

From: [Patrick Power](#)
To: [Penny Bright](#)
Subject: Investigating a complaint about Auckland Council recordkeeping
Date: Friday, 11 March 2011 2:28:00 PM

Dear Penny,

I understand from our discussion on the phone that you requested access to information held by the Auckland Council, under LGOIMA - specifically records about contractors. The council has replied to you declining your request, stating that it would take too much time to research and collate the information. You feel that this indicates the council is not keeping proper records about contractors, and that this may be a breach of the Public Records Act, specifically section 17.

Archives New Zealand does take possible breaches of the Public Records Act seriously

In order for us to investigate your complaint we will need more information about what you requested and what the council's response was. Can you supply a copy of your request and the reply?

We will also need to write to the Council about your request, in order to clarify their understanding of the situation. Can you please confirm that you are happy for us to do this

Regards,

Patrick Power
Manager, Government Recordkeeping Programme
Archives New Zealand Te Rua Mahara o te Kawanatanga
The Department of Internal Affairs Te Tari Taiwhenua
Direct Dial: +64 4 894 6035
Mobile: +64 21 289 4869

www.dia.govt.nz
www.archives.govt.nz

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23 May 2011

Chief Archivist
Archives NZ



Dear Mr Golding,

I am making a formal complaint about an alleged breach of s. 61 (c) Public Records Act 2005

"(c) contravenes or fails to comply with any provision of this Act or any regulations made under it."

The failure to comply attaches to s. 17 (1) of the Public Records Act 2005:

"Every public office and local authority must create and maintain full and accurate records of its offices in accordance with normal prudent business practice, including the records of any matter which is contracted out to an independent contractor."

EVIDENCE TO SUPPORT THIS COMPLAINT:

- ① 10 March 2011 "OPEN LETTER / LGOIMA REQUEST TO CEO OF AUCKLAND COUNCIL.
- ② 26 April 2011 : Reply from Bruce Thomas (Public Information Manager) Auckland Council. Attached - copies of transfers for information to the 7 Auckland Council Controlled Organisations and Council Organisation.
- ③ 16 May 2011 LGOIMA reply from C.C.O. Regional Facilities Auckland.

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④

11 March 2011 :

Acknowledgment by Ministerial Secretary
Jess van Harlem (Office of Rodney Hide)
of my originating open letter / LGONIA
request of 11 March 2011.

Yours sincerely

Romy Bright

Media Spokesperson

Water Pressure Group

Judicially-recognised 'Public Watchdog'
on Metrowater, water and Auckland
regional governance matters.

'Anti corruption campaigner'

Ph (09) 846 9825

021 211 4 127

waterpressure@gmail.com

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Recordkeeping Advice Meeting Record



Te Rua Mahara o te Kāwanatanga

ARCHIVES
NEW ZEALAND

Date/Time	23 rd May 2011
Advisors (Archives NZ)	Rebecca Smart & Marion Sanson
Note taker	Rebecca Smart
File reference	A571609

Client information

Name(s)	Penny Bright
Complaint	Formal Complaint under Section 61 of PRA against
Email	waterpressure@gmail.com
Phone	

Issues raised by Complaint

On the morning of the 23rd May 2011, Penny Bright arrived at the Archives New Zealand, Mulgrave street office. She requested to meet with someone in order to lay a complaint under section 61 of the Public Records Act.

A meeting was held between Penny Bright, Marion Sanson and myself in the Rehutai Meeting room, at 9.45am til approx 10.30am.

Penny Bright started the meeting by stating "she would like to lay a formal complaint about an alleged breach of S.61 (c) of the Public Records Act 2005". At this point she also stated that her belief was that Auckland Council had failure to comply with S.17 (1) of the Act. To prove this claims she provided a copy of the Local Government Official Information Meetings Act letter that was sent to the Auckland Council CEO (attachment 1) on the 10th March 2011. In this letter she requested information in regards to a central Register of Contracts.

The next letter presented to us was in response to her request and was dated 26th April 2011 from Bruce Thomas Public Information Manager. She also gave us 6 letters relating to her LGOIMA request, which was a transfer of the request to other Council organisations. She also presented a response letter from Regional facilities Auckland in relation to this letter. A letter of notification has also been sent to Minister of Local Government, Rodney Hide and is included in her attachments.

After reading through the attachments, Marion asked Penny if she had contacted the Ombudsman and/or the Office of the Auditor-General in which is replied no and she would not be doing so.

When requested for the complaint in writing by Marion she was not able to provide it so at this point she wrote a handwritten letter, which I organised a received stamp to be placed on and signed to say that we have received a copy of the complaint and the provided evidence.

The meeting was then closed with a comment that we would be in touch once we had investigated her claim. Meeting ended.

KIWIBLOG 'General Debate' 24 May 2011: My post outlining complaint to Chief Archivist about Auckland Council's alleged failure to maintain full and accurate contracting records + responses.

General Debate 24 May 2011


No TweetBacks yet. (Be the first to Tweet this post)

Tags: **General Debate**

This entry was posted on Tuesday, May 24th, 2011 at 8:10 am and is filed under **Uncategorized**. You can follow any responses to this entry through the **RSS 2.0** feed. You can skip to the end and leave a response. Pinging is currently not allowed.

91 Responses to "General Debate 24 May 2011"

- 1.
2. *publicwatchdog* (635) Says:

May 24th, 2011 at 8:25 am Good moaning 'Kiwibloggers'! 

Yesterday, Monday 23 May 2011 I made an historic first complaint to Chief Archivist about Auckland Council's alleged failure to maintain full and accurate 'contracting' records.

I arrived at the Office of the National Archives with evidence which, in my considered opinion, proves that 'contracting' at Auckland Council is effectively 'out-of-control' and made a formal written complaint to the Chief Archivist, about an alleged breach, by Auckland Council, of s 61 (c) of the Public Records Act 2005, because the Auckland Council

'(c) contravenes or fails to comply with any provision of this Act or any regulations made under it.

(This alleged failure to comply attaches to s 17 (1) of the Public Records Act 2005:

'Every public office and local authority must create and maintain full and accurate records of its offices in accordance with normal prudent business practice, including the records of any matter which is contracted out to an independent contractor.'

(Evidence to support this complaint is provided in detail on my blog).

I will be formally advising the Governing Body of the Auckland Council of this development, at their meeting this morning Tuesday 24 May 2011 at the former Manukau Council Chamber at 10am, where myself and fellow 'Public Watchdog' community activist, Lisa Prager have speaking rights.

How can the elected representatives of the Auckland '\$upercity' Council support this 3.7% rate\$ increase – when there cannot have been proper 'line-by-line' accounting because full and accurate records of contracts are not being kept in a proper way?

In my considered opinion, if the private 'piggies-in-the-middle' consultants and contractors were removed from core Council services and returned to 'in-house' provision – there could be savings to residents and ratepayers of hundreds of millions of dollars.

Whose interests are being served here, and where exactly are our public monies going?

Penny Bright

<http://waterpressure.wordpress.com>

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From: [Cathy Holmes](#)
To: [Patrick Power](#); [Simon Caseley](#)
Cc: [John Roberts](#); [Rebecca Smart](#); [Marion Sanson](#)
Subject: RE: File Note - Complaint from Penny Bright against Auckland Council - Breach of PRA (A571609)
Date: Monday, 30 May 2011 9:51:14 AM

Hi Patrick
 Can you please let me see the formal letter before it is sent out.
 thanks
 Cathy

Cathy Holmes
 Communications Adviser
 Department of Internal Affairs Te Tari Taiwhenua
 Direct Dial: +64 4 894 6084
www.dia.govt.nz

From: Patrick Power
Sent: Friday, 27 May 2011 1:53 p.m.
To: Simon Caseley
Cc: John Roberts; Rebecca Smart; Marion Sanson; Cathy Holmes
Subject: RE: File Note - Complaint from Penny Bright against Auckland Council - Breach of PRA (A571609)

I've asked Simon to take the lead on the investigation of this complaint, following the process I've outlined below.

Marion, can you please liaise with him re the formal letter back to Penny Bright.

Patrick Power
 Manager, Government Recordkeeping Programme
 Archives New Zealand Te Rua Mahara o te Kawanatanga
 The Department of Internal Affairs Te Tari Taiwhenua
 Direct Dial: +64 4 894 6035
 Mobile: +64 21 289 4869

www.dia.govt.nz
www.archives.govt.nz

From: Marion Sanson
Sent: Tuesday, 24 May 2011 11:17 a.m.
To: Patrick Power
Cc: John Roberts; Rebecca Smart
Subject: RE: File Note - Complaint from Penny Bright against Auckland Council - Breach of PRA (A571609)

Hello Paddy,

Your suggested approach appears good to me. You may find the attached draft Investigations Policy useful. It includes a table that indicates a way of working through a complaint. It may be helpful to outline to Bright early on how ArNZ intends to investigate and what the expected timeframe for a final reply is.

My initial comments are:

The issue for ArNZ is what does s 17(1) of the Public Records Act require around local authority contract management?

