responding to requests from media and the public.

The Council has made an 11.5 hour training course on Governance Fundamentals available to all staff. The Council advised me in April 2019 that 234 staff members had attended the course.

As part of the staff survey, I asked staff who assist in processing LGOIMA requests whether they had been adequately trained. Sixty percent of staff responded yes, they felt adequately trained. However, 33 percent felt they had not. Comments included:

Could benefit from training in advance rather than guidance documents.

Need regular refresher training.

We could always do with a reminder.

I note the Council has stated that individual employees identify training needs and include them in their 'My Time' development plans.¹⁹ Individual Managers discuss the plans, identify any gaps in knowledge and arrange internal or external training at that point. I discuss training further under [Opportunities for improvement](#).

¹⁹ 'My Time' is an employee-led process for employees and their managers to meet fortnightly and communicate about the employee's needs and any issues.

Model for handling LIM requests

The Council has a fully centralised model for processing LIM and property file requests. Approximately 20 Regulatory Support Officers (Property File Products) work full time processing LIM and property file requests, supported by two Team Leader Regulatory Support Advisors.

This structure appears to be working well for the Council. As at February 2019, the Council were achieving 99.71 percent of requests responded to within the Service Level Agreement (SLA) of 10 working days, or three working days for urgent requests.

All staff involved in the processing of LIMs receive training when they start, and they are also 'buddied up' with more experienced staff members until they are fully competent.

Administration of Council meetings and support to Councillors

Responsibility for the administration of local authority meetings sits with the Governance Support team, which is located within Democracy Services.

The Councillor Support Advisor team is made up of 15 Councillor Support Advisors. These staff members provide administrative support, as well as assisting Councillors to engage with the organisation, and with research and advice. When Councillors wish to obtain information, they are able to either approach a support advisor or go directly to the relevant subject matter expert.

The Governance Advisor team is also within the Governance Support team and includes a Team Leader, four senior advisors and four advisors. These staff members are responsible for administration of meetings, providing advice to the business on the requirements of Part 7 of the LGOIMA and bringing about continuous improvement in the Council's practice in this area.

Compliance with the timeframes set out in Part 7 of the Act seems to be well embedded in the Council practice and culture. Staff my investigators met with explained that having a larger number of advisors than smaller councils enabled it to identify opportunities for improvement and bring about important innovations, such as those set out in [Leadership and culture](#).

As previously outlined, the Council makes a Governance Fundamentals course available to all staff. This includes training on the requirements of Part 7 of LGOIMA, and other important aspects of Council work, including: CCOs; working with the local board and the governing bodies; and the idea of shared governance.

Another course offered by the Council helps develop report-writing skills, and is attended by all staff who write reports and provide advice to elected members. Governance Advisors also attend training prepared by the New Zealand Society of Local Government Managers (SOLGM).

It is my view that this arrangement works well for Auckland Council and I commend it for the positive structures it has in place.

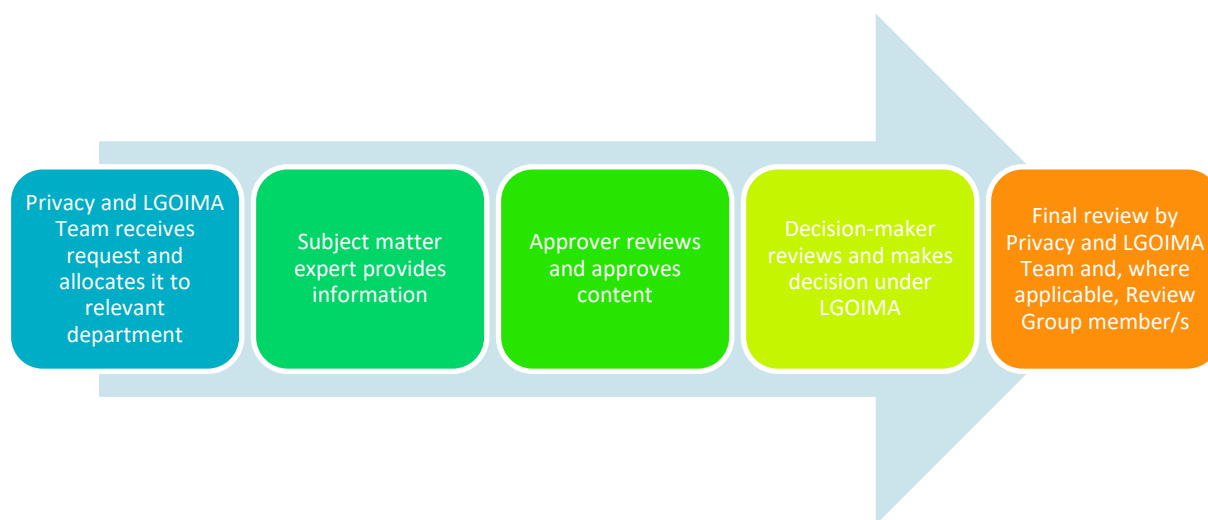
Opportunities for improvement

There are opportunities for improvement in relation to:

- the approval/decision making process and the role of the Review Group;
- mitigating vulnerabilities in the partly centralised model to cope with LGOIMA demand; and
- enhanced LGOIMA training, including targeted training for decision makers and communications staff, as well as regular refresher sessions.

Review Group and decision-making process

The following diagram is reproduced from the Council's 'Draft Appendix to LGOIMA Guide' document. It illustrates the approval process for a request relating to a single department:



The approval process for LGOIMA responses includes oversight by a Review Group. This group comprises senior staff from a number of business units, including the Mayor's office. The Review Group runs through a list of all new requests and focuses on those that are complex or have high public interest. The group views the draft response of those requests of interest after an 'approver' and a 'decision maker' have given approval. I discuss the inclusion of a representative from the Mayor's office further under [Current practices](#). The Council's draft protocols for LGOIMA requests states that, at this stage:

...if a review group or LGOIMA team member recommends substantial change to a response following approval by the decision maker, the revised response must be approved again by the approver and decision maker.

There are several potential issues with this system. I encourage the Council to consider the operational impact of a system where the bulk of work may be completed on a request, only for the work to be rendered unnecessary if the Review Group has a contrary view.

Another key issue is the clarity and accountability of the decision-making process. The distinction between 'approval/reviewer' and 'decision maker' is unclear, with the terminology

used interchangeably by staff, indicating there is also a lack of clarity in practice, at least amongst staff my investigators met with. It is also unclear who bears ultimate responsibility for exercising the CE's delegated authority.

The Council must take into account its timeliness obligations under the LGOIMA. Agencies are required to communicate their decision on a request *not later than 20 working days after the day on which the request is received and as soon as reasonably practicable*. If the Council makes its decision relatively early in the process, but communicates that decision to the requester only after a panel review process, it may be in breach of the latter obligation (to communicate its decision as soon as reasonably practicable). A number of Council staff raised concerns about the impact of the Review Group on LGOIMA timeliness, with one staff member saying *'sometimes responses are held up by Review Group delays'*.

I understand, based on meetings with staff, that there may be an intention for the Privacy and LGOIMA team to advise members of the Review Group which requests do not require review. However, I note that this does not appear to happen in practice, and it is not reflected in the Review Group's Terms of Reference or the Appendix to the LGOIMA guide.

I encourage the Council to:

- clarify its protocols around decision-making accountability, and finalise both the Review Group's Terms of Reference and the Appendix to the LGOIMA guide without delay; and
- consider reversing the steps in the process so that a Review Group can provide input at an early stage, which may inform the decision maker's final view but does not supplant it.

It is also of concern that the Business Partner responsible for each request signs out the decision letter to the requester. The rationale provided for this is that the Business Partner is the contact person on the request, and that having his or her name on the letter helps to facilitate communication between them and the requester. While I understand this reasoning, it could create the perception that a staff member without delegation has made a decision under the LGOIMA.

Action points

Re-examine the Review Group process, ensuring it does not adversely impact adherence with LGOIMA timeliness obligations

Review processes around signing out documents to ensure that the identity of the decision maker on the request is not misrepresented

Confirm protocols around accountability for decision making, and finalise both the Review Group's ToR and the Appendix to LGOIMA Guidance documents without delay

Council's response

In response to my provisional opinion, the Council commented that:

We consider that the role of the Review Group is sufficiently clear to its members... However, we agree that reiterating and clarifying the role with Review Group members is important and we will finalise and promote the Review Group's Terms of Reference as a priority.

The Council has also said that Review Group members review and provide guidance on LGOIMA responses, but they are not the decision-makers. If they suggest a substantial change the decision-maker considers the views of the Review Group, but ultimately, it is their decision to make. The Council did agree that further clarity among staff is required.

My comment

The Council has stated that the ultimate decision on LGOIMA requests rests with the decision-maker and not the Review Group. However, I agree that further clarity amongst staff is required, so that decision-makers do not feel unduly pressured in response to suggestions from the Review Group.

Capacity to efficiently employ the partly centralised model

The 'partly centralised' business partner model for handling LGOIMA requests appears to be an appropriate fit given the size of the Council, and the subject matter expertise required to respond to complex requests for information. However, the Council must be aware of, and mitigate, the potential vulnerabilities of this process.

It was apparent from my meetings with key staff that the business partner model is not consistently employed across the organisation. There are some departments which do not have Departmental Liaisons, and liaisons vary in their level of responsiveness to business partners. This may be due to workload pressures, or because they respond to LGOIMA requests infrequently, and so this aspect of their role is given a lower priority than 'business as usual' tasks. When asked, in my survey of Council staff, if the Council would be able to cope with a sudden increase in the number of LGOIMA requests it received, 41 percent of respondents said no.

As I discuss further, under [Current practices](#), the Council's adherence to LGOIMA timeliness obligations is variable, in some months dropping as low as 77 percent. Based on my review of sample LGOIMA files, and feedback from Council staff, I gather that there are sometimes delays of several days in logging and assigning requests to Departmental Liaisons, and that at the other end of that process there can be delays in business partners receiving the requested information from Departmental Liaisons.

The Council should be mindful that the more steps—and staff members—in the LGOIMA handling process, the greater the risk of delays. To mitigate this risk, the Council must ensure that:

- there is sufficient capacity in the LGOIMA team to assign requests to ‘Department Liaisons’ in business units without delay, particularly when there are spikes in demand;
- there is sufficient capacity within business units for Department Liaisons to be responsive to requests from business partners by ensuring LGOIMA work is considered part of their core role; and
- Departmental Liaisons are supported by their managers to prioritise this aspect of their role, even if they are not frequently called on to respond to LGOIMA requests.

The Council may benefit from undertaking some method of sampling to ascertain the amount of time spent by business units, Departmental Liaisons, and Business Partners logging and processing LGOIMA requests. By understanding this, the Council can ensure adequate workforce planning that takes into account the resource demands of other BAU tasks as well as the Council’s obligations under the LGOIMA.

This need not necessarily become a permanent fixture of the Council’s practice. I understand that the Council’s SAP system can record the time spent by staff collating and making a decision on LGOIMA requests. Therefore, the Council may already have collected some data with which to accurately assess the level of resourcing the Council needs to cope with the number of requests received and to respond within the statutory timeframe. However, this system is not used consistently across the business, resulting in an incomplete picture of the resources required to efficiently process LGOIMA requests. Undertaking a piece of work to understand the amount of time spent by business units may be of use to the Council when assessing its capability to discharge its LGOIMA obligations.

Action points

Ascertain the amount of time required to handle LGOIMA requests by Business Partners and Departmental Liaisons

Ensure Departmental Liaisons are adequately supported to prioritise this aspect of their role

Official information training

Not a Game of Hide and Seek identifies the factors an effective training framework should encompass:²⁰

- training at induction;
- introductory basic awareness of key LGOIMA principles;
- advanced courses for specialists covering, for example:
 - proper application of the public interest and harm tests;
 - dealing with broad, complex requests covering a large volume of information; and

²⁰ *Not a Game of Hide and Seek* (December 2015): 65

- refresher courses.

