



23 December 2021

Peter Newport

Sent via email to [peter.newport@crux.org.nz](mailto:peter.newport@crux.org.nz)

Dear Peter,

**REQUEST FOR OFFICIAL INFORMATION – PARTIAL RELEASE OF INFORMATION**

We refer to your official complaint made by you to the Office of the Ombudsman regarding our response to your information request on dated 24 March & 22 April 2021. You have requested the following information from Queenstown Lakes District Council (QLDC).

**REQUEST 1- On 25 February 2021, you requested the following information from the Queenstown Lakes District Council (QLDC):**

1. All emails between 1 February 2020 and today involving Jim Boulton, Mike Theelen, Meaghan Miller, Naell Crosby-Roe and Jack Barlow, involving the subject of procurement and/or ZQN7.
2. In addition, any communication between Mike Theelen and council staff regarding procurement policy and guidelines – whether connected to ZQN7 or not.

**REQUEST 2- On 24 March 2021, you requested the following information from the Queenstown Lakes District Council (QLDC):**

1. A recent 2021 QLDC staff review of your 2016 Procurement Policy and Guidelines (PPG) showed that they were unworkable, involved 300 non-compliant transactions per month and would halt or hinder the council's day to day operations.

How is it possible that Chief Executive Mike Theelen was unaware of this problem? We would like to see emails in 2020 between Mr Theelen and his colleagues, including Corporate Services and the Communications team, regarding QLDC's Procurement Policy and Guidelines. This request is in the public interest and should not involve any issues regarding privacy, commercial sensitivity, or the freedom of staff to have open conversations – especially as this issue has already been the subject of a public review by Mayor Jim Boulton.

2. Can we receive a detailed explanation from Mr Theelen as to how Procurement and Commercial Manager Geoff Mayman, hired in 2018, was himself unaware of this major and fundamental flaw in the council's Procurement Policy and Guidelines? We conclude he either did not read the documents or did read them and then either a) told Mr Theelen or b) decided not to tell Mr Theelen.

3. Can we see emails between Mr Mayman and Peter Hansby and Mike Theelen regarding the 2016 Procurement Policy and Guidelines? This request is in the public interest and should not involve any issues regarding privacy, commercial sensitivity, or the freedom of staff to have open conversation – especially as this issue has already been the subject of a public review by Mayor Jim Boulton.
4. Can we see emails in 2020 between Mayor Jim Boulton and council staff/managers that reference the subject of Procurement Policy and Guidelines, Ms Ruth Stokes, Ms Jendi Paterson or ZQN7 Ltd?
5. Can we see any correspondence or emails between QLDC and the council's auditors that addresses the issue of Procurement Policy and Guidelines? If no such communication exists – why did the auditors not spot this problem for four years (2016-2020)?
6. Can we see any emails and correspondence from QLDC Chief Financial Officer Stewart Burns and members of the Executive Leadership Team that reference the council's Procurement, Policy and Guidelines? This request is in the public interest and should not involve any issues regarding privacy, commercial sensitivity, or the freedom of staff to have open conversations – especially as this issue has already been the subject of a public review by Mayor Jim Boulton.

On 19 November 2021, we received a letter from the Office of the Ombudsman advising that we should review this matter and have recommended that we revise our response to your request.

### **QLDC response**

#### **Decision to release information requested**

QLDC has decided to grant your request for information in part. The information requested is provided as follows:

Please see our response below for both the requests:

Based on the subsequent conversations we had with Michael Clearly on behalf of the Office of the Ombudsman, we are now in the position to confirm that we are retrospectively amending our response and reason for our decision. Therefore, have decided to revise our response.

Having previously advised we were refusing your request on the grounds of section 17(h) of the Local Government Official Information and Meetings Act 1987 (LGOIMA), allows an agency to refuse a request for information if 'the request is frivolous or vexatious or that the information requested is trivial' and under section 7(2)(f)(ii) of the LGOIMA. Section 7(2)(f)(ii) of the LGOIMA provides that good reason for withholding official information exists if the withholding of the information is necessary to maintain the effective conduct of public affairs through "the protection of such members, officers, employees, and persons from improper pressure or harassment".

