

Official information practice investigation — terms of reference

September 2024

This document sets out the terms of reference for a self-initiated investigation by the Chief Ombudsman into the practices of the Council relating to the Local Government Official Information and Meetings Act 1987 (LGOIMA).¹

Purpose of the investigation

My investigation will consider how the Council meets the requirements and purposes of the LGOIMA, through the processing and decision making on requests for access to information and how it administers meetings under Part 7 of LGOIMA.

The investigation will consider all relevant policies, processes and practices; including supporting administrative structures, leadership and culture, information management, public participation and proactive release of information, to the extent that these relate to LGOIMA or advance its objectives.

The investigation will identify areas of good practice, and make suggestions for improvement opportunities if any areas of vulnerability are identified.²

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

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

² 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 council was unreasonable or contrary to law under s 22 of the OA.

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 consider how the Council administers Local Authority meetings (as per Part 7), and workshops or informal meetings. The investigation will not consider decisions taken by full council (committee of the whole).³ 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 may consider the extent to which the Council has appropriate processes, policies or resources in place to manage the relationship between a Council Controlled Organisation (CCO) or Council Board (CB) in relation to:

- Transferring requests to ensure compliance with the requirements of section 12 of the 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).⁴
- 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), property file requests, media information requests, records council meetings and workshops or information meetings.

If evidence emerges concerning specific examples of LGOIMA breaches, 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.

³ See s 13(1) OA

⁴ The decision must be made by the chief executive or any officer or employee authorised by the chief executive. See s 13(5) LGA. 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 questionnaire of the Council's official information practices, a staff survey, a survey of elected members, interviews with key staff, and a survey of the public. As information arises, it may become clear to my staff that other avenues of investigation are also required; if this occurs, you will be advised accordingly. 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).

Questionnaire

A questionnaire for the agency will be provided, 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 Council's senior management
- The logging, tracking and responses of LGOIMA requests
- The logging, tracking and responses to media information requests
- 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
- Other policies, procedures and guidance documents relevant to the investigation.

Surveys

The following surveys will be conducted:

- A survey of Council staff about their experience of the LGOIMA culture and practice within the Council
- A survey of the public including key media and stakeholder organisations. The Chief Ombudsman may issue a media release that includes a link to the public survey
- A survey of elected members, asking them about training received on LGOIMA, information management, and their roles and responsibilities under LGOIMA

Meetings and interviews

In addition to the meeting between the Chief Ombudsman and the Council’s Chief Executive, the investigation team will interview staff within the Council 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
Processing and dispatching of 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	1 hour

A member or members of staff with responsibility for	Approximate time required
recommendations to elected members as to whether items should be discussed in public excluded meetings	
Those responsible for processing LIM applications	½ hour

If requested, the interview recording or a summary of key points gathered from the meetings will be sent to individual interviewees.

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

Other

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.

A review of a sample of media information requests.

Follow up period

After information has been gathered through the methods outlined above, the investigation team may request additional information or clarification from the Council on points that have arisen throughout the course of the investigation.

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 may consult the mayor at any time during or after the investigation, and is required to consult with the Mayor before he forms his final opinion, if the Mayor so requests.⁵

⁵ See s 18(5) OA

Final report

Comments received on the draft report will be considered for amendment of, or incorporation into, the final report. The final report will be sent to the Chief Executive and the Council's Mayor, published on the Ombudsman's website, and tabled in Parliament.