I commend the Council for introducing training on LGOIMA responsibilities at induction, and for using the Business Partner model and Public Law team to enable ongoing training when the need arises. I understand that the Council has recently introduced steps to track and monitor what training is taking place, as part of its work programme to improve its LGOIMA practice. In time, this improvement will allow the Council to identify gaps and opportunities for refresher training.

However, tier three and four decision makers are not all provided with consistent and regular training. The Council has stated that it provides targeted on-the-job training to decision makers and senior managers as required. However, I would encourage Auckland Council to develop and introduce consistent formalised training, delivered to all tier three and four managers, on a regular basis, as opposed to when and as the Council perceives it is required. There is a risk that when training occurs only on an ad hoc basis, it will be considered a lower priority during busy times, and it may not occur. Running the training on a regular schedule will help ensure it occurs consistently, and remains a priority. This will help to ensure that staff are able to appropriately apply the LGOIMA provisions, including the public interest test. Regular refresher courses are also important to ensure decision makers are aware of any changes to legislation and current Ombudsman guidance.

I appreciate that many senior managers at the Council have experience in local government and have access to support from the Public Law and Privacy and LGOIMA teams. However, relying on an individual's knowledge and past experience to make the appropriate decisions may leave the Council vulnerable to unintended poor practice and decisions that are passed on to other staff, and then embedded into practice. Requiring regular training for senior managers would demonstrate leadership from the top, test officials' understanding and knowledge, promote efficiencies and consistency in decision-making, and demonstrate that responding to LGOIMA requests is core business prioritised and valued by leadership.

I believe the Council has the foundations of a great official information training programme, and suggest that it makes improvements that are within its capacity and fit for its size. As Auckland Council is aware, members of my Office are available to deliver official information training, and to assist in the development and/or delivery of a training programme, including the type of training required for different roles and different levels of seniority and responsibility.

Action point

Deliver targeted formalised training for decision makers with clear expectations set by senior leaders to attend regular refreshers

Information Management training

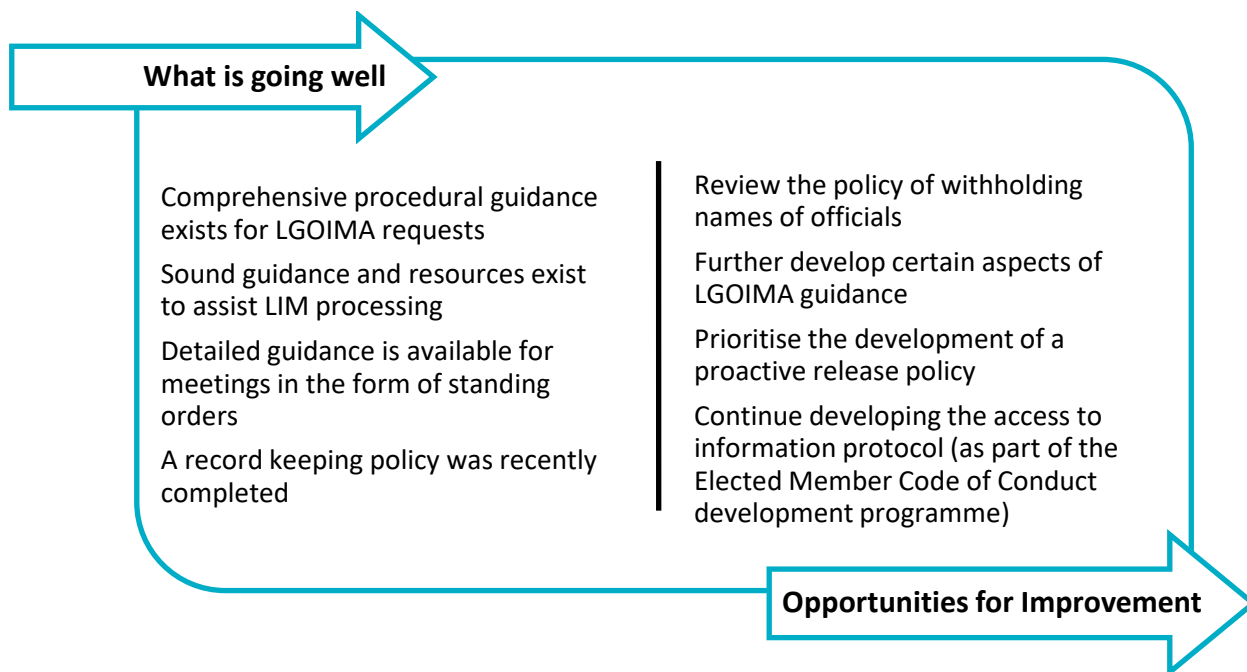
My investigation identified that the Council was only carrying out ad hoc, one-on-one training on Information Management. The Corporate Records & Archives team conducted the training.

In meetings with Council staff, my investigators were advised that a new starter's Manager or buddy provided on-the-job training on Information Management.

Since the commencement of this investigation, the Council stated that a new e-learning module is undergoing finalisation and will be available to staff in August 2019. The module will be compulsory for all new staff at induction and for all staff to complete every three years. I commend the Council on this new practice, which will go some way to ensure consistent practice across the organisation. I discuss information management and record keeping further under [Current practices](#).

Internal policies, procedures and resources

At a glance



While it is neither a legislative requirement nor an assurance that compliance with LGOIMA will occur, I do expect as a matter of good practice that councils develop or adopt policies and procedures that will assist staff to apply the requirements of the Act consistently. In addition, staff should be supported by good systems, tools and resources in their work that will enable councils to effectively process requests and make good decisions consistent with the provisions in the Act.

To assess Auckland Council's internal policies, procedures and resources, I considered whether it had accurate, comprehensive, user-friendly and accessible policies, procedures, and resources that enabled staff to give effect to the Act's principle, purposes and statutory requirements. This includes policies, procedures and resources in relation to:

- dealing with official information, the administration of council meetings, and producing LIM reports;
- records and information management; and
- proactive release of information.

After discussing aspects that are going well for Auckland Council, I identify some opportunities for improvement.

Aspects that are going well

Official information policies, procedures and resources

Auckland Council has a range of procedural guidance documents to assist staff in identifying and responding to LGOIMA requests.

These include:

1. Addendum to 'Our Charter', 'Local Government Official Information and Meetings Act – what you need to know'.
2. Appendix to LGOIMA guide (still in draft).
3. Department Drafting Task (DDT) document.
4. New Core manual.
5. Template letters.
6. Draft Access to information protocol for elected members.
7. Protocols for managing requests involving CCOs.

Based on my survey of staff, 68 percent of respondents find the guidance 'useful' or 'very useful'. Staff in the Privacy and LGOIMA team have access to a self-managed OneNote document that the team updates on a regular basis, and that provides assistance with the day-to-day workings of the team.

When asked in the staff survey how easy or difficult it was to locate Council policies, 71 percent of those who answered said it was 'very easy' or 'moderately easy.' One staff member said:

The Council's Our Charter has centralised the council's policies and procedures on responding to LGOIMA requests, and provides a handy repository for all relevant guides and FAQs. Our Charter is easy to find on the intranet.

When asked how useful policies, procedures and resources were for responding to LGOIMA requests, 23 percent of those who answered said they were 'very useful' and 45 percent said they were 'useful.'

The *Our Charter* addendum includes a good statement of principle as follows:

We know that all information must be made available to the public unless there is a good reason not to.

The addendum contains some accurate advice. For instance, it specifies that anyone can make a request for any information held by the Council, including text messages and information that known to the organisation but not yet recorded. It states:

Any information can be requested. This includes written documents, reports, memoranda, notes, emails, draft documents, policies and procedures, phone texts,

and information known to an agency but which has not yet been recorded in writing.

It also says that the requestor does not need to refer to the Act. The addendum addresses a number of common ‘myths’ about LGOIMA, including that draft documents and commercially sensitive information may not always be withheld, and that third parties cannot veto release of official information. I do hold some concerns about the section of the guidance relating to withholding staff names, which I will discuss further below under [Opportunities for improvement](#).

The ‘New Core’ manual offers guidance for staff on the logging and tracking of requests through the SAP system. I consider this to be a helpful step-by-step guide for new staff in the Privacy and LGOIMA team and assists them in this part of their job.

The Department Drafting Task form contains helpful, albeit high-level guidance for staff allocated a request. It contains information on withholding grounds and on charging for the supply of official information. It also highlights potential risks associated with releasing information. This document is essentially a coversheet for a request and if consistently used, it would be a very helpful tool for the person assigned the request, the decision maker, and the Business Partner. I discuss the use of this form further below under [Current practices](#).

While the guidance is generally sound, there may be some opportunities for improvement, which I will discuss below, under [Official information guidance](#).

I commend the Council for having redaction software that enables it to redact information and provide responses to LGOIMA requests via searchable PDF. I consider that this is a vital tool to help an agency comply with the spirit of the Act, as it ensures information is accessible to those who use screen readers, and allows requestors to search and utilise the information they receive to a much greater extent than an ‘image only’ PDF.

Lastly, I note that the Review Group allows for useful feedback loops between key teams involved in the processing of LGOIMA requests. It affords the Council the ability to discuss resourcing for official information across business units, and to determine whether multiple business units may need to be involved in a request. Further, the Business Partner model ensures ongoing feedback loops between the Privacy and LGOIMA team and the relevant business units. As noted above under [Organisation structure, staffing and capability](#), this allows for ongoing assessment of training needs.

Information management policies and procedures

The Council has a number of policies and procedures related to information management. These include:

1. Addendum to ‘Our Charter’ *‘Destruction of physical records – what you need to know’*.
2. Guidelines for recordkeeping of outsourced business activities.
3. Guidance for managing folders in the Council’s shared drive system.

4. One-page guidance 'Is it a record?'
5. A draft Recordkeeping Policy.
6. Guidelines for retaining digitised records in electronic form only.
7. Workflow for implementing a folder structure in the shared drive system.

The Council has recently completed a Recordkeeping Policy, which is now available to staff as one of the 'Our Charter' guides. The purpose of the Policy is:

To provide a framework and assign responsibilities for ensuring that full and accurate records of the business activities of Auckland Council are created... Compliance with this policy will ensure council records are the basis for organisational accountability, current and future policy formation, and management decision making. The records will support compliance with legislative and regulatory requirements, and document council activities, developments and achievements.

This high-level statement is encouraging to see, as are the accompanying expectations for Council staff with regard to recordkeeping.

The guidance for recordkeeping in relation to Council contractors is also positive. It clarifies that it is the responsibility of the Council to work with contractors to agree and define its expectations for recordkeeping related to contractors, and includes examples of record clauses for contractors.

In the staff survey, when asked how useful the Council's policies and procedures on recordkeeping and information management were, 45 percent of staff who responded to the survey said they were 'very useful' or 'useful'. However, 41 percent said they 'didn't know.' While I consider that the Council's policies in this area are generally sound, I hold concerns about its practices with regard to information management, which I discuss below, under [Current practices](#).

Council meetings

The Council has detailed guidance on the administration of Council meetings available for staff in the form of the *Standing Orders*.²¹ There are standing orders for the Governing Body, and standing orders for each local board. The standing orders appear to be fit for purpose, covering the key points in the indicators on this topic.

As outlined above in [Administration of Council meetings and support to Councillors](#), the Council makes a Governance Fundamentals course available to all staff, which includes training on the requirements of Part 7 of the LGOIMA.

²¹ See <https://www.aucklandcouncil.govt.nz/about-auckland-council/how-auckland-council-works/governing-body-wards-committees/Documents/standing-orders-governing-body.pdf>

LIMs

As discussed elsewhere in this document (see [Organisation structure, staffing and capability](#), and [Current practices](#)), the Council appears to have an effective structure and good practices in place for processing LIM requests, as evidenced by the Council consistently adhering to timeliness obligations.

Following the implementation of the SAP project, new LIM policies, procedures and resources were created by members of the Regulatory Support team (together with policies for responding to Property File requests). While these are currently not stored in a central location, the Council has advised that it is updating these manuals, and they will be available for all staff in the Council's online portal iTrain by the end of June 2019. I would encourage the Council to ensure that this project is finalised as soon as practicable to ensure that guidance is readily accessible and up to date.