We can confirm now that Council has now reviewed the matter, the reasons for withholding grounds and have completed another search of our archives, removed those that were out of scope and have withheld a few emails for confidentiality, free & frank, and legal privilege reasons. In addition, have applied minor redactions and have explained the rationale for the same in our response later.

- Please see the share file links below for the correspondence, materials and notes covering Q1 in both requests. This link contains 44 items, which are relevant to your request.
  - [Emails](#)
- For Q2 of your information request we don't consider this as a LGOIMA request as it is seeking comment not information held, and therefore have not provided any response for this part of your request. QLDC declines to make any further comment.
- For Q3, 4 and 6 there are no emails to be found and therefore we are refusing to respond to this part of your request under section 17(e) of the Local Government Official Information and Meetings Act 1987 (LGOIMA). Section 17(e) of the LGOIMA provides that there is a good reason for refusing official information when that document alleged to contain the information requested does not exist or, despite reasonable efforts to locate it, cannot be found. And our rationale to this has been provided later in this response.
- For Q5 of your request the audit process involves review & testing of multiple transactions & balances. It does not however, specifically include testing compliance of with Procurement Guidelines.

### **Decision to withhold remaining information requested**

#### *Information does not exist*

QLDC has decided to refuse your request for Q3, 4 and 6 in accordance with section 17(e) of the Local Government Official Information and Meetings Act 1987 (LGOIMA). Section 17(e) of the LGOIMA provides that there is a good reason for refusing official information when that document alleged to contain the information requested does not exist or, despite reasonable efforts to locate it, cannot be found. In this instance, we can confirm that there are no emails found for this part of your request.

#### *Free and frank expression of opinion*

We have decided to withhold a total of 48 emails related emails in accordance with section 7(2)(f)(i) of the LGOIMA. Section 7(2)(f)(i) of the LGOIMA provides that good reason for withholding official information exists if the withholding of the information is necessary to 'maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to members or officers or employees of any local authority'. In this case, these emails contained a discussion between internal staff and draft documents surrounding a decision that needed to be made in relation to this matter. We therefore considered it free and frank expression of opinion by staff.

#### *Legal privilege*

We have decided to withhold 3 emails in their entirety under section 7(2)(g) of the Local Government Official Information and Meetings Act 1987 (LGOIMA). Section 7(2)(g) of the LGOIMA provides that information can be withheld if the withholding of the information is necessary to maintain legal professional privilege. In this case, the emails we withheld includes general legal advice from our internal legal team. For these reasons, we decided to not release these emails.

We trust the above information satisfactorily answers the relevant components of your request.

### Public interest considerations

We have considered the interests of the public when making decisions to withhold requested information, including considerations in favour of release, whether the disclosure of the information would promote those considerations, and whether those considerations outweighed the need to withhold the information.

Promoting the accountability and transparency of local authority members and officials is in the public interest, as is the general public interest in “good government”. Where possible, we have favoured release of documents subject to redactions to give effect to the public interest. However, we consider that the public interest in making council papers available does not outweigh the importance of protecting the privacy of individuals or ensuring a fair and transparent process when appointing staff.

We have also considered the interests of the public when making the decision to withhold the legally privileged correspondence, included free and frank expression of opinion. Like in the above situation, we have considered the public interest in favour of release, and whether those considerations outweighed the need to withhold the correspondence and draft attachments.

In the case of legally privileged emails, it is important that QLDC staff can seek legal advice to ensure that QLDC is always acting in accordance with the law. Doing so promotes accountability. Consequently, we do not consider that the public interest in the release of these emails outweighs the considerations in favour of withholding the information.

Similarly, regarding the emails that we have withheld due to free and frank expression of opinion, we consider that it is necessary for our staff to be able to freely discuss and revise draft documents without their preliminary or other frank views being inhibited by potential disclosure. This enables all opinions to be expressed and promotes a considered outcome. We consider that this is not outweighed by the public interest in release.

### **Right to review the above decision**

Note that you have the right to seek an investigation and review by the Ombudsman of this decision. Information about this process is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

If you wish to discuss this decision with us, please contact [Naell.Crosby-Roe@qldc.govt.nz](mailto:Naell.Crosby-Roe@qldc.govt.nz) (Governance & Stakeholder Services Manager).

Kind regards



Poonam Sethi

Governance and Official Information Advisor