

Council could refuse high volume information requests as ‘vexatious’

Legislation	Local Government Official Information and Meetings Act 1987, ss 17(h), 21, 22
Agency	Tasman District Council
Ombudsman	John Allen
Case number(s)	009781
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A number of information requests were made to Tasman District Council over ten months—Chief Ombudsman of opinion that some of the requests could be refused under section 17(h) of the Local Government Official Information and Meetings Act 1987 (LGOIMA)—the complainant’s tone was polite and some of the requests, if made in isolation, may not have been considered vexatious—however, the cumulative effect was vexatious given the high volume of requests requiring significant Council staff effort—requests for Council policies and reasons for decisions could not be refused under section 17(h)

Background

The complainant made a number of information requests to the Tasman District Council (the Council) over a ten-month period. It appears the origin of these requests related to the Council’s decision-making about a building on the complainant’s property. However, the requests extended well beyond that issue. They included requests about:

- the complainant’s property;
- a Community Board; and
- Council staff members and staff policies.

Many of the requests were granted and others were refused under various grounds of the LGOIMA. However, 24 of the requests were refused by the Council under section 17(h) of the LGOIMA. The Council stated:

We have not reached this decision lightly. Your request is considered frivolous and vexatious [as] it lacks any public value, the intention of the requests appear to be to

cause disruption, irritation or distress to the Council and/or its staff. Consideration has also been given [to] the history of frequent requests and correspondence made by yourself, the volume of requests made, and that collectively your requests have taken a lot of time and resources to address.

You are put on notice that Council will carefully consider whether further requests meet the threshold for section 17(h). Especially given the volumes of requests received.

The complainant made a complaint to the Chief Ombudsman about the Council's decision to refuse the requests under section 17(h).

Investigation

Section 17(h) of the LGOIMA says an agency may refuse a request if it is frivolous or vexatious, or it seeks trivial information.

In his investigation, the Ombudsman considered the history and context of the requests, the stated intention and purpose of the requests, the administrative demands of the requests, and the effect on staff.

The complainant explained the purpose and context of each of their requests. However, the Ombudsman did not look at each request that was refused in isolation. Instead, the Ombudsman considered the requests collectively. It was necessary to consider the whole context for each request, including any pattern of requests.

History and context of the requests

The complainant made over 150 information requests to the Council over a ten-month period. The Ombudsman considered this a very high number, which put unreasonable pressure on the Council's LGOIMA function and had an impact on others seeking information from the Council.

The requests were made in the context of the complainant engaging in legal proceedings against the Council and making a number of complaints. After the 24 requests were refused the Council placed the complainant on a communication management plan, on the basis that their behaviour was negatively impacting Council staff, services, and resources.

The complainant explained they were requesting information to pursue their concerns about the Council. The Ombudsman agreed the complainant was entitled to raise concerns, be interested in their local community, and request information. However, this needed to be exercised in a proportionate and reasonable manner. In this case, the Ombudsman considered the sheer number of requests and the nature of many of them had gone beyond what was reasonable, and had become excessive or disproportionate, and an abuse of the right to request information under LGOIMA.

Intention and purpose of the requests

The Ombudsman also considered that the ongoing information requests did not appear necessary to support the complainant's legal proceedings. While this was not a determinative factor in the investigation, it was a relevant consideration.

Further, the purpose and pattern of some requests appeared to have gone far beyond the dispute about the complainant's property, including a large number of requests relating to a Community Board, Council staff members, and staff policies. It is, of course, open to members of the public to take an interest in such issues and request information. However, that does not automatically impose a right to that information, and does not free requesters from an obligation to act reasonably when pursuing their interests. It also does not create an obligation on the Council to divert its resources in order to respond to numerous requests.

In this case, the Council had granted a number of the complainant's information requests on the wider topics. Its decision to refuse some requests under section 17(h) did not appear to be causing the complainant any genuine disadvantage in terms of access to information, or any broader consequences in terms of meeting the general public interest in local government transparency and accountability.

Administrative burden and effect on staff

The Ombudsman considered the sheer volume of the complainant's requests required a disproportionate amount of Council staff resource to respond. As well as affecting the Council's ability to respond to requests from other people and carry out its general role, the volume of the requests had a significant effect on staff.

The requests often contained multiple parts and could be repetitive or very similar to previous requests. The complainant frequently responded to the Council, expressing dissatisfaction with their decisions and asking follow-up questions. In addition, a number of requests were for information that was already publicly available or asked the Council to create information. The LGOIMA provides for people to request information which is already held by an agency—it is not a device for interrogation of an agency. Questions which require an agency to provide an explanation or defend a position will not generally be considered requests for official information.

The Ombudsman acknowledged the tone of the complainant's correspondence was polite and that they may not have intended to have a broader impact on Council staff. Nevertheless, this was the overall impact of the requests and general correspondence.

Requests for policies and reasons for decisions

The complainant raised a concern that some of the requests were for Council policies and the reasons for decisions made about the complainant.

The Ombudsman agreed that four requests and part of one request were for Council policies and the reasons for decisions, and should have been considered under sections 21 and 22 of

the LGOIMA. The Ombudsman also noted that section 17(h) of the LGOIMA does not provide a reason to refuse requests made under section 21 and 22.

The Ombudsman raised this issue with the Council, to ensure it was aware of its relevant obligations and would identify and manage these types of requests in the future. However, the Ombudsman did not consider it necessary to continue investigating this aspect of the complainant's concerns. The Ombudsman noted it was open to the complainant to make these requests again, but encouraged them to reflect on the extent to which they genuinely needed this information before doing so. This was in the context where the cumulative volume of the complainant's information requests was having a disproportionate impact on the resources of the Council.

Outcome

The Ombudsman was satisfied the Council was entitled to give the history and context of the requests significant weight, given their volume and subject matter. The Ombudsman acknowledged some of the requests if made in isolation may not be considered vexatious. However, the extensive volume of requests over a period of time, requiring significant Council staff effort, resulted in an overall conclusion that the cumulative effect was vexatious.

The Council appeared to have refused far less than half of the complainant's requests under section 17(h). The Ombudsman considered this demonstrated constructive engagement, and that the Council was not automatically relying on section 17(h) but giving due consideration to each request.

The Ombudsman considered that even though the Council had refused a number of requests under section 17(h) of the LGOIMA, the complainant still had reasonable access to Council information. The frequency and nature of the complainant's requests suggested they were not exercising the rights to request information granted by the LGOIMA in good faith.

The Ombudsman formed the opinion that the Council could refuse 20 of the 24 requests under section 17(h) of the LGOIMA. The remaining requests were for policies and reasons for decisions, and section 17(h) was not applicable to those requests.

The Ombudsman suggested that the complainant review the frequency and nature of their information requests to the Council. The Ombudsman also suggested the complainant may wish to prioritise the requests that were most important to them, or consider other ways of raising their concerns directly with the Council rather than pursuing issues indirectly through LGOIMA requests.

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