Opportunities for improvement

There are opportunities for improvement in relation to:

- the policy around withholding officials' names;
- the creation of a proactive release of information policy;
- official information guidance;
- the creation of protocols for interactions with the Mayor and elected members on requests; and
- the protocol for requests involving CCOs.

Withholding officials' names

In the official information guidance attached to *Our Charter*, one of the common 'myths' referred to is the ability to routinely withhold staff names from responses to LGOIMA requests. The guidance states *'the lower down the decision-making chain an employee is, the higher an expectation of privacy they might have'*.

The Council also has provided my Office with a policy document dated June 2015, titled 'Redaction of Staff names', which concerns the redaction of staff names from Tier 5 and under when responding to a 'general request for information'. The Council has confirmed that the policy is currently in use. It notes that when a request is 'general', staff names are incidental to the request and differentiates between such a general request and a specific request for staff names. The guidance states at paragraph 4.1:

... Council is responding to a request for information where documents supplied would otherwise disclose names of staff (such as in an email), and those names are not directly relevant to the request. In such cases, names of senior staff or staff who have played a role in generating the document should be disclosed. For the purposes of redactions, names of staff from tier 4 and above should be disclosed.

This means that for the purposes of redaction of information, the general position is that the Public Information Team will redact names, position titles, and contact details of the following:

- a. All staff at tier 5 and below (including permanent, temporary, casual contract, and fixed term staff); and*
- b. Administrative staff at tier 2 and below.*

In all cases, agencies must start from the presumption that staff names will be released if they appear in information requested under the LGOIMA, unless there is good reason under the LGOIMA to withhold that information.

The Ombudsman's general position is that withholding staff names, when all that would be revealed is what they did in their official capacity, is not necessary, except in **special circumstances**:²²

The names of officials should, in principle, be made available when requested. All such information normally discloses is the fact of an individual's employment and what they are doing in that role. Anonymity may be justified if a real likelihood of harm can be identified but it is normally reserved for special circumstances such as where safety concerns arise.

In particular, it will not usually be necessary to withhold staff names in order to protect their privacy. The fact that a person works for an agency, or what they happen to do in that role is not inherently private. A public sector employee should reasonably expect a degree of transparency around what they have done in their official capacity.

The fact that an employee is in a junior or administrative role is not, on its own, sufficient justification for withholding their name. The blanket non-disclosure of employee names below a certain level of seniority cannot be justified under the LGOIMA. An agency may be of the view that names of junior or administrative staff do not need to be disclosed because those names are 'incidental' to the request. However, in the absence of confirming with the requester that they do not seek this information, those names do fall within the scope of the request and cannot be redacted unless there is good reason in the particular circumstances to withhold them.

The Council should not adopt a policy of always withholding the names of certain staff where it considers the names 'incidental' to the request.

Action point

Amend guidelines to ensure all information (including staff names) is released unless there is good reason under LGOIMA to withhold the information

²² See case 320402 (the 'PHARMAC case')

Council's response

The Council advised that the policy on the redaction of staff names will be amended. The Chief Executive has said:

As Chief Executive, I have strong legal obligations under the Employment Relations Act 2000 and the Health and Safety at Work Act 2015 to provide a safe workplace, in which our employees' physical and mental well-being are protected as far as practicable... I need to ensure that, wherever possible, we minimise, not increase, the risk to my staff of harm.

It appears that from your provisional opinion, and from other staff comments, that there is a perception that the guidance on the redaction of staff names acts as a blanket policy. We accept that a blanket policy would not align with the LGOIMA.

I agree with you that the guidelines can be amended to better reflect that each piece of information must be considered on a case-by-case basis and that formal training across the organisation that the guidelines are not a blanket policy is needed to reflect this.

Official information guidance

While the existing guidance for staff on processing LGOIMA requests is generally sound, some areas could be further developed. I understand that the Council has looked to streamline its policies and procedures through the *Our Charter* document, however, the guidance lacks advice on some crucial aspects of the LGOIMA process. The present guidance could be enriched by referring to significant aspects of the LGOIMA (either in the document itself or through a hyperlink to a fuller guidance document) such as:

- A clear definition of what official information means, i.e. any information held by the agency as opposed to generating fresh information. The guidance does state that any information can be requested and outlines examples of records.
- Identifying the type of official information request received (Part 2, 3, 4 or 6 of the LGOIMA) and distinguishing from the Privacy Act. The Council has stated that it addresses distinguishing LGOIMA requests from Privacy Act requests on page 1 of its Operations Manual. However, it does not clearly identify the type of information request received, in particular under which Part of the LGOIMA it should be considered.
- How to identify the scope of the request. The Council has stated that identifying the scope of a LGOIMA request is at the core of the Privacy and LGOIMA team's daily inbox meetings. The Business Partner liaises with the business unit to confirm the scope. Written guidance around scoping requests would be beneficial.

- How to consult and provide reasonable assistance to the requester. The Council has stated that consulting and assisting requesters is something the team does regularly, and it is briefly set out in the Operations Manual. However, the Council may benefit from having written guidance on consulting with requesters and clarifying requests.
- How to apply withholding provisions and the public interest test. Although some guidance is available, the Council may benefit from adding more detail on how to consider the withholding grounds and apply the public interest test.
- Dealing with urgent requests. The Council has stated that it has a practice in place for handling urgent requests, but I am not aware of any written guidance that supports and embeds the practice.
- Protection for release of official information in good faith (section 41 of LGOIMA).

I note that the Council's guidance at present defines the distinction between a request that will be handled through the LGOIMA process versus one that will be treated as a 'BAU' request. It may be beneficial for the Council to consider clarifying its guidance to ensure that staff are aware that requests for official information that are handled within a 'BAU' process must be handled in accordance with the LGOIMA. I will discuss this further below, under [Current practices](#).

Action point

Update LGOIMA guidance, incorporating my suggestions

Proactive release of information policy

As I discussed earlier, under [Leadership and culture](#), the Council proactively releases a substantial amount of information on its website, in excess of what is statutorily required. This includes some LGOIMA responses,²³ when they relate to matters of high public interest, such as 1080 pest management processes. The Council has also said that if a subject has attracted a lot of public interest, for example Lime scooters, it considers and plans publishing information in advance. Further, the Council has now started to publish LGOIMA responses following requests made by election candidates for information,²⁴ which is part of its proactive release programme.

The Council advises me that its procedure in relation to proactive release of information involves discussing with the subject matter expert and relevant business unit, Media team and LGOIMA team as necessary. However, there is no policy in place to underpin the development of a consistent and progressive practice of proactive release of information.

²³ See <https://www.aucklandcouncil.govt.nz/about-auckland-council/performance-transparency/privacy-official-information-requests/published-responses-information-requests/Pages/responses-about-1080-pest-management-hunua-ranges.aspx>

²⁴ See <https://www.aucklandcouncil.govt.nz/about-auckland-council/performance-transparency/Pages/request-for-information.aspx>

A policy for the proactive release of information would further promote the accountability of the Council's commitment to openness and transparency, particularly as the commitment to publishing information forms part of the Council's performance plan. A guiding policy for the proactive release of information can facilitate a consistent approach between business units, particularly in a large and diverse organisation such as Auckland Council. It would help manage the risks around releasing private or confidential information, commercially sensitive information, and information subject to third party copyright.

A policy for the proactive release of information might usefully include the following:

- A high-level commitment to proactively releasing information.
- A process for identifying opportunities for proactive release, for example, where a high number of LGOIMA requests is received about a subject, or there is otherwise high interest in the topic.
- A process for preparing for proactive release, including managing risks around personal or confidential information, commercial information and information subject to third party copyright.
- A process for considering frequency and timing of publication.
- A commitment to releasing information in the most useable form (in accordance with the New Zealand Government Open Access and Licensing framework).
- Provision for the policy to be regularly reviewed and updated.
- The types of information that will be proactively released. For example:
 - Information that has been released in response to LGOIMA requests.
 - Information described in section 21 of the LGOIMA about the Council's internal decision making rules, including its LGOIMA policies and procedures.
 - Performance information.
- Financial information relating to income and expenses, tendering, procurement and contract.

Action point

Prioritise the development of a proactive release policy with accountability assigned to a single, senior leader

Access to information protocol for elected members

The Council has been working on an Access to Information Protocol as part of a review of the Elected Member Code of Conduct. I commend the Council for the initiative and I would like to see the Council share its knowledge with other councils once the document is finalised.

I am of the view that the protocol is a generally sound document and provides a clear process to guide staff and elected members. The document recognises that elected members have a right to information to properly perform their functions (the ‘need to know principle’), but that

...elected members can continue to obtain Council information through the usual variety of channels such as discussion or correspondence with Council staff, agenda reports, and other elected members, and under LGOIMA.

However, there are a number of improvements that could be made to the document. The document differentiates between the ‘need to know’ principle and a LGOIMA process, and states that generally information will be provided to elected members under the ‘need to know’ principle. However, first and foremost, it is important for the Council to recognise that where an elected member requests information the request is subject to LGOIMA the same as it is for anyone else requesting information. Therefore, while the ‘need to know’ principle may be the primary vehicle for the provision of information to elected members, the underlying principle of the document should recognise and reflect the basic premise that LGOIMA applies to the request and information must be released on request unless there is good reason not to.

I also note that where a request for information is fully or partially refused, alternative information is provided or some form of restriction on access is imposed, the Council must be mindful that LGOIMA applies and must be complied with in all respects regardless of whether LGOIMA is specifically mentioned in the request for information. That is, reasons for the refusal and a reference to seeking review by the Ombudsman must be provided. I suggest that prior to finalising this document, the Council seek advice from my office to ensure the document aligns with the LGOIMA.

Action points

Review the Access to Information for Elected Members Protocol, incorporating my suggestions

Seek input from my Office to ensure the Access to Information for Elected Members Protocol aligns with the LGOIMA before the document is finalised

Council’s response

The Council has said:

It is up to the elected members to formally adopt their Code of Conduct, including the Access to Information Protocol, which is one of the Appendices. This council has not adopted the new Code of Conduct. We will present it to the incoming council sometime after the elections for their consideration.

Protocol for managing requests involving CCOs

As part of this investigation, I considered whether the Council has appropriate resources in place to manage the relationship between a CCO and the council particularly in relation to:

- Transferring requests to ensure compliance with the requirements of s 12 of LGOIMA;
- Decision making and accountability on a request, and that the lines of accountability and decision making are clear between the Council and CCO;
- Consultation on requests, to ensure the process is managed appropriately.

The Council has a protocol for managing requests involving CCOs. The 'roles and responsibilities' section of the protocol determines when to transfer and the decision maker on a request. The language used in the document states that '*requests relating **predominantly** to information held by AC will be handled by the Council*' and '*requests that **exclusively** relate to a CCO will be handled by the CCO*'.

To ensure that the lines of accountability and decision-making are not blurred, the Council should better align its protocols and practice with the language and requirements of section 12 of the LGOIMA. This would ensure that, in future, a request for information that is not held by the Council but is held by a CCO, and a request for information that is more closely connected with a CCOs function, are formally transferred to that CCO. I note that my suggestion for improvement is consistent with my earlier opinion of July 2018 about a processing of a request by the Council.²⁵

I note that this document is still in draft and subject to review. Auckland Council advised me that the review of the document has been put on hold while it completes other work. I encourage the Council to complete the review of this protocol including my suggestions and finalise the document without delay.