Penny Bright has asked about "Registers of Contracts"; first of all whether such registers were kept

by the 8 pre-reorganisation Auckland councils, the CCOs of the pre-organisation councils, the Auckland Transition Agency, and the current Auckland Council, and the Auckland Council's CCOs.

Auckland Council (AC) responded, correctly, that there is no requirement to keep a central register of contracts. AC recognises, however, that a register is a good idea and is developing one. AC is also correct in noting that council controlled organisations (CCOs) are separate "local authorities" under the Public Records Act. In terms of the Public Records Act CCOs have an obligation to keep full and accurate records of their contracts.

I agree with Penny, that to comply with s 17(1) LAs and CCOs need to have a full and accurate records of their contracts, but that would not necessarily mean a register.

The Chief Archivist can, under s 29, inspect LA systems for maintaining records, which could be useful, but cannot direct the AC and its CCOs to report on the practices around the management of their contracts records. A first step may be for ArNZ to ask the AC and the CCOs to confirm that they have full & accurate records about their contracts.

Whether or not contract information is released is a separate question from the question whether the AC and the CCOs have such records. The proper place for Bright to complain about a refusal to release information requested under LGOIMA is the Office of the Ombudsmen

I'm happy to assist further with this investigation,

Regards

Marion Sanson
Legal and Policy Analyst
Archives Policy
The Department of Internal Affairs Te Tari Taiwhenua
x9346

From: Patrick Power

Sent: Tuesday, 24 May 2011 9:08 a.m

To: Rebecca Smart; Marion Sanson

Cc: John Roberts

Subject: RE: File Note - Complaint from Penny Bright against Auckland Council - Breach of PRA (A571609)

Thanks for stepping in to handle this Bex. It was much appreciated.

I'm thinking that it might be best if someone else deals with Penny and the formal correspondence, seeing as you are the account manager for the Auckland Council. It seems like there is a potential for a conflict of interest. What do you think?

Based on my experience with other complaints, and my recent discussions with State Records NSW, I think the next steps are:

1. Review of the material provided and initial analysis - is what is described actually a breach of the Act?
2. Formal letter responding to the complainant, making clear what we think the issues are and setting some limits around what we can investigate.
3. Formal contact with Auckland Council around the complaint, if necessary, seeking information.
4. Develop an preliminary view on the issues, and discuss this with the council.
5. Finalise the preliminary view, and write to Penny Bright about this. She may wish to comment or provide further information at this stage.
6. If we are considering upholding the complaint, I think we need to give the council a chance to comment and/or provide further information as well.
7. Form a final view and write to Penny Bright and the Council about it.
8. Follow up on any issues if necessary.

9. Close complaint.

Patrick Power
Manager, Government Recordkeeping Programme
Archives New Zealand Te Rua Mahara o te Kawanatanga
The Department of Internal Affairs Te Tari Taiwhenua
Direct Dial: +64 4 894 6035
Mobile: +64 21 289 4869

www.dia.govt.nz
www.archives.govt.nz

From: Rebecca Smart
Sent: Monday, 23 May 2011 4:49 p.m.
To: Marion Sanson
Cc: John Roberts; Patrick Power
Subject: File Note - Complaint from Penny Bright against Auckland Council - Breach of PRA (A571609)

Hi Marion,

Attached is a file note of our meeting this morning, can you please have a look and make sure I got everything. Not sure what we need to do next but I thought a meeting maybe to discuss a way forward.

Cheers
Bex

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Xx May 2011

Penny Bright

Media Spokesperson

waterpressure@gmail.com

Dear Penny Bright

Complaint about Recordkeeping by Auckland Council

1. Acknowledge receipt of complaint – what is the complaint about?

Thank you for your formal complaint about the reply you received from Auckland Council, which appears to indicate that Auckland Council's recordkeeping does not meet the requirements of section 17(1) of the Public Records Act.

2. Clarify complaint

I note that Auckland Council has transferred part of your inquiry to the CCOs, so it is possible you will receive more information. I note that Regional Facilities Auckland has indicated it does hold a register of contracts.

As AC said, there is no requirement to hold a central register of contracts. I note that AC recognises that having such a register is a good idea and is in the process of creating one. The requirement to create and maintain accurate records of AC's affairs and of every matter contracted out do not require a register, but I would expect that, if the need arose, AC could generate a list of contracts.

I suggest your complaint is that important information about Auckland Council's predecessor's and its own contracts, is not available without substantial collation and research. Do you agree that this is the real issue for me to explore in terms of recordkeeping?

3. What is outside the scope of the Chief Archivist's functions

Had AC said that it holds the information you requested but will withhold the information for good reasons in term of the Local Government Official Information and Meetings Act 1987 (LGOIMA) the complaint would clearly be outside my functions, and would be a matter for the Office of the Ombudsmen. As it is, I have no power to require the release of information.

4. What is within the scope of the Chief Archivist's functions

In relation to local authority records, the Chief Archivist has declared certain local authority records to be protected records. The management of protected records are subject to higher levels of scrutiny. Some contracts will be protected records, e.g. contracts for public utilities. Other contracts must be kept for 7 years as financial records.

Both AC and its CCOs are subject to the Public Records Act. In relation to section 17(1), the Chief archivist and Archives New Zealand are not solely responsible for prosecuting complaints, although Archives New Zealand would be a lead agency.

My favoured approach in cases such as this is to investigate by asking questions of the AC and the CCOs to ascertain their standard of recordkeeping. I agree, contracts are important records of both AC and the CCOs and AC ought to have been able to confirm information received from predecessors (Q 1), advise how many CCOs operated under the predecessor bodies (Q 2), whether or not each predecessor had created and maintained a central register of contracts (Q 3).

The ATA was not a local authority, but it was a public office subject to the Public Records Act, and its records were transferred to the AC, I would expect that A A would have held information about contracts it became a party to, and that this information would now be held by AC (Q 4).

5. Proposed action

Chief Archivist can investigate the recordkeeping system of AC and CCOs. Some of your questions are historic.

I propose to investigate whether AC and the CCOs have satisfactory systems in place for their records of their contracts.

Inference that inability to provide – indicates poor recordkeeping

Approach is to point out the value of a register, and of having good, readily available information about its contract

6. Timeframe

Recordkeeping Advice Meeting Record



Te Rua Mahara o te Kāwanatanga

ARCHIVES
NEW ZEALAND

7

Date/Time	7/6/2011
Advisors (Archives NZ)	Patrick Power
Note taker	Patrick Power
File reference	2011/1514

Client information

Name(s)	Penny Bright
Complaint	Formal Complaint under Section 61 of PRA
Email	waterpressure@gmail.com
Phone	

Penny rang me on my mobile on 7/6. I was at home on sick leave.

She wanted to find out about progress with her complaint. I said we were drafting a letter which would say what we understood the complaint to be and what we could investigate and steps from here. I noted that some aspects were probably in the Ombudsmen's jurisdiction. Also noted that CCOs not in scope. She said she had rung because she is in Wellington tomorrow.

I said we would probably be posting the letter this week.

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From: [Patrick Power](#)
To: [Penny Bright](#)
Subject: Letter acknowledging complaint
Date: Friday, 10 June 2011 4:01:00 PM

Dear Penny,

I said on the phone the other day that we would send a formal reply to you this week.

The letter has been prepared for the Chief Archivist's signature. Unfortunately he is in Auckland today, so the letter will not be sent until next week. I anticipate that we will also be writing to the Auckland Council.

I do apologise for the delay in preparing a formal response.

Regards,

Patrick Power
Manager, Government Recordkeeping Programme
Archives New Zealand Te Rua Mahara o te Kawanatanga
The Department of Internal Affairs Te Tari Taiwhenua
Direct Dial: +64 4 894 6035
Mobile: +64 21 289 4869

www.dia.govt.nz
www.archives.govt.nz

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National Office, PO Box 12 050, Wellington 6144, New Zealand
T 04 499 5595 F 04 495 6210 E enquiries@archives.govt.nz
www.archives.govt.nz

28 June 2011

Ms P Bright
Media Spokesperson
Water Pressure Group

Via email: waterpressure@gmail.com

Dear Ms Bright

Complaint under the Public Records Act 2005

Thank you for visiting Archives New Zealand's Wellington office on 23 May 2011 and your interest in the recordkeeping obligations of local government under the Public Records Act 2005.

In your meeting with Archives New Zealand staff, you registered a complaint about the recordkeeping of the Auckland Council and Council Controlled Organisations.

Your written complaint alleges that those agencies have breached s17(1) of the Public Records Act 2005. Specifically, you allege that those agencies have failed to create and maintain registers of contracts and it is reasonable to expect that they should create and maintain such records.

The obligations to create and maintain adequate records are set out in more detail in the Create and Maintain Recordkeeping Standard. This Standard is mandatory for all local authorities.

The Auckland Council and the Council Controlled Organisations must all comply with the Public Records Act 2005. However, they are separately accountable for their own recordkeeping. This means that the Auckland Council is not responsible for the recordkeeping of the Council Controlled Organisations and the Council Controlled Organisations are responsible for creating and maintaining their own records of contracts.

