

25 November 2024



Dear 

### **Request for Official Information**

I refer to your request for Official Information received on 29 October 2024, about the investigation by Maria Dew KC.

Dunedin City Council has received a number of official information requests for similar material including:

- the report by Maria Dew KC into the conduct of Dunedin City Council Chief Executive.
- the complaint that prompted the investigation and any correspondence among Councillors and senior staff about the investigation.
- a copy of the terms of reference for the investigation.
- a copy of the subcommittees recommendation or resolution after it received the report, as well as a copy of the apology.
- the costs of the KC into the investigation and any legal costs incurred.

### **Decision on information requested**

Because of the number of requests received for this similar information, DCC has prepared this comprehensive response to requestors. DCC has reviewed the relevant sections and made this decision under the Local Government Official Information and Meetings Act (1987) (LGOIMA).

DCC has decided it cannot release the report prepared by Maria Dew KC or the related information sought on these issues that arose in April 2024 through to 12 November 2024 when the Decision-Making Committee reported back to Council. The related information includes the complaint, the terms of reference, any reports, the decision made in relation to it and minutes of public excluded meetings (except as provided below), and any apology. This is because this report was commissioned as part of an employment process relating to the Council's Chief Executive. The terms of reference, Maria Dew's report, correspondence about it and the Decision-Making Committee's decision and other related information all relate to this employment process and contain personal information about the Chief Executive. This information relates to the Chief Executive's private and confidential information as an employee relating to her work for DCC. This employment process was also conducted under an

express obligation of confidentiality to the persons concerned to maintain their privacy. The Maria Dew KC report was prepared subject to an express obligation of confidence to those who participated in it and provided information to Maria Dew KC. It is considered necessary to not release this material to protect the privacy of the Chief Executive and to maintain an obligation of confidentiality under sections 7(2)(a) and 7(2)(c)(ii) of LGOIMA.

The overall public interest to release this information has also been assessed to decide if despite these withholding grounds under LGOIMA, applying the information should still be released. It is acknowledged there is a higher public interest in the employment performance of a Chief Executive of a Council being the most senior employee. In this context the Mayor has provided comment publicly on the investigation, and its outcome to the extent he is able to while respecting the privacy of the Chief Executive. This in part addresses the public interest to know what has happened. Overall, it is considered there is a very strong privacy consideration here to maintain confidentiality and privacy of personal information about the Chief Executive in their role. In addition, the Maria Dew KC report was prepared as part of an employment investigation. All those who provided information to Maria Dew KC did so under an express obligation of confidence, and the report was prepared for the sole use of the DCC in its role as employer of the Chief Executive. There is considered to be a strong public interest for DCC to be able to maintain confidentiality and not release information from people participating in an employment investigation that they agreed would be confidential.

More broadly, Council believes, that as a matter of good HR practice, any person contributing to any employment investigation can freely participate and know their information can contribute to an investigation and remain confidential and used only for that purpose. Because of these factors it is decided the public interest still favours withholding this information in these circumstances.

It has been considered whether a redacted form of the information could be provided, or a summary is possible to address the public interest. That is not considered appropriate here either because to be in any way meaningful it will necessarily need to go beyond the Mayor's public statements and disclose information about the employment process or outcome that is confidential to the Chief Executive in her role.

It is also important to note that the Chief Executive has been consulted on the potential release of personal and confidential information about this process and requests that the personal information remain confidential to her. This is a strong consideration here.

This conclusion is supported by discussion in the [Office of the Ombudsman Public Interest Guideline 2019](#) where a similar case is set out in the practice guidelines on weighing the public interest in case notes called 'Case 321631 (2012)—Information about an employment investigation'<sup>1</sup>. This concerned a requester who sought a copy of an independent review into the raising of a personal grievance against Housing New Zealand's Chief Executive. The request was refused on privacy and confidentiality grounds (sections 9(2)(a) and 9(2)(ba) of the OIA), and the requester complained to the Ombudsman.

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<sup>1</sup> Page 46.

The Ombudsman found that the relevant withholding grounds applied, and the question was whether the public interest in disclosure outweighed the need to withhold the information to protect the privacy and confidentiality interests. The report identified there are strong privacy interests arising from the expectation of confidentiality during the course of employment. The Privacy Commissioner has noted on numerous occasions that 'information about an individual's performance in an employment context is highly personal and would generally be considered to be confidential'. The Ombudsman concluded that withholding was necessary to protect the privacy of the chief executive and sections 9(2)(a) and 9(2)(ba)(i) and (ii) of the OIA provided good reason to withhold the investigation report.

### **Costs of the KC report**

DCC is able to release the costs incurred by DCC for the investigation report by Maria Dew KC. DCC has been invoiced \$132,509.01 (including GST) for work on the investigation and producing the report.

### **Costs of Legal Fees**

DCC is able to release the costs incurred by DCC for legal fees. DCC has been invoiced \$122,069.67 (including GST) for legal advice.

### **Minute Extract**

The minute extract from the Council meeting appointing the Decision-Making Committee is:

- a) **Decides** to establish a Committee made up of the Mayor, Councillors Laufiso and Acklin.
- b) **Decides** that the quorum of the Committee is two, and that the Committee will be called the Decision-Making Committee.

### **Correspondence between Senior Staff Members and Councillors**

DCC has decided is unable to release correspondence between senior staff and Councillors in relation to this issue. This decision is made in reliance on section 17(f) LGOIMA.

This is because the volume of material would require substantial collation and research. There is a high volume of information held by DCC and this would require extensive review and collation and research to determine firstly its relevance, then which of that material is subject to legal professional privilege, which is relating to the privacy of an individual, of which a high proportion will inevitably be. To complete this exercise it is estimated to take weeks of relevant staff time. This will detract from normal duties to deal with other work including other normal LGOIMA requests. It has been considered that external dedicated resource would need to be brought in to work on that.

It has also been considered that fixing a charge would not be realistic and potentially a lengthy time extension would be necessary to achieve a complete and accurate exercise to provide decisions on the information within the scope of this request. There have been a number of requests seeking this sort of information so consulting with all requestors to try and determine if any modification to the requests would help to narrow them and enable this information to be made available is not practical, and would still require assessing the particular grounds for each piece of correspondence to ensure obligations of privacy are not interfered with.

Overall this is one of those circumstances where the collation and research required to produce decisions is likely to be lengthy, and likely to reveal most of the information is covered by a good reason to not release it, and what may be released at the end of such an exercise may amount to routine matters such as arranging logistics of meetings or the like which do not seem to address what the requestors are possibly most interested in seeing.

### **Rights to review the above decision**

I 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.

Kind regards



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