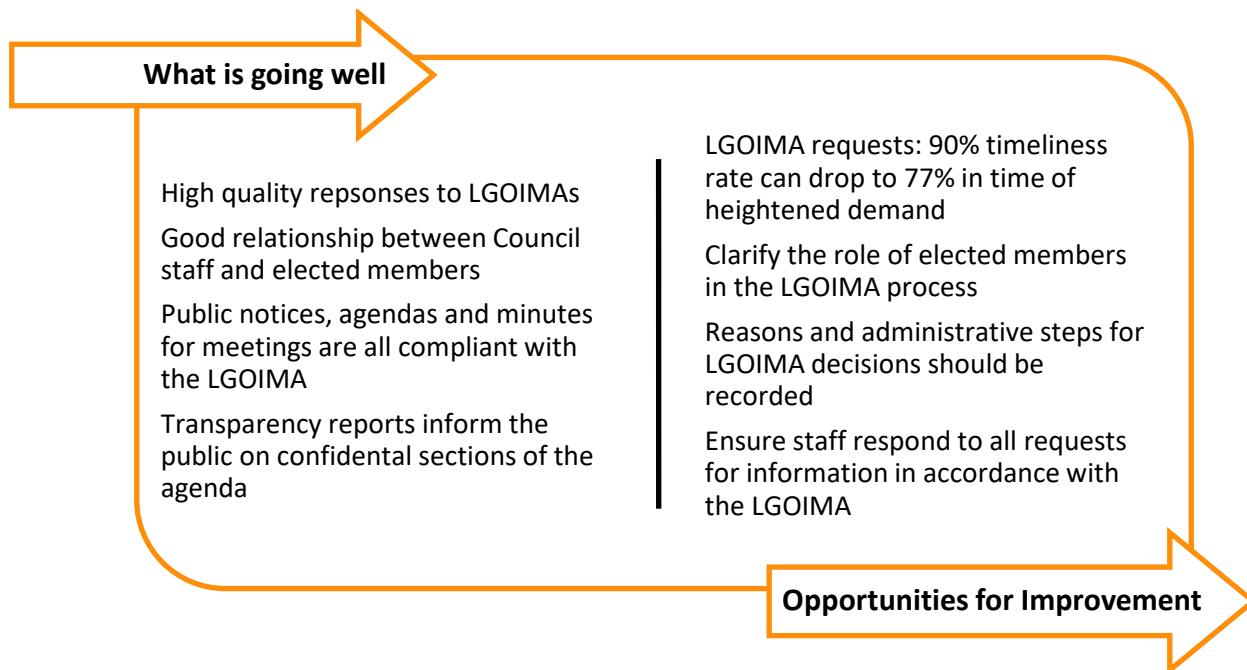
Action point

Complete the review of the protocol for requests involving CCOs incorporating my suggestions and finalise the document without delay

²⁵ Opinion: 474094 July 2018

Current practices

At a glance



The effectiveness of LGOIMA is largely dependent on those who implement it on a day-to-day basis and how they apply the resources available to them to manage the realities of giving effect to the Act.

To assess the current practices of Auckland Council, I considered whether:

- The Council's practices demonstrate understanding and commitment to the principles and requirements of LGOIMA;
- Council staff have a good technical knowledge of LGOIMA; and
- The Council is coping with the volume and complexity of its LGOIMA work and is compliant with the Act.

Aspects that are going well

Official information practices

To get an understanding of how the Council processes requests, my investigators reviewed a random selection of LGOIMA request files from the last three months. My investigators found that the quality of the response letters was high, with good acknowledgment practices and template letters, although there was one instance where the acknowledgement of receipt to the requester was not evident from the documents reviewed. There was evidence of a thorough practice to ensure all aspects of a request had been completed. There was also good, open communication between the LGOIMA and Media and Customer Services teams. In terms

of the substantive decision making, the Council could improve its recording of decision-making and I discuss this under [Opportunities for improvement](#).

For the period 1 July 2017 to 30 June 2018, the Council completed 960 LGOIMA requests. Eight hundred and sixty of these requests had decisions made and communicated within the statutory (20 working days) or extended timeframe. In 100 instances, a decision was not made and communicated within the statutory (20 working days) timeframe. This represents a compliance rate with LGOIMA timeliness obligations of 90 percent. I understand that during particularly busy periods the rate can drop further. Evidence provided to me indicates that in some months the rate dropped to as low as 77 percent.

Delays may be due to a number of factors, such as staff absences, or workload pressures and aspects of the Council's partly centralised model. While I believe the Council's Business Partner model is generally sound, the Council could put in place practical steps to mitigate any potential impact of spikes in demand and ensure there are no further slips in timeliness. Discussion of cases at the Council's Review Group has some potential benefits, in that it allows ongoing feedback loops to occur between those responsible for processing requests and senior leaders. However, the current implementation of this practice may also contribute to delays, which I discussed under [Organisation structure, staffing and capability](#).

Good working relationship between Council staff and elected members

A well-functioning working relationship between Council staff and elected members is extremely important in order for a council to perform efficiently and effectively. Auckland Council's Governance Manual states:

A key part of the role of council staff is to provide elected members with comprehensive advice to enable informed and competent decision-making.

... a high level of cooperation and mutual respect between elected members and staff is essential for the council's effective performance.

Council staff appear to have a good working relationship with elected members, in terms of elected members seeking information from staff and staff retrieving information from elected members. The Council has a number of Councillor Support Advisors who provide administrative support and assist Councillors with research and advice. When Councillors wish to seek information, they are able to either approach a support advisor or go directly to the relevant subject matter expert.

A LGOIMA request may be for information held by an elected member. The Council has stated that the process for collating the information from elected members (Councillors and local board members) is essentially the same as a Business Partner's process for any other department and the process is documented in the OneNote Operations Manual.

Meeting practices

The Council has demonstrated that it is compliant with the statutory requirements for public notification of meetings, publication of agendas, and issuing minutes. Evidence suggests that

agendas are published within the statutory timeframe of two working days prior to the relevant meeting. Meetings of the Council's governing body and its main committees are streamed live, so an accurate record of the public portion of the meeting is immediately available. Meetings can also be viewed on-demand via the Council's website.

I commend Auckland Council on its transparency measures in relation to information heard in the 'Public Excluded' portion of meetings. Firstly, the Council introduced transparency reports for the confidential sections of an agenda. The Council has stated that it has introduced an open report, which sits alongside confidential reports that are written and debated in the Public Excluded portion of meetings.

Secondly, the Council has introduced a 'restatement date' on confidential reports. One of the staff members my Investigators met with said that if a restatement date has not been included on the confidential report, *'the Governance advisor will go back and request a restatement of some description'*. I commend the Council for this initiative, which if successfully executed, will ensure as much information as possible is released to the public.

However, as one staff member noted, *'it is important to ensure that the restatement actually happens'*. I have been informed that practices may differ quite widely between different decisions the Council makes. Efforts are being made to record the restatement date in the information section of each agenda, which should ensure there is a clear record of the restatements that have been made.

Workshops

Auckland Council appends its workshop material to a *'summary of information'* and includes it in the information section of the next Council or committee meeting agenda. It is positive to see the Council's *'Planning a Committee Workshop'* document states *'Workshops are not used to make decisions – that is for formal committee or Governing Body meetings'* and:

Workshop material will be appended to a summary of information items in the next committee meeting, unless it has been clearly marked as confidential.

I urge the Council to continue to review its processes to ensure that it is being as open and transparent as possible. For instance, it may consider keeping fuller records of discussions that take place in workshops to ensure staff are provided with the tools and leadership support to make accurate records of workshops.

Opportunities for improvement

There are opportunities for improvement in relation to:

- elected member involvement on LGOIMA requests;
- documenting decision making and administrative steps for LGOIMA responses, including consideration of the public interest where applicable;
- ensuring the SAP system is used consistently across the business for LGOIMA responses;

- information management retrieval;
- improvements to responses to Property File Requests; and
- making improvements to the handling of 'BAU' requests for information and media requests to ensure these are handled in accordance with the LGOIMA.

Elected member involvement on LGOIMA requests

LGOIMA decisions must be made by the Chief Executive or any '*officer or employee*' authorised by the Chief Executive.²⁶ Elected members (Mayors or Councillors) are not '*officers or employees*', and are therefore not permitted to make decisions on LGOIMA requests. The Council must ensure that elected members are not involved or seen to be involved in the decision making process on LGOIMA requests. This is to ensure there is no political interference or even the perception of such in the decision made by the Chief Executive. However, elected members may be consulted before the Council makes the decision on the request.²⁷

I consider that it is important that that role of elected members in the LGOIMA process is clear. Such guidance is particularly important for Auckland Council, where mayoral office staff, such as the Mayor's Political Advisors perform a function somewhat analogous to political advisors in a Minister's office where it would be inappropriate for those staff to be involved in a Chief Executive's decision on a request. The ability for the Mayor to appoint Mayoral office staff is provided for by section 9 of the Local Government (Auckland Council) Act 2009.

The Council has been working on a draft protocol in relation to elected members and their staff and includes a section titled 'Mayoral Office staff'. It states that the LGOIMA process applies to Mayoral Office staff in the same way as it does to staff in other parts of the organisation, except where the process relates to decision-making. It states that '*the decision-maker for Mayoral Office requests is the Governance Director*'.

I am of the view that the protocol does not yet adequately clarify when and in what circumstances decision makers will consult with elected members and Mayoral office staff. For example, I encourage the Council to distinguish in the document between:

- consultation – this means the Council can seek input before a decision is made; and
- notification – this means the Council is letting the elected members know about the decision on a request.

When the discretion to consult is exercised, it would be prudent to include guidance on what time limits are appropriate in order for the Council to meet its requirement to make and communicate the decision on a request within the maximum 20 working days and whether an extension is appropriate. Consultation may be necessary where:

²⁶ See s 13(5) LGOIMA.

²⁷ See s 13(6) LGOIMA.

- the information is about the elected member;
- the information was supplied by the elected member; and/or
- release could adversely affect the elected member.

Notification to an elected member may occur at the same time or shortly before the decision is sent to the requester. This approach ensures the Council is meeting its obligation to make and communicate a decision on a request ‘as soon as reasonably practicable’ and, once a decision is made, to release information ‘without undue delay.’

In addition, I note that a representative of the Mayor’s office is part of the Review Group. It is not clear from the Review Group Terms of Reference what their role is in the LGOIMA process. As I have discussed above under [Organisation structure, staffing and capability](#) the involvement of a representative of the Mayor in the Review Group leaves the Council vulnerable to a perception of political interference in the decision making process.

I therefore consider that it is not appropriate that a representative from the Mayor’s office is a member of the Review Group. I am not saying that it is never appropriate for the Mayor’s office to be notified or consulted on a LGOIMA request, as I have discussed above, but the membership of the Review Group should not be the mechanism to facilitate this.

I also note that the Council does not record whether an elected member was consulted on a request, or whether a decision was notified to an elected member. I consider this lack of record keeping to be a vulnerability that may leave the Council open to further criticism. If a response was queried, there would be no record explaining whether or not consultation had taken place and what the content and outcome was of that consultation. Where a clear policy exists, and it is clearly understood by Council staff, and elected members, this minimises the perception and risk of any improper involvement in the Council’s decision-making process.

Action points
Ensure that the Review Group does not include a representative from the Mayor’s office
Review the Appendix to LGOIMA Guide incorporating my suggestions to ensure the roles of elected members are clear in the LGOIMA process and finalise the document without delay
Keep a record of instances where an elected member was consulted or notified on a request

The Council's response

The Council has not accepted the action point that it 'Ensure that the Review Group does not include a representative from the Mayor's office'. The Council states:

...the Mayoral Office representative largely attends to be aware and across new LGOIMA requests and to provide timely advice about where information is held. Staff in the Mayoral Office work across the entirety of the organisation, including Council-Controlled Organisations. This makes them an ideal source of information...

It is therefore worthwhile for us to retain a Mayoral Office representative on the Review Group and we consider that the LGOIMA protocols and Review Group terms of reference will mitigate any concerns about undue influence in decision-making.

My comment

I acknowledge that the Council considers the benefit of including Mayoral staff in Review Group meetings to outweigh the risk. However, I do not think it is necessary for the Mayor's Office to attend the Review Group meeting, which has visibility of all LGOIMAs and provides feedback on proposed responses. The Review Group is concerned with high profile and complex LGOIMA requests, and these are precisely the type of request that requires clear and careful management of political input. I encourage the Council to consider alternatives to its process, such as requesting information from Mayoral Office staff about the whereabouts of documents on a case-by-case basis, and notifying and consulting with the Mayor on relevant requests on a case-by-case basis in accordance with the protocol for elected members.