I must advise you that I have no jurisdiction over requests for information made under the Local Government and Official Information and Meetings Act 1987. Therefore, I cannot investigate decisions by the Auckland Council or the Council Controlled Organisations not to release information to you.

I note that the Auckland Council has transferred some of your requests for information to the Council Controlled Organisations because that information is held by them. It would be helpful to me if you would inform me of the outcome of this request.

I would like to assure you that I take all suggestions of non-compliance with the Public Records Act very seriously. I will be seeking further information from the Auckland Council regarding the matters you raise and will determine, what, if any, action I consider appropriate. I will keep you fully informed as I deal with the issues.

In closing, please accept my apologies for the delay in formally acknowledging your complaint.

Yours sincerely

Greg Goulding
Chief Archivist and General Manager
Archives New Zealand
Department of Internal Affairs

From: [Raewyn Vogel](#)
To: [Penny Bright](#)
Subject: Complaint under the Public Records Act 2005
Date: Tuesday, 28 June 2011 9:38:47 AM
Attachments: [img-628091029.pdf](#)

Dear Ms Bright

Please find attached a reply from the Chief Archivist of Archives New Zealand to your complaint made under the Public Records Act 2005.

Kind regards

Raewyn Vogel
Personal Assistant to Greg Goulding, Chief Archivist & General Manager
Archives New Zealand Te Rua Mahara o te Kawanatanga
The Department of Internal Affairs Te Tari Taiwhenua
10 Mulgrave St
PO Box 12 050
Wellington 6144 New Zealand
Direct Dial: +64 4 496 1381 Extn: 9381
F + 64 4 495 6210

www.dia.govt.nz
www.archives.govt.nz

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National Office, PO Box 12 050, Wellington 6144, New Zealand
T 04 499 5595 F 04 495 6210 E enquiries@archives.govt.nz
www.archives.govt.nz



Te Rua Mahara o te Kāwanatanga

ARCHIVES
NEW ZEALAND

28 June 2011

Ms P Bright
Media Spokesperson
Water Pressure Group

Via email: waterpressure@gmail.com

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In closing, please accept my apologies for the delay in formally acknowledging your complaint.

Yours sincerely



Greg Goulding
Chief Archivist and General Manager
Archives New Zealand
Department of Internal Affairs

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The Chief Executive
Auckland Council
Private Bag 92300
Auckland 1142

Dear [Doug Mackay]

Re: Alleged breach of the Public Records Act 2005

I am notifying you that a complaint has been received about the recordkeeping of the Auckland Council.

Section 17(1) of the Public Records Act 2005 requires that agencies covered by the Act, including the Auckland Council, create and maintain full and accurate records, in accordance with normal, prudent business practice.

The complaint instances that the Council should create and maintain registers of contracts, in accordance with s17(1), but has failed to do so.

The same complaint is also made against several Council-controlled Organisations. Those organisations are separately accountable for their own recordkeeping under the Act. Therefore, I am dealing with this complaint. At this time, I do not intend notifying them about the same matter because they are. At this stage, I am I may be approaching them, pending the outcome of the complaints request for information under the

The complaint arose from an official information request under LGOIMA for registers of contracts.

Can you please advise me of a responsible officer within the Council, who will manage the investigation of this matter on behalf of the Council.

They advise that you only need one certificate of compliance, because the main check is on the procedure you followed when digitising, not the business process itself. What you can do is send a copy of the checklist of mandatory requirements to the departments who are undertaking scanning, ask that they work through them and tick them off. You can then bundle the completed checklists together and send them to the CE with the certificate of compliance for signoff, so they can see that the requirements have been met.

It seems appropriate for the CE signoff to be at a programme level rather than a solution level. So only one certificate of compliance would be required. overarching Certificate of Compliance that covers all instances of digitisation solutions

if you wanted to do this for another business procedure, the certification would have to be completed again

From our perspective, the key thing is that the Chief Executive is able to have an appropriate level of assurance that the requirements in the General Disposal Authority and Digitisation Standard will be met.

From our discussions, I understand that there is in effect a programme of digitisation at MSD. That is, there is a standard approach to designing, approving, and monitoring digitisation solutions, and clear internal governance for this work.

In this situation, it seems appropriate for the CE signoff to be at a programme level rather than a solution level. So only one certificate of compliance would be required.

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From: [Jacqueline Davidson](#)
To: [Shanann Carr](#)
Subject: RE: Re-activating investigation under the Public Records Act
Date: Monday, 14 July 2014 11:55:39 AM
Attachments: [image001.png](#)

Hi Shanann,

Yes, I can confirm that I received the mail. A bit swamped at the moment, but should, hopefully, have something to you by the end of the week.

Rgds

Jacqui

Jacqueline Davidson | Records and Archives Manager
Information Services | Enterprise Information Delivery | Records and Archives
Mobile 021 596 682
Auckland Council, Level 5, 135 Albert St, Auckland 1142

Visit our website: www.aucklandcouncil.govt.nz

From: Shanann Carr [mailto:xxxxxxx.xxxx@xxx.xxxx.xx]
Sent: Monday, 14 July 2014 11:52 a.m.
To: Jacqueline Davidson
Subject: RE: Re-activating investigation under the Public Records Act

Hi there Jacqui,

I'm just seeking confirmation that you received the below, and an indication of when I may get a response from you?

Kind regards,

Shanann Carr

Shanann Carr | Senior Archives Advisor | Recordkeeping Capability
Archives New Zealand Te Rua Mahara o te Kawanatanga
Direct Dial: +64 4 894 6034 | Extn: 9344
10 Mulgrave Street | PO Box 12-050, Wellington 6011, New Zealand
www.archives.govt.nz | www.thecommunityarchive.org.nz

From: Shanann Carr
Sent: Friday, 27 June 2014 3:35 p.m.
To: 'Jacqueline Davidson'
Subject: RE: Re-activating investigation under the Public Records Act

Hi Jacqui,

As discussed in our recent telephone conversation I have attached the original correspondence between Penny Bright and Auckland Council for your information.

The complaint we received in May 2011 suggested that Auckland Council was not complying

with section 17 of the Public Records Act:

17 Requirement to create and maintain records

(1) Every public office and local authority must create and maintain full and accurate records of its affairs, in accordance with normal, prudent business practice, including the records of any matter that is contracted out to an independent contractor.

(2) Every public office must maintain in an accessible form, so as to be able to be used for subsequent reference, all public records that are in its control, until their disposal is authorised by or under this Act or required by or under another Act.

(3) Every local authority must maintain in an accessible form, so as to be able to be used for subsequent reference, all protected records that are in its control, until their disposal is authorised by or under this Act.

Ms Bright believed that Auckland Council, including its predecessors, were not keeping appropriate records regarding the management of its contractors, in this case registers, and was therefore failing to comply with the Act.

We did begin an investigation of the complaint, but it appears this investigation was not completed or documented. At this stage I am hoping you can recall the complaint made by Ms Bright, and if so could you please clarify your understanding of the situation in writing. Could you also please provide a summary of actions regarding Auckland Councils management of contractor records since the incident in question, i.e. what improvements have been made to the system for keeping such records between then and now.

I am looking to gain further context so I can determine whether Archives New Zealand will need to investigate.

If you need anything clarified further please let me know.

Kind regards,

Shanann Carr

Shanann Carr | Senior Archives Advisor | Recordkeeping Capability

Archives New Zealand Te Rua Mahara o te Kawanatanga

Direct Dial: +64 4 894 6034 | Extn: 9344

10 Mulgrave Street | PO Box 12-050, Wellington 6011, New Zealand

www.archives.govt.nz | www.thecommunityarchive.org.nz

From: Jacqueline Davidson [<mailto:xxxxxxxxx.xxxxxxxx@xxxxxxxxxxxxxxxxxxxx.xxxx>]

Sent: Tuesday, 10 June 2014 1:19 p.m.

To: Shanann Carr

Subject: RE: Re-activating investigation under the Public Records Act

Hi Shannan,

If you want to give me a call to discuss this, I'm available between 4-4.30 this afternoon or any time after 12 tomorrow.

Regards

Jacqui

Jacqueline Davidson | Records and Archives Manager
Information Services | Enterprise Information Delivery | Records and Archives
Mobile 021 596 682
Auckland Council, Level 5, 135 Albert St, Auckland 1142

Visit our website: www.aucklandcouncil.govt.nz

From: Shanann Carr [<mailto:xxxxxxx.xxxx@xxx.xxx.xx>]
Sent: Monday, 9 June 2014 9:49 a.m.
To: Jacqueline Davidson
Subject: Re-activating investigation under the Public Records Act

Dear Jacqui,

I am Shanann Carr, a Senior Advisor in the Recordkeeping Capability team at Archives New Zealand.

I have been asked to follow up a query from a member of the public, about recordkeeping practices at Auckland Council. The query is regarding a potential breach of sections 17(1) and 61(c) of the Public Records Act 2005, the complainant was not provided access to the records she requested and it was suggested that this was a breach of the act.

