

27 April 2023

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

Thank you for your request for information held by the Queenstown Lakes District Council (**QLDC**). On 3 April 2023 you requested the following information under the Local Government Official Information and Meetings Act 1987 (**LGOIMA**):

1. All emails, messages, correspondence, and documents (internal and external to QLDC) connected to QLDC and CEO Mike Theelen (personally or as a council employee) filing a complaint with the NZ Media Council as per the attached July 26 letter from lawyers Wynn Williams.
2. All costs related to this or similar recent complaints against Crux whether with Wynn Williams or other external suppliers / consultants.
3. All disclosure made to, and any communication with elected members (including the mayor) regarding this legal action and the associated costs.
4. Was this matter dealt with at the personal cost of Mr Theelen or the cost of QLDC – what was the reasoning behind the decision?
5. Does QLDC now accept that Mr Theelen and the senior management of the council failed to give truthful answers during 2020 on multiple occasions when asked by Crux if procurement rules were being followed?
6. Was Mr Theelen aware of the QLDC procurement policy and guidelines throughout his time as CEO of the council – given the pivotal nature of these documents? If so – why were the rules not followed and clearly communicated to staff?

### QLDC response

1. *All emails, messages, correspondence, and documents (internal and external to QLDC) connected to QLDC and CEO Mike Theelen (personally or as a council employee) filing a complaint with the NZ Media Council as per the attached July 26 letter from lawyers Wynn Williams.*

To address this part of your request, we completed the following email archive search:

- Date range: 3 April 2022 – 3 April 2023
- The subject of the email must include the following: media council complaint.

The above search produced 11 email chains. Nine email chains have been withheld in full, one email has been released in full, and one email has been released with a minor redaction. The released information can be accessed in the link below.

## Documents x2

2. *All costs related to this or similar recent complaints against Crux whether with Wynn Williams or other external suppliers / consultants.*

We have decided to withhold this information. More detail is provided later.

3. *All disclosure made to, and any communication with elected members (including the mayor) regarding this legal action and the associated costs.*

As this is an operational matter, no briefing was provided to elected members.

4. *Was this matter dealt with at the personal cost of Mr Theelen or the cost of QLDC – what was the reasoning behind the decision?*

This is a QLDC matter and QLDC made the complaint to the Media Council. QLDC provided the waiver and consent documentation required by the Media Council's rules and met all requirements of its published complaints procedure. That procedure does not require the complainant to obtain waivers from any third parties.

5. *Does QLDC now accept that Mr Theelen and the senior management of the council failed to give truthful answers during 2020 on multiple occasions when asked by Crux if procurement rules were being followed?*

No.

6. *Was Mr Theelen aware of the QLDC procurement policy and guidelines throughout his time as CEO of the council – given the pivotal nature of these documents? If so – why were the rules not followed and clearly communicated to staff?*

We have previously addressed these questions via the QLDC media channels.

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

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

We have good grounds under the LGOIMA for withholding some of the information requested in full and some information subject to redactions. We consider it is necessary to withhold certain information on the basis of the following grounds:

- s 7(2)(f)(i) – to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to members or QLDC officers/employees.
- s 7(2)(g) – to maintain legal professional privilege.

### Emails

Email (1) has a minor 'free and frank' redaction in the body of the email. If released un-redacted the author would be prevented from making such comments, via email, on such matters in the future. This would prevent topics of a similar nature from being quickly progressed and actioned. The information has been redacted to enable staff to freely share off-the-cuff / to-and-fro thoughts and

opinions within emails in the future. We consider that the release of this information would cause staff to be more guarded in their emails, which would inhibit the exercise of officer duties and therefore the functions of council.

Nine email threads (including their attachments) contain information that is subject to legal professional privilege. We do not intend to waive legal professional privilege over this information and therefore we have decided not to release this information in response to your request.

### Costs

In question two you requested all costs related to this or similar recent complaints against Crux whether with Wynn Williams or other external suppliers / consultants. We consider this information to be legally privileged material. All documents between QLDC and its lawyers (in-house and external, including Wynn Williams) fall into the category of “communications between a solicitor (acting in that capacity) and the client for the purposes of seeking or giving legal advice or assistance, irrespective of legal proceedings”. Documents revealing the costs (and inherent within that, the scope of the legal advice sought and delivered) meet that description. In other words, you can’t reveal the costs without revealing what advice was sought.

### **Public interest considerations**

We consider 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”, and accountability for spending public money. Where possible, we have favoured the release of information. However, we do not believe that these public interest considerations mean we should waive legal professional privilege, nor release the ‘free and frank’ comment we redacted.

The council recognises the important role media plays in holding local government to account, however council also places high importance upon its right to challenge misinformation in the media. If the public are misled by the media, distrust in council can escalate. This can affect the day-to-day functioning of council processes. While we see it as important to be transparent and accountable, releasing the legally privileged material is not outweighed by these considerations. We place strong weight on our ability to seek advice on the prevention of the spread of misinformation in the media and believe that our ability to do this greatly benefits the public at large.

Further, we do not think that the public interest considerations noted outweigh our need to withhold the ‘free and frank’ comment made in one email. Being able to freely discuss the matter, candidly, uninhibited, and via email, is important for ensuring council can take action and access official channels when making complaints about misinformation in the media.

We conclude that the important section 7 withholding interests identified (free and frank expression of opinion and legal professional privilege), which relate to a subset of the information within the scope of your request, are not outweighed by countervailing public interests requiring 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).

We trust this response satisfactorily answers your request.

Kind regards,

A handwritten signature in black ink, appearing to be 'M. Patterson', with a long horizontal line extending to the right.

Madeline Patterson  
Senior Official Informaiton Advisor