Documenting decision making and consultation

It is important for agencies to keep records of the process of decision-making on LGOIMA requests. Doing so:

- will enable the agency to provide grounds in support of its reasons for refusing a LGOIMA request, if they are sought by the requester;
- will make it easier to respond to the Ombudsman in the event of an investigation of a complaint; and
- provides an opportunity to create a repository of knowledge about how the Council makes decisions on LGOIMA requests, thereby developing a consistent approach. (I discuss this further below, under *Performance monitoring and learning*).

There is an opportunity for the Council to use its existing Department Drafting Task for (DDT) for this purpose, although it appears the use of this form is, at present, inconsistent; and the form may require some amendments to ensure it is fit for purpose.

I understand the DDT form is used to record the decision on requests (though not necessarily the consideration and/or discussion behind them), the senior leader who approved the response, and any input received from the weekly Review Group. This document is then stored on the Council's shared drive network, alongside other documents relevant to the request. While it may be possible to infer details of the decision-making process by scanning the documents associated with a request, I do not consider that this represents a full, discrete record of the decision-making process.

In my view, the key elements that ought to be recorded for decisions on LGOIMA requests are:

- The reasons for withholding information in this particular instance – how and why the relevant withholding ground applies;
- If a withholding is being considered under section 7(2), how the public interest test in section 7(1) was considered;
- If a possibly controversial decision to release information is being made – the reasons for that decision (for example how privacy or commercial sensitivity grounds were considered, or whether the decision to release was due to the public interest);
- If the requested information involves a third party, the consultation that took place with that third party and how the third party's views were considered;
- Where appropriate, the administrative steps in relation to a LGOIMA requests. Documenting the steps taken to search for documents, and the number and type of documents located, can assist staff handling similar requests in future, particularly if the request is for a broad range of information. In addition, documenting the time taken to collate a sample of documents within the scope of a request for a large amount of information can assist in responding to an Ombudsman's investigation into refusals for administrative reasons and decisions to charge for the supply of information.

It is not for me to determine the best method for the Council to adequately record these elements. However, one possible method may be for the Council to amend its DDT coversheet to include the key elements outlined above, ensure it is not excessively burdensome to complete and is consistently used across business units.

Action points

Record the reasoning behind LGOIMA decisions, including any consideration of the public interest and the results of any consultations with third parties

Record administrative steps behind LGOIMA responses where this may be necessary

Document retrieval

My investigation has identified Information Management as one of the key issues that the Council faces. Of the respondents to the staff survey, 50 percent said that it was either moderately or very difficult to use the Council's information management systems to search and find information.

Some comments include:

It is very difficult to find information. There are often duplicate accounts for individual customers in SAP-CRM, so it is hard to know if you have found all relevant information for a particular customer.

We need more supervision of filing, training and active assistance by records management staff to ensure all relevant records are scanned and/or archived.

At present, the Council has a number of different Information Management systems that hold legacy information, and there is no unified EDRMS for Council information. I acknowledge that the Council has a large project underway to move toward a single EDRMS, however, the status quo brings about vulnerabilities for Council’s ability to comply with its LGOIMA obligations.

In particular, a number of staff said they store information in their business unit’s U-drive, which is only viewable within that team, rather than in one centralised document management system.

It may be that staff are not confident with using the document management system(s) and regular training would address this. I note that since my investigation into Auckland Council’s practices started, a new e-learning module ‘Records and Archives Management Introduction’ has been implemented. This is compulsory for new staff, and for all staff every three years. I encourage the Council to ensure there are no gaps in the roll out of this training, particularly for existing staff. I also note that the Council has taken proactive steps to ensure the Information and records management guide is now available alongside the ‘Our Charter’ series of guides.

Until the new EDRMS is rolled out, I would also expect that leaders encourage their staff to complete the e-learning module and to champion proper use of the existing document management system in order to be consistent with the Council’s information policies and guides.

In addition to regular training on information management, I also consider that it would be beneficial for the Council to build steps into its practice to further mitigate any vulnerabilities in relation to searching for information. This could be achieved by ensuring staff have spoken to the Corporate Records & Archives team where useful or necessary, for example when a request relates to information held across multiple business units.

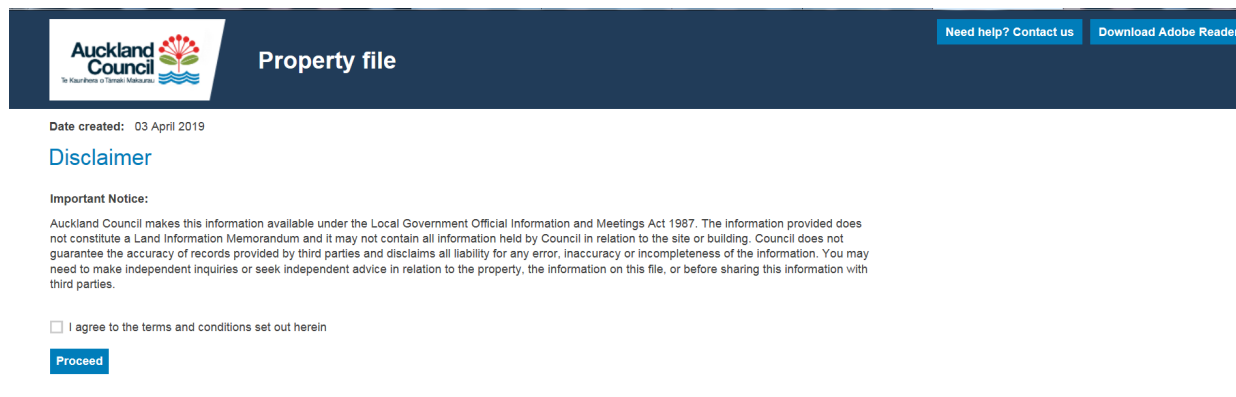
Action points
Ensure all staff have completed the e learning module on Information Management and record keeping
Consider adding a step in the LGOIMA handling process to involve the Corporate Records and Archives team particularly for large or complex requests
Leaders to champion sound information management and record keeping practices

Property file requests

Property file requests are requests for specific information from property files, distinct from a LIM application. The Council received approximately 25,000 property file requests between July 2018 and February 2019.

Although not handled within the 'formal' LGOIMA process, the Council makes it clear through the disclaimer below that the information is made available under the LGOIMA.

This disclaimer is attached to all property file requests:



The screenshot shows a dark blue header with the Auckland Council logo on the left and two buttons on the right: "Need help? Contact us" and "Download Adobe Reader". Below the header, the text "Property file" is displayed. Underneath, it says "Date created: 03 April 2019" and "Disclaimer" in blue. An "Important Notice:" section contains a paragraph of small text. Below that is a checkbox labeled "I agree to the terms and conditions set out herein" and a blue "Proceed" button.

The Building Consents and Property Data teams process the Council's property file requests. The Customer Services Front of House team assists with administration of the requests.

The Council has stated that all information on a property is included on a property file. However, there may be personal information on a file that it withholds from the requester. If the staff member processing the request is in doubt, they will seek advice from the Legal team or Democracy Services on whether the document can be released. The Council informs customers that information on the file has not been released to them but does not state the nature of the withheld information, or why it has been withheld. Customers are then redirected to the Council if they would like more information.

It is encouraging that the Council is aware that property file requests are LGOIMA requests. However, I am concerned that a requestor may not know the reason for the refusal from the property file as required by section 18 of the LGOIMA.

I therefore suggest that the Council adjust the wording in the decision letter for property file requests to ensure compliance under the LGOIMA. Where information is withheld, the decision letter should:

- advise the requester that information has been withheld, and the reason for its refusal;
- advise the requester that they can contact the Council to request the grounds in support of that reason; and
- advise the requester of their right, by way of complaint to the Ombudsman, to seek an investigation and review of the refusal.

Action point

Ensure property file requestors are advised of any grounds for refusal of information and of their right to complain to the Ombudsman if they are not satisfied with the Council's response

Media and other requests for information

The Council's Media/Communications team responds to straightforward media requests and enquiries. Staff across the Council (including the Customer Services teams) also respond to straightforward 'BAU' requests, where a response can be provided quickly to the customer. The Communications team also keeps a log of all information requests submitted directly to them. I understand that Customer Services teams also use the SAP database to record information.

I understand the need for a mechanism to swiftly process requests according to the demands of the 24-hour news cycle, however, the Council must be mindful—as must all agencies—that such requests are governed by the LGOIMA.

Staff need to be aware that where information is refused, the decision must be communicated in accordance with section 18 of LGOIMA, which requires the Council to:

- Provide the reason for the refusal and, if requested, the grounds in support of that reason; and
- Advise the requester that they may make a complaint to the Ombudsman and seek an investigation and review of this decision.

All councils should ensure that media and contact centre information requests are handled in accordance with the LGOIMA. This should include providing specific guidelines and training for the Media team on their obligations under the LGOIMA. It should also include consideration of appropriate consultation or referral processes to LGOIMA specialists when media information requests become complex, and the Media team is unable to meet them fully, in the requester's preferred format, and within their preferred timeframe.

The Council informs me that the Communications team received training in July 2018. Further, informal guidance and training is provided to the Communications team by senior staff acting as mentors to junior staff on LGOIMA issues.

While I am encouraged that the Council has provided training to its Communications team, it would be preferable that a regular training programme is implemented and similar training is provided to contact centre staff. I do not consider it is sufficient to rely solely on guidance from more senior staff to ensure the Communications team is consistently compliant with the LGOIMA. While senior staff may have experience in local government, without the benefit of ongoing training and regular refreshers, the Council is vulnerable to unintended poor practices being passed on to other staff and then embedding into practice.

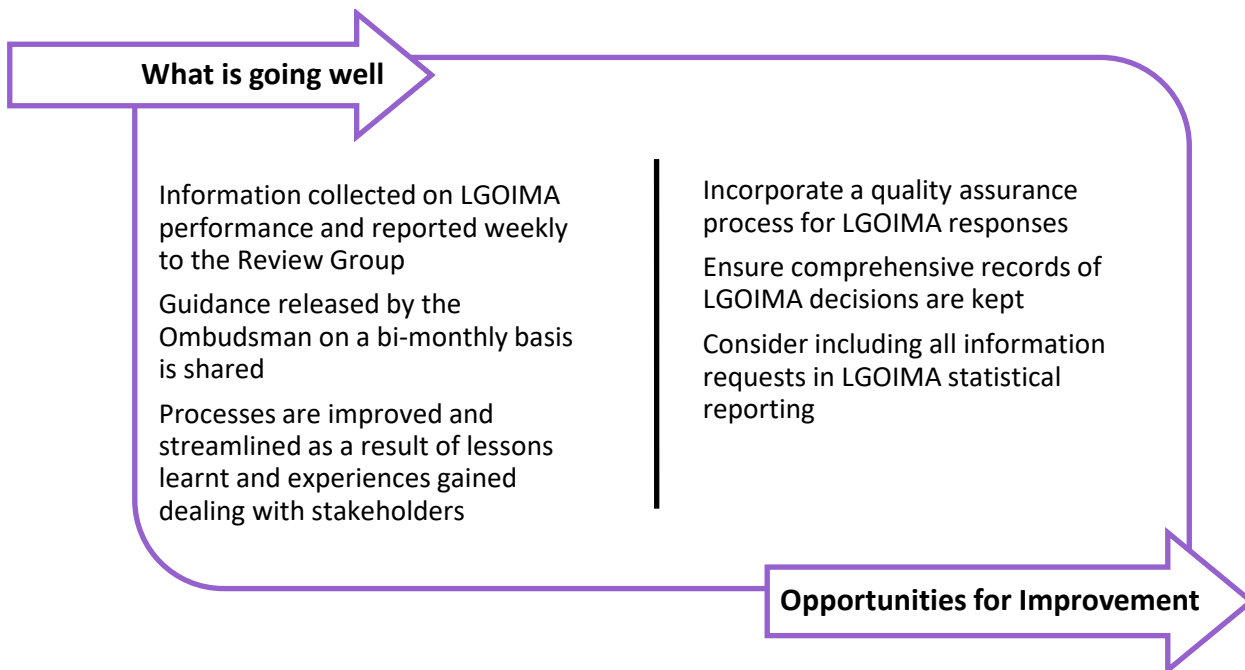
I note that the tracking of LGOIMA requests handled by these teams provides an opportunity to collect data that reflects a truer picture of the Council's performance, and could also inform

the Council's proactive release practice. I discuss this further under *Performance monitoring and learning*.