This complaint was made to Archives New Zealand in approximately May 2011; however we have been asked to re-activate the investigation as it is not obvious to us that the Archives New Zealand staff member working on the complaint at the time completed the investigation. The staff member is no longer with Archives New Zealand and we are unable to follow up with them about this. For the purposes of ensuring an investigation was commenced, or completed, I am wondering if Auckland Council may have record of the investigation taking place in approximately March-May 2011 with details of an outcome. If not, I am wondering if we can have a chat about the case so we can finally have resolution?

Details of the investigation are as follows:

Date Archives New Zealand Received complaint: 23 May 2011

Complainant: Penny Bright

Complaint: Ms Bright requested information from Auckland Council, specifically evidence that prior to amalgamation under the Auckland Council each of the following councils [*listed in original letter*] had created and maintained a 'central register of contracts' for any matter which was contracted out to an independent contractor", she asked to see proof of this, among other things, including information regarding CCOs. Date information was requested from Auckland Council: 10 March 2011.

Date Ms Bright was responded to by Auckland Council: 26 April 2011.

Responded to by: Bruce Thomas, Public Information Manager, Democracy Services

At this stage I am wondering if you may recall or have record of this complaint and/or any investigation of the matter by Archives New Zealand.

I am happy to discuss this over the phone if that is easiest. When would be a good time

to give you a call?

Many thanks,

Shanann Carr

Shanann Carr | Senior Advisor | Recordkeeping Capability
Archives New Zealand Te Rua Mahara o te Kawanatanga
Direct Dial: +64 4 894 6034 | Extn: 9344
10 Mulgrave Street | PO Box 12-050, Wellington 6011, New Zealand
www.archives.govt.nz | www.thecommunityarchive.org.nz



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From: [Jacqueline Davidson](#)
To: [Shanann Carr](#)
Subject: Re-activating investigation under the Public Records Act
Date: Friday, 18 July 2014 2:22:30 PM
Attachments: [RM Contractor Recordkeeping Guidelines.doc](#)

Hi Shanann,

With reference to your investigation into Archives New Zealand response to the complaint laid by Penny Bright where she believed that the Auckland Council, including its predecessors, were not keeping appropriate records regarding the management of its contractor registers, I would make the following comments:

- I was not involved in the response to the initial complaint, but have reviewed the material you have provided, and concur with the response of our letter dated 26 April 2011 the main points being:
 - Auckland Council is under no obligation to create and maintain a register of contracts (as distinct from our obligation to create and maintain our records s17 PRA – inferred)
 - The Council is currently in the process of developing such a register
 - Once established, the information contained in the register would be withheld for commercial reasons as detailed in section 7(2)(h) of the Local Government Official Information and Meetings Act
- At the time of the original request from Ms Bright, 10 March 2011, the Auckland Council had been in existence as an amalgamated entity for a little over 4 months. During the amalgamation process, under the auspices of the ATA, considerable effort was expended to discover and manage information relating to contractors from all the legacy councils. The nature of contracts (length of term) means that this can be quite fluid, hence the time taken to establish a definitive register during this settling in period.
- Since this time, Council has established new procurement processes which manage our contracts through a business system (SAP) integrated with the respective contract document(s) stored in our corporate records repository, TRIM. The records in TRIM are managed by my team, and have appropriate security and rights assigned to them, as well as retention and disposition actions taken from our approved retention schedule.
- The Records and Archives team made extensive submissions on the new procurement process and have been involved in the roll-out and training to the organisation.
- In terms of managing the records created by contractors, we have developed the attached guidelines for contractor records (heavily based on the guidance of Archives NZ).
- Should this request be made again, I would recommend that any contractor information be withheld on the grounds that to release it would unreasonably prejudice the commercial position of the person who supplied or is subject to the contract information. Naturally this would be on a case-by-case basis.

I hope that this provides you with enough information, if not, or you would like further clarification, please do not hesitate to contact me.

These comments are my opinion and not necessarily the view of the Auckland Council.

Rgds

Jacqui

Jacqueline Davidson | Records and Archives Manager
Information Services | Enterprise Information Delivery | Records and Archives
Mobile 021 596 682
Auckland Council, Level 5, 135 Albert St, Auckland 1142

Visit our website: www.aucklandcouncil.govt.nz



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RECORDS MANAGEMENT GUIDELINE: RECORDKEEPING FOR BUSINESS ACTIVITIES CARRIED OUT BY CONTRACTORS

Date of Effect: 7 November 2012

Date of Last Revision: N/A

Contact: Team Leader Records Management

PURPOSE

The purpose of this document is to provide a guideline for creating and maintaining the records of Auckland Council (the council) business activities carried out by contractors.

The benefits of formalising recordkeeping requirements of contractors include:

- retention of corporate knowledge
- protection of the organisation's assets
- legal obligations can be met
- mitigation of service delivery disputes
- intellectual property protection.

GLOSSARY

Contractor: a person, corporation or service provider who is contracted by the local authority to supply or arrange the supply of goods or the performance of services to the local authority.

Contractors can be engaged to perform business activities on the local authority's behalf; either in their entirety, or with input from the local authority.

Work being undertaken for the local authority by contractors can be short-term or on-going, and may be conducted within the organisation or externally. For example:

- Small-scale business activities, e.g. fixed-term project manager to run an internal project, or engaging consultant to develop a policy paper
- Medium to large scale business activities, e.g. engaging a contract manager to run a major utilities project
- Temporary internal role
- Outsourcing an entire business function, e.g. contracting out the provision of a service to customers.

Disposal: the transfer of control of a record; or the sale, alteration, destruction, or discharge of a record (PRA, s4)

Local Authority: a regional council or territorial authority. This includes:

- A council-controlled organisation
- A council-controlled trading organisation and
- A local government organisation (PRA, s4)

Local Authority Record: A record or class of records in any form, in whole or in part, created or received...by a local authority in the conduct of its affairs. (PRA, s4)

Protected Record: A local authority record declared by the Chief Archivist to be a protected record by notice in the Gazette. A local authority must provide for the adequate protection and preservation of its protected records. Protected records must not be disposed of without the authorisation of the Chief Archivist. A list of local authority protected records is known as the "Local Government Schedule". (PRA, s40)

Record: Information, whether in its original form or otherwise, including (without limitation) a document, a signature, a seal, text, images, sound, speech, or data compiled, recorded, or stored, as the case may be, —

- in written form on any material; or
- on film, negative, tape, or other medium so as to be capable of being reproduced; or
- by means of any recording device or process, computer, or other electronic device or process

REGULATORY FRAMEWORK AND OBLIGATIONS

Public Records Act 2005

Section 17: Requirement to create and maintain records

(1) Every public office and local authority must create and maintain full and accurate records of its affairs, in accordance with normal, prudent business practice, including the records of any matter that is contracted out to an independent contractor.

(2) Every public office must maintain in an accessible form, so as to be able to be used for subsequent reference, all public records that are in its control, until their disposal is authorised by or under this Act or required by or under another Act.

(3) Every local authority must maintain in an accessible form, so as to be able to be used for subsequent reference, all protected records that are in its control, until their disposal is authorised by or under this Act.

Protected records, Section 17(3), are described in the Local Government Schedule.

Create and Maintain Recordkeeping Standard

2.2.2 Responsibilities for Records of Functions Carried out under Contract

The Public Records Act 2005 requires local authorities to create and maintain full and accurate records of their affairs, including records of matters contracted out to independent contractors. ***The legal obligation to ensure that records of local government functions are created and maintained therefore rests always with the local government entity, not the independent contractor.*** Depending on the nature of the work being contracted out, this will require either:

- the contractor creating and temporarily maintaining the records regarding the function on behalf of the local authority, or
- the contractor regularly providing the local authority with sufficient information about the function to enable the creation and maintenance of full and accurate records, or
- a combination of the two.

Contracts or agreements with contractors should contain provisions to ensure that such records are created and maintained according to the requirements of the standard.

Additional legislation

Other acts support the need for a good standard of recordkeeping by local authorities, including:

- Official Information Act 1982
- Local Government Official Information and Meetings Act 1987
- Public Finance Act 1989
- Health and Safety in Employment Act 1992
- Financial Reporting Act 1993
- Privacy Act 1993
- Copyright Act 1994
- Tax Administration Act 1994

- Electronic Transactions Act 2002
- Evidence Act 2006
- Limitations Act 2010.

There may also be recordkeeping requirements in sector-specific legislation and industry standards.

GENERAL CONSIDERATIONS

The Public Records Act 2005 requires that the council must maintain records of its relationships with contractors, and the activities the contractors undertake on council's behalf.

Recordkeeping activity should be informed by the level of risk associated with the business activity. Where the accountability level is high, the council requires contractors to create records which will provide it with detailed evidence of the work undertaken.

It is the responsibility of the council to work with contractors to agree and clearly define expectations for those records the contractors create or receive during the term of their engagement.

The level of recordkeeping support contractors might need depends on factors such as whether they are working internally or externally. For example, external contractors may not require training on the organisation's corporate recordkeeping systems.

RECORDKEEPING CONSIDERATIONS FOR INCORPORATION INTO CONTRACTS WITH CONTRACTORS

1. Make sure recordkeeping requirements and responsibilities are clearly understood by all parties

Recordkeeping responsibilities should be communicated to contractors, whether they are working internally or externally.