Action points
Ensure that all information requests are handled in accordance with the provisions of the LGOIMA
Provide regular training refreshers to the Communications and Contact Centre teams

Performance monitoring and learning

At a glance:



Ombudsmen have consistently advocated maintaining a full audit trail in respect of any decision made by an agency. Making decisions under LGOIMA is no different. Once this information is recorded, agencies have a wealth of information that can be used to inform business planning and future decisions concerning access to information – but only if it is captured in a way that is meaningful, facilitates subsequent analysis, and regular monitoring and reporting occurs.

To assess performance monitoring and learning of the Council in respect of its LGOIMA obligations, I considered whether:

- The Council had an established system for capturing meaningful information about its LGOIMA activities and established appropriate and relevant performance measures.
- There was regular reporting and monitoring about the Council’s management performance in respect of LGOIMA compliance.
- The Council learned from data analysis and practice.

After discussing aspects that are going well for the Council, I identify some opportunities for improvement.

Aspects that are going well

It is positive to see that the Council has two organisational performance targets for official information. The targets relate to the percentages of requests that meet the statutory

timeframe and the number of formal complaints upheld by the Ombudsman. Individual performance measures for LGOIMA Business Partners include timeliness and the requirement to contribute to the development and implementation of high quality performance standards for LGOIMA responses.

The Council records a range of data clearly on SAP. This includes:

- number of requests;
- type of requestor;
- information sought;
- number and timeliness of transfer;
- data on extensions; and
- time from request to communication of decision.

The Council also advised that it saves some data on its shared 'U Drive'. This includes:

- the outcome of a request;
- charges made and collected;
- reasons for withholding a request (although I note this is provided in a response letter to a requestor rather than in a working document, see [opportunities for improvement](#));
- records of consultation; and
- records of time limit breach.

The Privacy and LGOIMA team provide weekly reports to the Review Group, Democracy Services General Manager and Governance Director detailing information about LGOIMA requests, including the substance of requests, completion rates, those completed within the statutory timeframe and those overdue.

This information is also included in weekly, quarterly and monthly business intelligence reports. A weekly summary report is provided to the Senior Leadership team and includes information about the total number of LGOIMA requests each week, the average time taken to respond, the channel that the request came through, and the digital uptake.

The Council informed me that the reasons for requests (for example a topic of interest) and identity of frequent requesters is not currently analysed, however it is working on a system to analyse this data in order to inform its proactive release practice. In addition, the Council is looking to improve the method and quality of reporting on its LGOIMA practice and is actively working with its Business Intelligence teams to generate new reports from its 'SAP' system.

As described above, some of the information collected is held in different repositories, and, as discussed under [Current Practices](#), SAP is perhaps not used consistently across the Council. These factors may make it more difficult to ensure consistent reporting. However, I note that

the Council is working on a project to enable better use of software tools to facilitate more efficient and consistent reporting.

I consider it is important that an agency's Senior Leadership team is kept informed of trends in LGOIMA performance. Reporting of this nature ensures that any pressures, compliance issues and opportunities for proactive release are given appropriate attention and discussion at a senior level. I am encouraged to see that the Privacy and LGOIMA team reported to the Senior Leadership team on the organisational performance under LGOIMA in September 2018. The report covered risks and issues and recommended additional resource for the team to manage the increase in LGOIMA workload. This is an excellent example of the type of comprehensive reporting being used by the Council to inform resourcing and capability building decisions. I would encourage the Council, if it is not already, to continue to provide reports of this nature regularly to senior leadership and quarterly to the Chief Executive.

Learning through practice

The Council disseminates guidance releases by my Office through bi-Monthly updates from its Legal team. The Council has stated it monitors relevant data, guidance and publications, including those produced by the Ombudsman, Local Government New Zealand and the Department of Internal Affairs. The Public Law team monitors this and provide new training or advice as necessary. Given the consultation about the OIA initiated by the Ministry of Justice in early 2019, the Council states it has been in touch with the Department of Internal Affairs to find out if/when they are planning to review the LGOIMA. I consider actions such as this to be commendable as it demonstrates the Council is actively working to ensure it is aware of any developments in the law and any other relevant institutions.

Furthermore, the Council states that the Public Law team are involved in the 'Local Government Connect' email groups. These groups promote discussion between local authorities, and goes some way to ensure sharing of 'best practice' with other local authorities. The Council is to be commended for having systems in place to share official information learning and experience.

Opportunities for improvement

There are opportunities for improvement in relation to:

- Monitoring quality of LGOIMA responses;
- Record of decision making process; and
- Enhancing LGOIMA statistical reporting.

Monitoring quality

The Council has stated that its LGOIMA and Privacy team use 'lessons learned' and experience dealing with stakeholders or certain types of requests as an opportunity to streamline and improve the processing of official information requests, particularly as an outcome of a formal

or informal investigations (for example an Ombudsman Investigation). I also note that the business partners are required to contribute to the development of high quality performance standards for LGOIMA responses. However, it is not clear what those standards are.

I would encourage the Council to take into consideration the quality of its responses in addition to timeliness. Adherence to LGOIMA timeliness obligations is important; however, this should not be at the expense of providing quality responses. As I discussed under [Current practices](#), the Council produces high quality responses and has a thorough practice of ensuring all aspects of a request have been responded to. A quality assurance process would ensure that high standards are maintained and drive even greater performance in LGOIMA practice. The quality of LGOIMA responses may encompass factors such as a robust and adequately documented decision-making process, the inclusion of contextual information to assist requesters, and the quality of response letters, amongst others. Methods to assess quality may include, for example, peer review with a set of criteria that each response is to be assessed against, or a random quality assurance check of closed LGOIMA requests on a regular basis. Establishing a system of quality assurance could assist the Council to identify where additional training needs or support may be needed in particular business unit, and to recognise excellent performance where it exists.

The outcome of a quality assurance process could be incorporated into regular reporting on the organisational performance of LGOIMA responses, as discussed above.

Action point

Incorporate quality assurance into the Council's LGOIMA performance framework and associated reporting to senior leadership

Record of decision making

As outlined earlier, under [Current practices](#), the Council does not appear to take adequate steps to fully record its decision making process on LGOIMA requests. The Council has said that it saves some information on the SAP database, some in the DDT coversheet and other information on its shared U Drive.

I do not consider listing the withholding grounds that apply in the decision letter to the respondent to be adequate recording of the decision. Often there is rich discussion that takes place between business groups, for example the Legal team, Communications teams and LGOIMA team before a decision is reached on the application of a withholding ground. Without capturing this information, the Council is missing an opportunity to keep a repository of knowledge for current and future staff to learn from. Equally, if the Council's final decision was to refuse any part of the request for official information, a failure to keep adequate records could also inhibit the Council's ability to explain to an Ombudsman why it came to the decision at the time it was made.

Further, while there is some record of consultations, there were gaps in the decision making process in the files my staff reviewed and no discrete place where the rationale behind the

decision was clearly articulated. As noted earlier, I also consider it beneficial for the Council to record whether elected members were consulted or notified about a LGOIMA request.

An important aspect of performance monitoring is that it enables the Council to learn from its data to inform future decision-making. Therefore, failure to record the outcome of past decisions can make it difficult for other staff to locate similar previous requests to ensure consistency or make a justified departure from a standard line of response.

Action point

Consider improving the record keeping on LGOIMA requests; if the final decision is to refuse, this reasoning should include the basis for the decision, and the outcome of any consultations involved, including with elected members

Inclusion of all official information requests in LGOIMA statistical reporting.

The Council's Communications team keeps a record of all media requests received and its Digital team uses Google Analytics to measure transparency and reports it to the Digital team Manager. This tracking of information demand allows the Council to identify if a subject has attracted significant public interest and to then consider publishing information in advance. The LGOIMA team uses the Council's SAP workflow tool as the main database for LGOIMA tracking. Customer facing teams also use the SAP database which suggests LGOIMA requests responded to through this channel are also captured.

The SAP system appears to have excellent functionality for LGOIMA processing, including sending an automatic email to staff when they are assigned a request and tracking the 20 working day time limit to make and communicate a decision on a request.

However, I understand that some business units do not currently use the SAP system, and that these units will work through the LGOIMA process outside the workflow system, usually by email. While I appreciate that there may be barriers to implementing the SAP system for all Council work, I consider that if SAP is not used consistently across the business, this may be hindering the Council's ability to report accurately on LGOIMA performance.

I would encourage the Council to consider how it might be able to capture this data consistently to better reflect the number of requests the Council actually deals with. I am not suggesting that every one of these requests should be logged in the LGOIMA system and processed as such, however it may be possible to collate information the Council already gathers (such as the media requests) to report more accurately on the number of requests the Council has responded to. The effect of this could result in an immediate positive impact on the perceptions of transparency both internally and externally by reporting on a more complete picture of the Council's LGOIMA performance.

This approach may also assist the Media team and Contact Centre teams in keeping their LGOIMA obligations front of mind, and encourage knowledge sharing between teams.

Action point

Consider ways to include contact centre, media, elected member and property file LGOIMA requests in LGOIMA statistical reporting

Appendix 1: LGOIMA practice investigation terms of reference

This document sets out the terms of reference for a self-initiated investigation by the Chief Ombudsman into the practices of Auckland Council relating to the Local Government Official Information and Meetings Act 1987 (LGOIMA).²⁸

Purpose of the investigation

The investigation will consider how the Council works to achieve the purposes of the LGOIMA through its processing and decision-making under that Act, (in relation to both the Act's official information and meetings parts).

The investigation will include consideration of the Council's supporting administrative structures, leadership and culture, processes and practices, including information management public participation, and proactive release of information to the extent that these relate to achieving the purposes of the LGOIMA.

The investigation will identify areas of good practice, and make suggestions for improvement opportunities if any areas of vulnerability are identified.²⁹

Scope of the investigation

The investigation will evaluate the Council's leadership and culture, organisational systems, policies, practices and procedures needed to achieve the purposes of the LGOIMA, with reference to a set of indicators, grouped around the following dimensions:

- Leadership and culture
- Organisation structure, staffing and capability
- Internal policies, procedures and resources
- Current practices
- Performance monitoring and learning

The investigation will include consideration of how the Council liaises with its elected members on LGOIMA requests, and may meet with elected members if, as the investigation progresses, it would be prudent to. The investigation will also consider how the agency administers Part 7

²⁸ See sections 13(1) and 13(3) of the Ombudsmen Act 1975 (OA).

²⁹ Formal recommendations under the OA will only be made if the Chief Ombudsman forms an opinion that a decision, recommendation, act, or omission by the agency was unreasonable or contrary to law under s 22 of the OA.

Local Authority meetings. The investigation will not consider decisions taken by full council (committee of the whole).³⁰ However, in relation to decisions by full council, the reasonableness of any advice provided by officials or employees, on which the decision was based may be considered as part of the investigation.

The investigation will not consider the processes and decision making of Council Controlled Organisations (CCOs) or Community Boards (CBs), as they are separate statutory entities and are subject to obligations under the LGOIMA in their own right.³¹ However, the investigation will consider the extent to which the agency subject to the investigation has appropriate processes, policies or resources in place to manage the relationship between the CCO or CB and the council in relation to:

- Transferring requests to ensure compliance with the requirements of section 12 of LGOIMA
- Decision making and accountability on a request, in that the lines of accountability and decision making are clear between the Council and CCO or CB particularly in circumstances where the Council provides administrative support for LGOIMA responses.³²
- Consultation on requests, to ensure the process is managed appropriately.

A sample of decisions reached by the Council on individual LGOIMA requests may be considered as part of this investigation, to assist the Chief Ombudsman's understanding of the Council's official information practices. Other samples that may be reviewed include records of the processing of Land Information Memorandum requests (LIM), and records of recent Council meetings.