- agree with the contractor the records expected to be created, captured and temporarily maintained during the performance of the activity
- if a contractor is given custody of, or access to council's records to assist them in their work, including copies, set clear guidelines on how long they can keep them, and who they can share them with. Check that all records are returned by the agreed time.
- specify the relevant policies and guidance material that are to be used by the contractor when undertaking a business activity on council's behalf, e.g. internal recordkeeping policies and other applicable guidelines
- agree on a process to share and hand over electronic and physical records throughout the contractor's engagement with the council, or at the conclusion of the contract.

2. Prevent unauthorised disposal of records

Disposal and control of local authority protected records rest with the council, specifically the Records and Archives team, unless otherwise agreed

3. Maintain oversight and control of records

- Check the contractor is meeting the council's recordkeeping and accountability requirements through a monitoring process, e.g. reporting, audit or inspection.
- Define and document the ownership of records and the information they contain; this includes records created by the contractor while they are working with the council, and records transferred by council to the contractor.

4. Records created by, or provided to contractors must remain accessible

Under section 17(2) and 17(3) of the Public Records Act 2005, local authority protected records must remain accessible to the council and the public for reference, e.g. through a Local Government Information and Meetings Act 1987 (LGOIMA) request.

- ensure records are routinely captured into council's recordkeeping framework
- recordkeeping metadata for records must be created and managed

- come to an early agreement with the contractor over the format of physical and electronic records to ensure they are accessible during the term of engagement and after transfer from the contractor to the council
- consider getting contractors a login to council's systems to ease the administrative burden, or set clear rules and expectations on what, when and how records are made available for transfer or migration to the council's system(s)
- classify and manage physical records in line with council's classification scheme
- enforce council's policies on the accessibility of sensitive information.

5. Ensure records are appropriately stored

- Arrange appropriate storage of all records involved in the contracted-out activity in line with council's storage guidelines and make sure the contractor is aware of these requirements.
- Come to an agreement over the storage of electronic records, as they are vulnerable to accidental disposal and damage.

WHAT RECORDS SHOULD BE CREATED AND KEPT?

Contractors perform business activities on behalf of the council either in their entirety, or with input from the council. The following records should be created:

- **The contracting relationship**

The council is responsible for creating and maintaining records of relationships with contractors. This may include:

- the tender specifications produced, and records of their distribution to potential bidders
- the tender and evaluation process, including reasons for the selection of the successful bidder
- contracts, including any variations on contracts
- invoices
- correspondence with the contractor and
- the results of any monitoring or evaluation of the contractors' work.

- **The business activity**

The council may require contractors to create and provide the records of contracted out business activities. The council **does not** have to do this itself.

Creating the record could take the form of:

- regular status reports from the contractor on the activity, or
- the contractor providing the records they have created during the term of their engagement at the end of the contract, or when requested by council
- or both

Full and accurate records must be made of council's affairs that have been contracted out, in keeping with normal, prudent business practice. This involves creating records which:

- document the carrying out of council's business objectives, core business functions, services and deliverables
- provide evidence of compliance with current regulatory and legislative standards and/or requirements
- document the value of the resources of the council and how risks to the business are managed
- support the long-term viability of the council.

REFERENCES

Archives New Zealand. (2009). *G17: Recordkeeping for Business Activities Carried out by Contractors*
<http://archives.govt.nz/advice/continuum-resource-kit/continuum-publications-html/g17-recordkeeping-business-activities-carr>

State Records of New South Wales. *Guideline 16 Accountable outsourcing -Recordkeeping considerations of outsourcing NSW Government business.*<http://www.records.nsw.gov.au/recordkeeping/government-recordkeeping-manual/guidance/guidelines/guideline-16>

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APPENDIX A: CONTRACT INCLUSIONS CHECKLIST

	Does the outsourcing contract include:	
1.	A listing of the recordkeeping requirements for the business being contracted out?	Yes/No
2.	A listing of the records that are to be returned to the council at the completion of the contract?	Yes/No
3.	A specification of the format/s that the records are to be returned to the council in at the completion of the contract?	Yes/No
4.	A statement regarding the council's rights of access to the records of the outsourced business access for the duration of the contract?	Yes/No
5.	A requirement that basic control information is kept about the records of the outsourced business to facilitate access and retrieval?	Yes/No
6.	A requirement for the contractor to abide by the council's privacy management plan or equivalent in respect of the information it keeps for the purpose of the contract?	Yes/No
7.	A requirement for the contractor to cooperate fully with the council in the event of an application under a LGOIMA request relating to records of the outsourced business?	Yes/No
8.	Authorisation by the council for the contractor to carry out specified disposal processes for specified records?	Yes/No
9.	An undertaking that specified records and the control information required to access them will be returned to the council at the completion of the contract?	Yes/No
10.	Dispute resolution procedures, and penalties where appropriate, for breach of the contract, such as a failure to return records to the council at the completion of the contract?	Yes/No
11.	Requirements for the contractor to store and handle records of the outsourced business in accordance with council's requirements?	Yes/No
12.	Details of a mechanism by which the council can measure the contractor's compliance with the records requirements of the contract?	Yes/No

APPENDIX B: EXAMPLES OF RECORDS CLAUSES FOR CONTRACTS

Records of (the outsourced business)

(Service provider) must create and keep records that fully document the operation and delivery of the service, including but not limited to:

- (specific recordkeeping requirements listed here).

This includes records generated and kept using electronic technologies, such as e-mail.

Records format

(Service provider) must ensure that records of (the outsourced business), if created and maintained in electronic format, are kept in a standard format that will be easily migratable to the Auckland Council's systems. In this case, the acceptable formats are:

- (specific electronic / other formats listed here)

Access to records

The Auckland Council retains the right to access any records of (service provider) relevant to the delivery of (the outsourced business), for the purposes of monitoring compliance with this contract.

(Service provider) must ensure that:

- data cannot be used for applications not specified in the contract (for example, to data match with databases owned by other clients of the contractor).
- personal information is to only be used for the purpose for which it was gathered, in accordance with the *Privacy Act 1993*, and
- files and other council records are not to be shown to a third party without the written agreement of (the responsible council role).

(Service provider) must ensure that records are documented in manual or electronic control systems with basic identifying information, including (but not limited to) a unique identifier and location details.

Records storage and handling

Hard-copy records leant to and created by (service provider) must be stored in a secure environment so as to protect and ensure the physical and intellectual integrity of the records

Storage areas for magnetic media are protected from magnetic fields.

Records of (the outsourced business) that are in electronic format are backed up regularly, and copies are kept off-site.

Reporting

A report containing copies of records of the (outsourced business activity) is to be forwarded to (council's contact person) every (number) months, starting (number) months after the commencement of the contract

Authorised disposal of records

(Service provider) is required to retain records of (outsourced business activity) in its office for (number) years, and then destroy the records in a secure manner.

(Service provider) is not permitted to destroy any records of (the outsourced business) corruptly or fraudulently, for the purpose of concealing evidence of wrongdoing, or for any other improper purpose.

(Service provider) is not permitted to transfer records of (the outsourced business) to a third party for any purpose unless authorised to do so by the Auckland Council.

Return of records on completion of contract

The following records of (the outsourced business) are to be returned to (the Auckland Council at the completion of the contract:

- records of (...) activity
- records of (...) activity, and
- any control records used to manage the above.

All records (of the outsourced business) created in the performance of this contract to be returned to (council's contact person) in (an accessible) format. Nominated formats for electronic records are to be:

- (format / application X), or
- (format / application Y).

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From: [Raewyn Vogel](#)
To: [Patrick Power](#)
Subject: Phone Call/complaint - Penny Bright
Date: Thursday, 21 August 2014 3:22:07 PM
Importance: High

Hi Paddy

Just following up on our conversation earlier.

Please ring Penny Bright on 09 846 9825, or Mobile: 021 211 4127 urgently regarding her complaint about the Auckland City Council. She wants to know what we are doing regarding the investigation to hold the Auckland Council accountable under the Public Records Act.

Her email address is: [@x](#)

(She indicated that she was currently having problems with her computer so please ring her).

Penny rang at 14:54 today (21 August)

Thanks

Raewyn

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From: [Patrick Power](#)
To: [Penny Bright](#)
Subject: Progress on your complaint
Date: Thursday, 21 August 2014 5:45:00 PM
Attachments: [image002.png](#)

Dear Penny,

As discussed on the phone, a Senior Advisor in my team is progressing the investigation of your complaint. We have received information from Auckland Council about the matter and are considering that information to determine whether we believe there was a breach of the Public Records Act 2005. We will write to you soon.

Regards,

Patrick Power | Manager Recordkeeping Capability | Public Sector Digital Continuity Manager
Archives New Zealand Te Rua Mahara o te Kawanatanga
Direct Dial: +64 4 894 6035 | Extn: 9335 | Fax: +64 4 495 6210 | Mobile: +64 21 685210
10 Mulgrave Street | PO Box 12-050, Wellington 6011, New Zealand
www.archives.govt.nz | thecomunityarchive.org.nz



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From: [Shanann Carr](#)
To: "Bruce Thomas"
Cc: "Jacqueline Davidson"
Subject: RE: Re-activating investigation under the Public Records Act
Date: Thursday, 18 September 2014 3:27:00 PM
Attachments: [image001.jpg](#)

Hi Bruce,

Since I haven't heard from you, perhaps it is best that I give you a call.

What is your number? I could give you a call tomorrow?

Regards,

Shanann Carr

Shanann Carr | Senior Archives Advisor | Recordkeeping Capability
Archives New Zealand Te Rua Mahara o te Kawanatanga
 Direct Dial: +64 4 894 6034 | Extn: 9344

From: Jacqueline Davidson [mailto:xxxxxxxxx.xxxxxxxx@xxxxxxxxxxxxxxxxxxxx.xx]
Sent: Tuesday, 9 September 2014 2:54 p.m.
To: Bruce Thomas
Cc: Shanann Carr
Subject: FW: Re-activating investigation under the Public Records Act

Hi Bruce,

As you couldn't make it to our meeting last Thursday to discuss the below, could you please give Shanann a call so that she can get clarity around the remaining point, in response to Penny Bright's complaint.

Thanks

Jacqui

Jacqueline Davidson | Records and Archives Manager
 Information Services | Enterprise Information Delivery | Records and Archives
 Mobile 021 596 682
 Auckland Council Level 5, 135 Albert St, Auckland 1142

Visit our website: www.aucklandcouncil.govt.nz

From: Shanann Carr [mailto:xxxxxxx.xxxx@xxx.xxxx.xx]
Sent: Thursday, 28 August 2014 11:17 a.m.
To: Jacqueline Davidson
Subject: RE: Re-activating investigation under the Public Records Act

Hi Jacqui,

I'm just putting together a response for Ms Bright.

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I'm trying to determine if Auckland Council did in fact breach section 17(1) of the Public Records Act, even if for a brief period. A small piece of the correspondence needs clarifying.

In reference to Bruce Thomas' response to Ms Brights request for information. Penny asked for the following:

"8) Please provide the information which confirms that in accordance with normal prudent business practice, Auckland Council has now 'amalgamated', created and maintains full and accurate records of any matter which has been contracted out to an independent contractor..."

Bruce responded:

"...this information does not yet exist and your request is therefore refused under section 17(e) of the act."

Penny is not just referring to a 'register' here, but general 'information'. I think this might be where the sticking point is.

Could you please confirm on behalf of the Council that this is correct? That "information which confirms that in accordance with normal prudent business practice, Auckland Council has now 'amalgamated', created and maintains full and accurate records of any matter which has been contracted out to an independent contractor..." had not been created at the time of Ms Bright's request of 10 March 2011?

This is what I need to clarify before we can move forward with this.

Happy to discuss this over the phone. Let me know a good time to call.

Shanann

Shanann Carr | Senior Archives Advisor | Recordkeeping Capability
Archives New Zealand Te Rua Mahara o te Kawanatanga
Direct Dial: +64 4 894 6034 | Extn: 9344

From: Jacqueline Davidson [<mailto:xxxxxxxxx.xxxxxxxxx@xxxxxxxxxxxxxxxxxxxx.xxxx.x>]
Sent: Friday, 18 July 2014 2:22 p.m.
To: Shanann Carr
Subject: Re-activating investigation under the Public Records Act

Hi Shanann,

With reference to your investigation into Archives New Zealand response to the complaint laid by Penny Bright where she believed that the Auckland Council, including its predecessors, were not keeping appropriate records regarding the management of its contractor registers, I would make the following comments:

- I was not involved in the response to the initial complaint, but have reviewed the material you have provided, and concur with the response of our letter dated 26 April 2011 the main points being:
 - Auckland Council is under no obligation to create and maintain a register of contracts (as distinct from our obligation to create and maintain our records s17 PRA – inferred)
 -

The Council is currently in the process of developing such a register

- Once established, the information contained in the register would be withheld for commercial reasons as detailed in section 7(2)(h) of the Local Government Official Information and Meetings Act
- At the time of the original request from Ms Bright, 10 March 2011, the Auckland Council had been in existence as an amalgamated entity for a little over 4 months. During the amalgamation process, under the auspices of the ATA, considerable effort was expended to discover and manage information relating to contractors from all the legacy councils. The nature of contracts (length of term) means that this can be quite fluid, hence the time taken to establish a definitive register during this settling in period.
- Since this time, Council has established new procurement processes which manage our contracts through a business system (SAP) integrated with the respective contract document(s) stored in our corporate records repository, TRIM. The records in TRIM are managed by my team, and have appropriate security and rights assigned to them, as well as retention and disposition actions taken from our approved retention schedule.
- The Records and Archives team made extensive submissions on the new procurement process and have been involved in the roll-out and training to the organisation.
- In terms of managing the records created by contractors, we have developed the attached guidelines for contractor records (heavily based on the guidance of Archives NZ).
- Should this request be made again, I would recommend that any contractor information be withheld on the grounds that to release it would unreasonably prejudice the commercial position of the person who supplied or is subject to the contract information. Naturally this would be on a case-by-case basis.

I hope that this provides you with enough information, if not, or you would like further clarification, please do not hesitate to contact me.

These comments are my opinion and not necessarily the view of the Auckland Council.

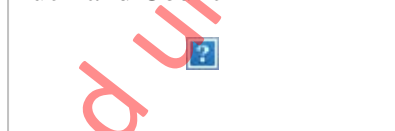
Rgds

Jacqui

Jacqueline Davidson | Records and Archives Manager
Information Services | Enterprise Information Delivery | Records and Archives
Mobile 021 596 682
Auckland Council, Level 5, 135 Albert St, Auckland 1142

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25 September 2014

Shannan Carr,
Senior Archives Advisor,
Archives New Zealand.

Dear Ms Carr,

Public Records Act.

Further to Ms Davidson's correspondence of 18 July 2014, as the then Public Information Manager, I was original involved in Ms Bright's Local Government Official Information and Meetings Act 1987 (LGOIMA) request. I concur with Ms Davidson's summary and re-iterate the following points.

- Auckland Council is under no obligation to create and maintain a register of contracts.
- At the time of the original LGOIMA request the records and contracts carried over from the legacy councils were in the process of being standardised, centralised and amalgamated. Given the enormity of this process, requests of the nature of Ms Bright's requests were refused under the Act as the information (i.e. the register) did not exist. The actual contracts, requests for service, purchase orders did exist, but any request for all of these documents were refused on the grounds of substantial collation. Requests for specific contracts were processed in accordance with the provisions of LGOIMA.
- The present situation is that a record of or link to all contracts are held in the council financial system. While noting point one above, Council does now have a register of all contracts, as it can produce a list of vendors, and has indeed produced this for LGOIMA requests from other parties.

I trust this addresses the matter.

Yours faithfully,



Bruce Thomas

From: [Shanann Carr](#)
To: ["Bruce Thomas"](#)
Cc: ["Jacqueline Davidson"](#)
Subject: RE: Message from KMBT_C353
Date: Thursday, 9 October 2014 10:18:00 AM
Attachments: [RE Re-activating investigation under the Public Records Act.msg](#)
[Waterpressure Group - Penny Bright re Alleged Breach of S61\(c\) of Public Records Act 2005 - attachments.pdf](#)

Hi Bruce,

Thanks for the letter, we are almost there. We just need to add one more paragraph.

If you could please make reference to your response to Ms Bright, as per the attached email, I can run this past our legal team to make sure it is all ok.

I can understand that the request would have been refused 'on the grounds of substantial collation', but this was not the message Ms Bright received at the time

Ms Bright was told that this part of her request (question 8 – see attached PDF) was refused under section 17(e) of LGOIMA - that the document alleged to contain the information requested does not exist or cannot be found (suggesting a breach of the PRA). However your recent letter suggests it was refused under section 17(f) - that the information requested cannot be made available without substantial collation or research. If you could confirm the discrepancy in the original response to Ms Bright that would be fantastic.

Many thanks,

Shanann Carr

Shanann Carr | Senior Archives Advisor | Recordkeeping Capability
Archives New Zealand Te Rua Mahara o te Kawanatanga
Direct Dial: +64 4 894 6034 | Extn: 9344

From: Shanann Carr
Sent: Tuesday, 30 September 2014 11:23 a.m.
To: 'Bruce Thomas'
Subject: RE: Message from KMBT_C353

Thanks Bruce,

Sorry for my delayed response.

I'll have a look and let you know if it meets our requirements.