If evidence emerges concerning specific examples of LGOIMA breach, then a determination will be made in each case as to whether it can be addressed adequately within this investigation, or whether a separate stand-alone intervention is warranted. Any process issues which can be resolved during the course of the investigation will be rectified immediately.

Investigation process

The Manager Official Information Practice Investigations will work with a team of Senior Investigators and Investigators to assist the Chief Ombudsman conduct the investigation. The investigation team will liaise with your nominated contact official during the investigation. Information may be gathered through the processes set out below.

³⁰ See s 13(1) OA

³¹ CCOs are subject to Parts 1-6 of the LGOIMA. See s 74 of Local Government Act 2002 (LGA).

³² The decision must be made by the chief executive or any officer or employee authorised by the chief executive see s 13(5). Elected members (mayors, councillors or members of boards) are not officers or employees, and are therefore not permitted to make decisions on LGOIMA requests.

Information gathering

The information for the investigation will be gathered through desk research, a detailed survey of the Council's official information practices, a staff survey, a survey of elected members, meetings with key staff, and a survey of key external stakeholders. As usual, any requests for information during this investigation will be made pursuant to section 19 of the Ombudsmen Act 1975 and subject to the secrecy provisions in section 21 of that Act.

Desk research

A review of publicly available information including the Council's annual reports, strategic intentions documents, and any other material made available on its website. Desk research will also review data and information held by the Office of the Ombudsman (for example, statistical data).

Surveys

The following surveys will be conducted:

- A survey of the agency, including requests for the supply of internal documents about:
 - Authorisations to make decisions on LGOIMA requests
 - Strategic plans, work programmes, operational plans
 - Policies, procedures and guidance on responding to LGOIMA requests
 - Training materials and quality assurance processes
 - Reports on LGOIMA performance and compliance to the agency's senior management
 - The logging and tracking of LGOIMA requests for response
 - Template documents for different aspects of request processing
 - Policies, procedures and guidance on records and information management to the extent they facilitate achieving the purposes of the LGOIMA
 - Policies, procedures and guidance on proactive publication
- A survey of council staff about their experience of the LGOIMA culture and practice within the council
- A survey of key media and stakeholder organisations that have sought information from the agency -the Chief Ombudsman may issue a media release that includes a link to the stakeholder survey.
- A survey of elected members, asking them about training received on LGOIMA, information management, and their roles and responsibilities under LGOIMA.

Meetings

In addition to the meeting between the Chief Ombudsman and the Council's Chief Executive, the investigation team will meet with staff within the agency as set out in the schedule below. Also included is the likely length of time required for each meeting:

A member or members of staff with responsibility for	Approximate time required
Strategic direction, organisation and operational performance	1 hour
Logging and allocating and tracking LGOIMA requests, processing and dispatch of LGOIMA requests	1 hour
Providing information in response to LGOIMA requests.	½ to 1 hour
Decision makers on LGOIMA requests	½ hour
Media/communications	1 hour
External relations / stakeholder engagement	1 hour
Website content	½ hour
Information management	½ hour
Human Resources and training	½ hour
Providing legal advice on the LGOIMA, including the application of refusal grounds, when a response is being prepared, and 'public excluded' resolutions	1 hour
Receiving public enquiries (receptionist, call centre manager if relevant)	½ hour
Those involved in the administration and arrangement of meetings under part 7, for example the Council Secretary or meeting secretary, and including council staff who provide advice and make recommendations to elected members as to whether items should be discussed as public excluded meetings.	1 hour

A summary of key points gathered from the meetings will be sent by email to the individual staff to confirm accuracy.

The investigation team may meet with additional staff, as the investigation progresses.

Other

A review of the Council's intranet.

A review of a sample of files held by the Council on previous requests for information, previous requests for LIMs and records held on recent Council meetings.

Fact checking

After all the information has been gathered, an initial summary of the facts relevant to support each of the indicators will be sent to the Council to ensure any relevant information has not been overlooked.

Reporting

Draft report

The draft report of the Chief Ombudsman's investigation will cover the indicators and incorporate good practices as well as any issues that may have been identified during the investigation. The draft report will outline the Chief Ombudsman's provisional findings and when relevant, identify the suggestions and/or recommendations that may be made to improve Council's official information practices. The draft will be provided to the Chief Executive for comment.

The Chief Ombudsman is required to consult with the mayor or chairperson before he forms his final opinion, if the mayor or chairperson so requests.³³

Final report

Comments received on the draft report will be considered for amendment of, or incorporation into, the final report. The Chief Ombudsman will provide the final report to the Chief Executive of the Council so that she can respond to the findings and suggestions and/or recommendations.

The final report will be made available to the Council's Mayor, published on the Ombudsman's website, and tabled in Parliament.³⁴

Evaluation

Following completion of his investigation, the Chief Ombudsman will conduct a review exercise as part of his Continuous Improvement programme. This will involve seeking the views of the Council's senior managers on their experience of this practice investigation, its value and relevance to their improving their work practices, and how future investigations may be improved when applied to other agencies.

³³ See section 18(5) OA

³⁴ The Chief Ombudsman may also table a final report in the House of Representatives in specific cases/circumstances.

Appendix 2: Key dimensions and indicators

Introduction

There are five key dimensions that have an impact on official information good practice in local government agencies:

[Leadership and culture](#)

[Organisation structure, staffing and capability](#)

[Internal policies, procedures and resources](#)

[Current practice](#)

[Performance monitoring and learning](#)

These dimensions are underpinned by a series of **indicators**, which describe the elements of good practice we would expect to see in order to evaluate whether each of the dimensions is being met.

These indicators are not exhaustive and do not preclude an agency demonstrating that good practice in a particular area is being met in other ways.

Note: Where this document refers to 'official information requests', this includes requests made under Part 2, Part 3, Part 4 and applications for Land Information Memoranda under section 44A.

Leadership and culture

Achieving the purposes of the Local Government Official Information and Meetings Act 1987 (the Act) largely depends on the attitudes and actions of leaders, including elected members³⁵, chief executives, senior leaders and managers within the agency.

Elected members, chief executives and senior managers should take the lead in promoting openness and transparency, championing positive engagement with official information legislation.

Elements	Things to look for (indicators)
Elected members, chief executives, senior leaders and managers demonstrate a commitment to the agency meeting its obligations under the Act and actively foster a culture of openness within the agency	<ul style="list-style-type: none"> ✓ Chief executives, leaders and the relevant elected members work together to promote a culture of positive LGOIMA compliance and good administrative practice ✓ Senior leaders make clear regular statements to staff and stakeholders in support of the principle and purposes of official information legislation, reminding staff of their obligations ✓ Senior leaders demonstrate clear knowledge and support of the Act's requirements ✓ Senior leaders encourage staff to identify areas for improvement and provide the means for suggesting and implementing them when appropriate ✓ Senior leaders make examples of good practice visible ✓ A visible and explicit statement exists about the agency's commitment to openness and transparency about its work

³⁵ Elected members are not subject to LGOIMA, but they do hold information that is subject to the Act, and they are requesters under the Act. The expectation is that they model openness and transparency in the work that they do, and demonstrate a commitment to compliance with the legislation in order to secure the public's trust and confidence in the local authority.

Elements	Things to look for (indicators)
<p>Senior leadership have established an effective official information strategic framework which promotes an official information culture open to the release of information</p>	<ul style="list-style-type: none"> ✓ The agency has a strategic framework describing how it intends to achieve: <ul style="list-style-type: none"> – Compliance with the Act – Good practice – A culture of openness and continuous improvement – Participation and access to information by the public and stakeholder groups ✓ Senior leaders takes an active role in the management of information ✓ A senior manager has been assigned specific strategic responsibility and executive accountability for official information practices including proactive disclosure ✓ Senior managers have accountabilities for compliance with the Act ✓ Appropriate delegations exist for decision makers and they are trained on agency policies and procedures and the requirements of the Act ✓ Senior leaders model an internal culture whereby all staff: <ul style="list-style-type: none"> – Are encouraged to identify opportunities for improvement in official information practice (including increasing proactive disclosure) and these are endorsed and implemented – Are trained to the appropriate level for their job on official information policies and procedures and understand the legal requirements – Have compliance with the Act in their job descriptions, key performance indicators, and professional development plans ✓ Senior leaders oversee the agency’s practice and compliance with the Act, the effectiveness of its structures, resources, capacity and capability through regular reporting. Any issues identified that risk the agency’s ability to comply with the Act are actively considered and addressed

Elements	Things to look for (indicators)
<p>Senior leadership demonstrates a commitment to proactive disclosure of information and public participation, with clear links to the agency's strategic plans, thereby creating a public perception, and a genuine culture of openness</p>	<ul style="list-style-type: none"> ✓ Senior leaders are committed to an active programme of proactive disclosure and stakeholder engagement where the agency seeks and listens to the public's information needs through: <ul style="list-style-type: none"> – Regular stakeholder meetings and surveys – Reviewing and analysing requests and media logs – Reviewing and analysing website searches ✓ There is clear senior leadership commitment to the proactive release of information resulting in the agency publishing information about: <ul style="list-style-type: none"> – The role and structure of the agency and the information it holds – Strategy, planning and performance information – Details of current or planned work programmes, including background papers, options, and consultation documents – Internal rules and policies, including rules on decision-making – The agency's significance and engagement policy – Corporate information about expenditure, procurement activities, audit reports and performance – Monitoring data and information on matters the agency is responsible for – Information provided in response to official information requests – Other information held by the agency in the public interest ✓ The agency holds up to date information that is easily accessible (easy to find, caters for people requiring language assistance or who have hearing or speech or sight impairments) about: <ul style="list-style-type: none"> – What official information it holds – How it can be accessed or requested by the public and its stakeholders – How to seek assistance – What the agency's official information policies and procedures are (including charging) – How to complain about a decision ✓ The agency makes information available in different formats, including open file formats ✓ The agency's position on copyright and re-use is clear ✓ The public and stakeholders perceive the agency to be open and transparent

Organisation structure, staffing and capability

Responding to official information requests is a core function of the local government sector.

Therefore, it is expected agencies will organise their structure and resources to ensure they are able to meet their legal obligations under the Act considering each agency's size, responsibilities and the amount of information held.

Elements	Things to look for (indicators)
<p>Agency has the capacity to discharge its official information obligations, and obligations around local authority meetings, with clear and fully functioning:</p> <ul style="list-style-type: none"> • roles; • accountabilities; • reporting lines; • delegations; and • resilience arrangements 	<ul style="list-style-type: none"> ✓ An appropriate, flexible structure exists to manage official information requests and obligations around local authority meetings which is well resourced reflecting the: <ul style="list-style-type: none"> – Size of the agency – Number of requests received (and from whom, public, media, other) – Number or percentage of staff performing official information and meeting functions in the agency – Percentage of time these staff are also required to undertake other functions – Need to respond within statutory time limits – Use of staff time, specialisations, structural resilience ✓ Roles and responsibilities are clearly defined: <ul style="list-style-type: none"> – Specific responsibility exists for coordinating, tracking and monitoring official information requests and agency decisions (and ombudsman decisions) and there is the authority and support to ensure compliance³⁶ – Decision makers are sufficiently senior to take responsibility for the decisions made and are available when required, and if not, resilience arrangements exist. – The official information function is located in an appropriate unit or area within the agency that facilitates effective working relationships with relevant business units (for example, media and legal teams)

³⁶ This indicator is also relevant to performance monitoring and learning.