Shanann

Shanann Carr | Senior Archives Advisor | Recordkeeping Capability
Archives New Zealand Te Rua Mahara o te Kawanatanga
Direct Dial: +64 4 894 6034 | Extn: 9344

From: [Shanann Carr](#)
To: ["Jacqueline Davidson"](#)
Subject: RE: Re-activating investigation under the Public Records Act
Date: Monday, 8 September 2014 1:11:00 PM
Attachments: [image001.jpg](#)

Thanks Jacqui

Shanann Carr | Senior Archives Advisor | Recordkeeping Capability
Archives New Zealand Te Rua Mahara o te Kawanatanga
Direct Dial: +64 4 894 6034 | Extn: 9344

From: Jacqueline Davidson [mailto:xxxxxxxxx.xxxxxxxx@xxxxxxxxxxxxxxxxxxxx.xx]
Sent: Monday, 8 September 2014 1:07 p.m.
To: Shanann Carr
Subject: RE: Re-activating investigation under the Public Records Act

Hi Shanann,

I set up a meeting with Bruce last week to discuss this, unfortunately he couldn't make it, and I have since found out that he has changed jobs internally. Am trying to pin him down for you – hopefully this won't take too long.

Rgds

Jacqui

From: Shanann Carr [mailto:xxxxxxx.xxxx@xxx.xxxx.xx]
Sent: Monday, 8 September 2014 1:04 p.m.
To: Jacqueline Davidson
Subject: RE: Re-activating investigation under the Public Records Act

Hi Jacqui,

Just following up on our phone call last week.

You were going to jog Bruce's memory and get him to give me a call?

I haven't heard from him.

Shanann

Shanann Carr | Senior Archives Advisor | Recordkeeping Capability
Archives New Zealand Te Rua Mahara o te Kawanatanga
Direct Dial: +64 4 894 6034 | Extn: 9344

From: Jacqueline Davidson [mailto:xxxxxxxxx.xxxxxxxx@xxxxxxxxxxxxxxxxxxxx.xx]
Sent: Thursday, 28 August 2014 11:22 a.m.
To: Shanann Carr
Subject: RE: Re-activating investigation under the Public Records Act

Hi Shannon,

Released under the Official Information Act 1982

Probably best to discuss this. Any time next Tuesday afternoon would be good for me.

Thanks

Jacqui

Jacqueline Davidson | Records and Archives Manager
Information Services | Enterprise Information Delivery | Records and Archives
Mobile 021 596 682
Auckland Council, Level 5, 135 Albert St, Auckland 1142

Visit our website: www.aucklandcouncil.govt.nz

From: Shanann Carr [<mailto:xxxxxxx.xxxx@xxx.xxx.xx>]
Sent: Thursday, 28 August 2014 11:17 a.m.
To: Jacqueline Davidson
Subject: RE: Re-activating investigation under the Public Records Act

Hi Jacqui,

I'm just putting together a response for Ms Bright.

I'm trying to determine if Auckland Council did in fact breach section 17(1) of the Public Records Act, even if for a brief period. A small piece of the correspondence needs clarifying.

In reference to Bruce Thomas' response to Ms Bright's request for information. Penny asked for the following:

"8) Please provide the information which confirms that in accordance with normal prudent business practice, Auckland Council has now 'amalgamated', created and maintains full and accurate records of any matter which has been contracted out to an independent contractor..."

Bruce responded:

"...this information does not yet exist and your request is therefore refused under section 17(e) of the act."

Penny is not just referring to a 'register' here, but general 'information'. I think this might be where the sticking point is.

Could you please confirm on behalf of the Council that this is correct? That "information which confirms that in accordance with normal prudent business practice, Auckland Council has now 'amalgamated', created and maintains full and accurate records of any matter which has been contracted out to an independent contractor..." had not been created at the time of Ms Bright's request of 10 March 2011?

This is what I need to clarify before we can move forward with this.

Happy to discuss this over the phone. Let me know a good time to call.

Shanann

Shanann Carr | Senior Archives Advisor | Recordkeeping Capability
Archives New Zealand Te Rua Mahara o te Kawanatanga
Direct Dial: +64 4 894 6034 | Extn: 9344

From: Jacqueline Davidson [<mailto:xxxxxxxxxx.xxxxxxxx@xxxxxxxxxxxxxxxxxxxxx.xxx>]
Sent: Friday, 18 July 2014 2:22 p.m.
To: Shanann Carr
Subject: Re-activating investigation under the Public Records Act

Hi Shanann,

With reference to your investigation into Archives New Zealand response to the complaint laid by Penny Bright where she believed that the Auckland Council, including its predecessors, were not keeping appropriate records regarding the management of its contractor registers, I would make the following comments:

- I was not involved in the response to the initial complaint, but have reviewed the material you have provided, and concur with the response of our letter dated 26 April 2011 the main points being:
 - Auckland Council is under no obligation to create and maintain a register of contracts (as distinct from our obligation to create and maintain our records s17 PRA – inferred)
 - The Council is currently in the process of developing such a register
 - Once established, the information contained in the register would be withheld for commercial reasons as detailed in section 7(2)(h) of the Local Government Official Information and Meetings Act
- At the time of the original request from Ms Bright, 10 March 2011, the Auckland Council had been in existence as an amalgamated entity for a little over 4 months. During the amalgamation process, under the auspices of the ATA, considerable effort was expended to discover and manage information relating to contractors from all the legacy councils. The nature of contracts (length of term) means that this can be quite fluid, hence the time taken to establish a definitive register during this settling in period.
- Since this time, Council has established new procurement processes which manage our contracts through a business system (SAP) integrated with the respective contract document(s) stored in our corporate records repository, TRIM. The records in TRIM are managed by my team, and have appropriate security and rights assigned to them, as well as retention and disposition actions taken from our approved retention schedule.
- The Records and Archives team made extensive submissions on the new procurement process and have been involved in the roll-out and training to the organisation.
- In terms of managing the records created by contractors, we have developed the attached guidelines for contractor records (heavily based on the guidance of Archives NZ).
- Should this request be made again, I would recommend that any contractor information be withheld on the grounds that to release it would unreasonably prejudice the commercial position of the person who supplied or is subject to the contract information. Naturally this would be on a case-by-case basis.

I hope that this provides you with enough information, if not, or you would like further clarification, please do not hesitate to contact me.

These comments are my opinion and not necessarily the view of the Auckland Council.

Rgds

Jacqui

Jacqueline Davidson | Records and Archives Manager
Information Services | Enterprise Information Delivery | Records and Archives
Mobile 021 596 682
Auckland Council, Level 5, 135 Albert St, Auckland 1142

Visit our website: www.aucklandcouncil.govt.nz



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Released under the Official Information Act 1982

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From: waterpressure@gmail.com [mailto:waterpressure@gmail.com]
Sent: Thursday, 10 March 2011 7:32 pm
To: R Hide (MIN)
Subject: 'Open Letter' /LGOIMA request to the CEO of Auckland Council, Doug McKay re: Statutory duties arising from s.17 (1) of the Public Records Act 2005:

'Open Letter' /LGOIMA request to the CEO of Auckland Council, Doug McKay



10 March 2011

Auckland Council CEO
Doug McKay

'Open Letter /LGOIMA request'
re: Statutory duties arising from s.17 (1) of the Public Records Act 2005:

"Every public office and local authority must create and maintain full and accurate records of its offices in accordance with normal prudent business practice, including the records of any matter which is contracted out to an independent contractor".

Dear Doug,

Please provide the following information:

1) The information which confirms that prior to amalgamation under the Auckland Council, each of the following local authorities had created and maintained a (central) 'Register of Contracts' for any matter which was contracted out to an independent contractor:

(Independent contractor to include 'consultant' contractors.)

- a) Auckland Regional Council (ARC)
- b) Auckland City Council
- c) Manukau City Council
- d) Waitakere City Council
- e) North Shore City Council
- f) Rodney District Council
- g) Papakura District Council
- h) Franklin District Council

2) Please provide the information which confirms that prior to amalgamation under the Auckland Council, how many Council Controlled Organisations (CCOs) operated under each of the following local authorities:

- a) Auckland Regional Council (ARC)

- b) Auckland City Council
- c) Manukau City Council
- d) Waitakere City Council
- e) North Shore City Council
- f) Rodney District Council
- g) Papakura District Council
- h) Franklin District Council

3) Please provide the information which confirms that prior to amalgamation under the Auckland Council, that each 'Council Controlled Organisation' (CCO) operating under each of the above-mentioned local authorities had created and maintained a (central) 'Register of Contracts' for any matter which was contracted out to an independent contractor.

4) Please provide the information which confirms that for the time that the Auckland Transition Agency (A.T.A.) was operating, that they had created and maintained a (central) 'Register of Contracts' for any matter which was contracted out to an independent contractor.

5) Please provide the information which confirms that for the time the Auckland Council has been operating, there has been created and maintained a (central) 'Register of Contracts' established for for any matter which has been contracted out to an independent contractor.

6) Please provide the information which confirms that for the time the each of the following Auckland Council 'Council Controlled Organisations' (CCOs); Council organisations and 'statutory entities' has been operating, there has been created and maintained a (central) 'Register of Contracts' established for for any matter which was contracted out to an independent contractor.

- a) Auckland Council Investments (ACIC)
- b) Auckland Tourism, Events and Economic Development (TEED)
- c) Regional Facilities Auckland (RFA)
- d) Auckland Council Property Ltd (ACPL)
- e) Auckland Waterfront Development Agency (AWDA)
- f) Watercare Services Ltd
- g) Auckland Transport

7) Please provide the information which confirms that in each of the above-mentioned categories, auditors responsible to the Office of the Auditor-General, have double-checked that a (central) 'Register of Contracts' has been created and maintained.