Elements	Things to look for (indicators)
<p>Agency has the capability to discharge its official information obligations, and obligations around local authority meetings</p>	<ul style="list-style-type: none"> ✓ Training at all levels on the requirements of the Act is provided regularly and staff are expected to attend, and to apply the knowledge acquired ✓ Training is role specific with additional training for senior managers, decision makers and staff with official information and meeting responsibilities to support their work ✓ Expectations are set by senior leaders that regular refreshers are provided to all staff ✓ Training is provided on information management and record keeping that is role-specific and includes guidance on information retrieval as well as information storage ✓ The process for staff to assess and make decisions on official information requests and meetings is clear, understood, up to date and staff apply and document the process ✓ Agency staff, including front line staff and contractors, know what an official information request is and what to do with it. ✓ User-friendly, accessible resources, guidance and 'go to' people are available ✓ Staff official information capability is regularly assessed and monitored through, for example, performance reviews and regular training needs analyses ✓ Official information obligations, and obligations related to local authority meetings are included in induction material for all staff ✓ The agency's internal guidance resources are accessible to all staff

Internal policies, procedures and resources

Agencies should develop or adopt policies and procedures that will assist staff to consistently apply the requirements of the Act supported by good systems, tools and resources ensuring effective processing of requests consistent with the requirements of the Act

Elements	Things to look for (indicators)
<p>The agency has official information and meeting policies, procedures and resources that are accurate and fit for purpose</p>	<ul style="list-style-type: none"> ✓ Good policies, procedures and resources exist for receipt and assessment of requests, which cover: <ul style="list-style-type: none"> – What is official information – Identifying the type of official information request received (Part 2, 3, 4 or 6 of the LGOIMA) and distinguishing from Privacy Act requests – What to do if information is held by an elected member – Identifying the scope of the request – Consulting with and assisting the requester – Logging requests for official information – Acknowledging receipt of the request – Correctly determining statutory time limits and tracking the handling of the requests – Identifying who in the agency should respond to the request – Establishing criteria for deciding whether, and if so, how a response to a request should be provided urgently – Managing potential delays (including the reasons for them, the escalation process and invoking the extension provision) ✓ Good policies, procedures and resources exist for information gathering on requests, which cover: <ul style="list-style-type: none"> – Identifying the information within the scope of the request – Searching, finding and collating the information at issue – Documenting the search undertaken for the information within the scope of the request (including time taken if charging is likely) – Transferring requests to other agencies and advising the requester – Consulting officials within the agency and third parties – What to do if the information is held by a contractor covered by the Act by virtue of section 2(6) of LGOIMA – Engaging with elected members on official information requests ✓ Good policies, procedures and resources exist for decision making on requests, which cover:

Elements	Things to look for (indicators)
	<ul style="list-style-type: none"> - Making a decision whether to release the information - Making a decision on the format in which information is released - Making a decision whether to charge for the release of information - Guidance on application of withholding or refusal grounds relevant to requests made under Parts 2, 3 and 4 - Guidance on any statutory bars on disclosure relevant to the legislation the agency administers - Imposing conditions on release where appropriate - Advising the requester of the decision - Recording reasons for each item of information withheld, and the agency's consideration of the public interest in release where required ✓ Good policies, procedures and resources exist for releasing requests, which cover: <ul style="list-style-type: none"> - Providing the information in the form requested - Preparing information for release (including redactions) ✓ Good policies, procedures and resources exist for the administration of local authority meetings, which cover: <ul style="list-style-type: none"> - How and when meetings (ordinary and extraordinary) are publicly notified - How items not on the agenda for a meeting may be dealt with - How and when agendas and associated reports are made available to the public - When it is appropriate to hold a workshop rather than a meeting - Preparing, and allowing the public to inspect or receive copies of minutes of meetings and workshops - Decision making on whether meetings should be 'public excluded' - Ensuring a resolution to exclude the public is compliant with Schedule 2A LGOIMA ✓ The agency has tools and resources for processing official information requests, such as templates, checklists, 'go-to' people, effective tracking and monitoring systems, and redaction software and staff are trained on how to use them. ✓ The agency's official information and meeting policies, procedures and resources are regularly reviewed and up-to-date ✓ Staff find the policies useful and easy to access

Elements	Things to look for (indicators)
<p>The agency has appropriate record keeping and information management policies, procedures and resources</p>	<ul style="list-style-type: none"> ✓ Staff are able to identify, access and collate information that has been requested under the Act ✓ The agency has accurate and comprehensive records and information management policies, procedures and resources which enable information relevant to a request to be identified and collated ✓ The policies and procedures cover aspects such as: <ul style="list-style-type: none"> – Creating, organising, maintaining and storing records – How to access information held by elected members – Managing and modifying records – The security of information – A guide to determining which records systems exist and what information each holds – Retaining, retrieving and disposing of records – Both manual and electronic records, including personal email accounts, instant messaging and text messages – Assigned responsibilities and performance criteria for records and information management by staff – The provision of secure audit trails – Annual/periodic audits of records ✓ These policies and procedures are regularly reviewed and up-to-date ✓ Staff find the policies and procedures useful and easy to access

Elements	Things to look for (indicators)
The agency has accurate and comprehensive proactive release policies, procedures and resources	<ul style="list-style-type: none"> ✓ The policies and procedures cover the release of such things as: <ul style="list-style-type: none"> – Information that has been released in response to official information requests – Information described in section 21 of the LGOIMA about the agency’s internal decision making rules, including its official information policies and procedures – Strategy, planning and performance information – Financial information relating to income and expenses, tendering, procurement and contracts – Information about work programmes and policy proposals – Information about public engagement processes, including public submissions – Minutes, agendas, and papers of advisory boards or committees – Information about regulatory or review activities carried out by agencies ✓ The policies and procedures include a process for identifying opportunities for proactive release, for example, where a high number of official information requests is received about a subject ✓ The policies and procedures include a process for preparing for proactive release, including managing risks around private or confidential information, commercially sensitive information and information subject to third party copyright ✓ The policies outline how and where the information should be made available for access, and if any charge should be fixed ✓ They are regularly reviewed and up-to-date ✓ Staff know about the agency’s proactive release policies and procedures ✓ Staff find the policies useful and easy to access

Current practices

The effectiveness of the Act is largely dependent on those who implement it on a day to day basis and how they apply the resources available to them to manage the realities of giving effect to the Act

Elements	Things to look for (indicators)
<p>Official information and meeting practices demonstrate understanding, compliance, and commitment to the principles and requirements of the Act.</p>	<ul style="list-style-type: none"> ✓ The agency complies with maximum statutory timeframes to transfer, extend, decide on requests, and release official information ✓ The agency complies with statutory timeframes for notifying meetings, and making available agendas ✓ The agency makes standing orders, meeting agendas and associated reports, and meeting minutes available to the public ✓ The agency produces comprehensive meeting minutes which contain, for example: <ul style="list-style-type: none"> - the time the meeting opened and closed, the date, place and nature of the meeting - the names of the councillors attending the meeting, those who have leave of absence or who have given an apology, and the arrival and departure times of councillors who arrive or leave during the course of the meeting - a record of every resolution, motion, amendment, order, or other proceeding of the meeting and whether they were passed or not - any 'public excluded' resolutions are in the form set out in Schedule 2A and comply with section 48 LGOIMA - the outcome of any vote taken - the names of members voting for or against a motion when requested or after a division is called ✓ Requests are handled in accordance with the applicable law (Privacy Act; Part 2, 3, 4, or 6 of LGOIMA) ✓ The agency makes appropriate use of the withholding grounds and administrative reasons for refusal, and the provisions for excluding the public from the whole or any part of local authority meetings ✓ The agency makes appropriate use of the legislative mechanisms for dealing with large and complex official information requests ✓ The agency gives proper consideration to the public interest in release of official information, and explains this to requesters ✓ The agency interprets the scope of official information requests reasonably

Elements	Things to look for (indicators)
	<ul style="list-style-type: none"> ✓ The agency consults with, and provides reasonable assistance to requesters ✓ The agency consults appropriately with third parties ✓ Elected members involvement in agency official information decision making is appropriate ✓ The process for escalation of issues is used where necessary and is effective ✓ Official information is released in the form requested unless there is a good reason not to ✓ Consideration is given to releasing information in accessible formats ✓ There is evidence that agency practice aligns with its policies and procedures ✓ Staff regularly use the agency's policies and procedures
The agency has good record keeping and information management practices	<ul style="list-style-type: none"> ✓ The agency documents its handling of official information requests, including the steps taken to search for the requested information, the information identified as relevant to the request, and the reasons for its decisions ✓ The agency's records and information management practices facilitate official information compliance (it is generally easy to find information that has been requested under the Act) ✓ Staff regularly use the agency's records and information management policies and procedures as described in <i>Good records and information management policies, procedures and resources</i> ✓ The agency demonstrates good record keeping processes and practices for all meetings, both formal and informal
The agency has good proactive release practices	<ul style="list-style-type: none"> ✓ The agency publishes useful information online including the types of information described in the 'Good proactive release policies, procedures and resources' indicator, under Internal policies, procedures, and resources ✓ The agency publishes information in multiple formats, and applies open use standards ✓ The agency's position on copyright and re-use is clear ✓ Staff use the agency's proactive release policies and procedures where applicable

Performance monitoring and learning

Agencies should adopt performance monitoring and learning frameworks that enable them to learn and drive performance improvement and innovation

Element	Things to look for (indicators)
<p>The agency has an established system for capturing and analysing data to inform meaningful and appropriate performance measures</p>	<ul style="list-style-type: none"> ✓ Performance measures include: <ul style="list-style-type: none"> – Quantity –for example the number of requests, from where and the number processed – Efficiency –for example duration of request handling, number of responses that exceed legislative maximum time limits, the reasons for any delays – Quality- for example outcome of any internal quality assurance reviews and/or external reviews of official information and meeting decisions and processes and whether or not the results of those reviews provide evidence of system wide issues – Monitoring of opportunities for proactive release –for example identifying common types of requests or a high number that indicates information that could be made available ✓ The agency collects data about its performance under the Act including: <ul style="list-style-type: none"> – The number of requests – The type of request (Part 2, 3, 4 or 6 of LGOIMA) – The type of requester (for example; media, political researcher, corporation, individual citizen, elected member, interest group etc) – The information sought – The number and reason for transfers, and whether the transfer was made in time – The number and reason for any ‘public excluded’ resolutions – The number, length and reason for extensions – The outcome of the request (granted in full, granted in part, refused in full, withdrawn or abandoned) – The number and amount of charges made and collected – The grounds on which information was withheld or the request refused – Whether the requester was consulted prior to any refusal under section 17(f), which provides that <i>‘A request made in accordance with section 10 may be refused (if)... the information requested cannot be made available without substantial collation or research.’</i>

Element	Things to look for (indicators)
	<ul style="list-style-type: none"> - Whether any elected member was consulted on the decision - Whether the decision was notified to any elected member - Whether, and which, third parties were consulted - The time from receipt of the request to communication of the decision - The time from receipt of the request to release of the information - If the time limit (extended or not) was breached, the reasons for the delay - Whether the response was proactively published and if not, why - Whether the Ombudsman investigated or resolved a complaint about the request - The outcome of the Ombudsman's investigation or involvement - The outcome of any internal quality assurance reviews of processes or decisions - Staff time spent and costs incurred in processing official information requests, including the time spent assisting in processing requests by staff who are not in core LGOIMA roles ✓ The agency analyses this data to determine whether it is complying with its relevant performance measures ✓ The agency monitors information demand (for example, through official information requests, website use, and other enquiries) to identify opportunities for proactive release ✓ The agency monitors any difficulties in identifying and collating information that has been requested
There is regular reporting about the agency's management and performance in respect of official information requests	<ul style="list-style-type: none"> ✓ Data about the agency's official information performance, and information demand is regularly reported to senior leaders, and at least quarterly to the Chief Executive ✓ Reports include emerging themes or trends, opportunities for improvement and proactive release, resourcing, capacity or capability (training) issues ✓ Reporting informs planning, resourcing and capability building decisions

Element	Things to look for (indicators)
The agency learns from data analysis and practice	<ul style="list-style-type: none">✓ The agency has a system for sharing official information learning and experience, such as meetings, newsletters, email or intranet updates, or official information <i>'champions'</i>✓ The agency monitors relevant data, guidance and publications, including those produced by the Ombudsman, Local Government New Zealand and the Department of Internal Affairs✓ The agency monitors the outcome of Ombudsman investigations and reports these to relevant staff, including official information decision makers✓ The agency analyses information to determine where it has the potential to improve official information practice, stakeholder relations, or increase opportunities for public participation✓ The agency periodically reviews its relevant systems, structures, and compliance with policies and procedures✓ The agency actively participates in initiatives to share and discuss best practice externally, for example through forums, interest groups, networks and communities of practice