8) Please provide the information which confirms that in accordance with normal prudent business practice, Auckland Council has now 'amalgamated', created and maintains full and accurate records of any matter which has been contracted out to an independent contractor, including the above-mentioned Auckland Council 'Council Controlled Organisations' (CCOs); Council organisations and 'statutory entities'.

9) Please provide the name and position of the Auckland Council employee who is ultimately responsible for the creation and maintenance of records of any matter which is contracted out to an independent contractor, as defined in s17 of the Public Records Act 2001, and would bear ultimate responsibility for any of the following offences:

http://www.legislation.govt.nz/act/public/2005/0040/latest/DLM345796.html?search=ts_act+Public+Records+Act+2005_re sel&p=1#DLM345796

61 Offences

Every person commits an offence who wilfully or negligently—

- (a) damages a public record; or
- (b) disposes of or destroys a public record otherwise than in accordance with the provisions of this Act; or
- (c) contravenes or fails to comply with any provision of this Act or any regulations made under it.

Yours sincerely,

Penny Bright

Media Spokesperson

Water Pressure Group
Judicially recognised Public Watchdog on Metrowater, water and Auckland regional governance matters.

"Anti-corruption campaigner".

Attendee: Australian Public Sector Anti-Corruption Conference 2009
Attendee: Transparency International's 14th Anti-Corruption Conference 2010
Auckland Mayoral Candidate 2010.

Independent Candidate Botany by-election 2011.

<http://waterpressure.wordpress.com>

Ph (09) 846 9825
021 211 4 127

Released under the Official Information Act 1982



BY EMAIL: waterpressure@gmail.com

26 April 2011

Official Information Request No. 9000108231

(Please quote this in any correspondence)

Ms Penny Bright
86A School Road
Kingsland
Auckland 1030

Dear Ms Bright

Local Government Official Information and Meetings Act 1987

Re: requests for evidence of record

I refer to your email dated 10 March 2011, which we received on 11 March 2011, requesting information about records relating to independent contractors.

As a general comment, we note that section 17(1) of the Public Records Act 2005 to which you refer does not establish an obligation to create and maintain a register of contracts and nor is there any other statutory obligation to do so. Nonetheless, the Council is currently in the process of developing such a register. Even once it is established, the information contained in the register is unlikely to be disclosed on the grounds that to do so would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information. Of course, any requests will be considered on a case-by-case basis.

Please also note that Council Controlled Organisations are independent entities separate from the Auckland Council. They have their own obligations to respond to requests under the Local Government Official Information and Meetings Act.

Regarding your request, we have responded to your questions in the order in which they were raised.

1) The information which confirms that prior to amalgamation under the Auckland Council, each of the following local authorities had created and maintained a (central) 'Register of Contracts' for any matter which was contracted out to an independent contractor:

- a) Auckland Regional Council (ARC)
- b) Auckland City Council
- c) Manukau City Council
- d) Waitakere City Council
- e) North Shore City Council
- f) Rodney District Council
- g) Papakura District Council
- h) Franklin District Council

2. Please provide the information which confirms that prior to amalgamation under the Auckland Council, how many Council Controlled Organisations (CCOs) operated under each of the following local authorities:

- a) Auckland Regional Council (ARC)

- b) Auckland City Council
- c) Manukau City Council
- d) Waitakere City Council
- e) North Shore City Council
- f) Rodney District Council
- g) Papakura District Council
- h) Franklin District Council

Your request is refused under section 17(f) of the Act on the basis that the information requested, to the extent it may exist or be held by the Auckland Council, cannot be made available without substantial collation or research.

17. Refusal of requests

A request made in accordance with section 10 of this Act may be refused only for one or more of the following reasons, namely:

(f) That the information requested cannot be made available without substantial collation or research:

3) Please provide the information which confirms that prior to amalgamation under the Auckland Council, that each 'Council Controlled Organisation' (CCO) operating under each of the above-mentioned local authorities had created and maintained a (central) 'Register of Contracts' for any matter which was contracted out to an independent contractor.

4) Please provide the information which confirms that for the time that the Auckland Transition Agency (ATA) was operating, that they had created and maintained a (central) 'Register of Contracts' for any matter which was contracted out to an independent contractor.

Your request is refused under section 17(g)(i) of the Act on the basis that the information requested is not held by the local authority and we have no grounds for believing that the information is held by another organisation. Alternatively, your request is refused under section 17(f) on the basis that the information requested cannot be made available without substantial research.

17. Refusal of requests

A request made in accordance with section 10 of this Act may be refused only for one or more of the following reasons, namely:

(g) That the information requested is not held by the local authority and the person dealing with the request has no grounds for believing that the information is either—
(i) Held by another local authority or a Department or Minister of the Crown or organisation;

5) Please provide the information which confirms that for the time the Auckland Council has been operating, there has been created and maintained a (central) 'Register of Contracts' established for any matter which has been contracted out to an independent contractor.

7) Please provide the information which confirms that in each of the above-mentioned categories, auditors responsible to the Office of the Auditor-General, have double-checked that a (central) 'Register of Contracts' has been created and maintained.

8) Please provide the information which confirms that in accordance with normal prudent business practice, Auckland Council has now 'amalgamated', created and maintains full and accurate records of any matter which has been contracted out to an independent contractor, including the above-mentioned Auckland Council 'Council Controlled Organisations' (CCOs); Council organisations and 'statutory entities'.

As mentioned at the beginning of this letter, this information does not yet exist and your request is therefore refused under section 17(e) of the Act.

17. Refusal of requests

A request made in accordance with section 10 of this Act may be refused only for one or more of the following reasons, namely:

(e) That the document alleged to contain the information requested does not exist or cannot be found:

6) Please provide the information which confirms that for the time the each of the following Auckland Council 'Council Controlled Organisations' (CCOs); Council organisations and 'statutory entities' has been operating, there has been created and maintained a (central) 'Register of Contracts' established for any matter which was contracted out to an independent contractor.

- a) Auckland Council Investments (ACIC)
- b) Auckland Tourism, Events and Economic Development (TEED)
- c) Regional Facilities Auckland (RFA)
- d) Auckland Council Property Ltd (ACPL)
- e) Auckland Waterfront Development Agency (AWDA)
- f) Watercare Services Ltd.
- g) Auckland Transport

The information, to the extent it may exist, is not held by the Auckland Council and your request has been transferred to the organisations listed above. A copy of our letter of transfer is attached for your information.

9) Please provide the name and position of the Auckland Council employee who is ultimately responsible for the creation and maintenance of records of any matter which is contracted out to an independent contractor, as defined in s17 of the Public Records Act 2001, and would bear ultimate responsibility for any of the following offences:

61. Offences

Every person commits an offence who wilfully or negligently—

- (a) damages a public record; or
- (b) disposes of or destroys a public record otherwise than in accordance with the provisions of this Act; or
- (c) contravenes or fails to comply with any provision of this Act or any regulations made under it.

The Auckland Council has a corporate responsibility to comply with the Public Records Act 2005.

You have the right in accordance with section 27(3) of the LGOIMA to make a complaint to the Office of the Ombudsmen regarding council's refusal to release any information under this letter and for the delay in getting this response to you.

If you have any further queries please contact me on (09) 301 0101, quoting Official Information Request No. 9000108231.

Yours sincerely



Bruce Thomas
Public Information Manager
Democracy Services

9000108231



26 April 2011

Official Information Request No. 9000108231
(Please quote this in any correspondence)

David Rankin
Auckland Council Property Limited

Dear Mr Rankin

Local Government Official Information and Meetings Act 1987

Re: requests for evidence of record

Please find enclosed a copy of a request for information received by us from Penny Bright.

Auckland Council does not hold the information requested in question six, we believe Auckland Council Property Limited holds this information.

Accordingly, we are transferring this part of the request to you for answering pursuant to section 12 of the Act.

12 Transfer of requests

Where –


- (a) A request in accordance with section 10 of this Act is made to any local authority; and
- (b) The information to which the request relates –

- i. Is not held by that local authority but is believed by the person dealing with the request to be held by another local authority or a Department or Minister of the Crown or organisation; or
- ii. Is believed by the person dealing with the request to be more closely connected with the functions of another local authority or a Department or Minister of the Crown or organisation; -

the [chief executive] of the local authority to which the request is made, or an officer or employee authorised by that [chief executive], shall promptly, and in no case later than 10 working days after the day on which the request is received, transfer the request to the other local authority, or the appropriate Department, Minister of the Crown, or organisation, and inform the person making the request accordingly.

Thank you for your cooperation with this request. If you require further assistance from me please contact me on (09) 301 0101 or email me at veena.kavia@aucklandcouncil.govt.nz, quoting Official Information Request No. 9000108231.

Yours sincerely


Veena Kavia
Information Advisor
Democracy Services



26 April 2011

Official Information Request No. 9000108231
(Please quote this in any correspondence)

Dr David Warburton
Auckland Transport
6 Henderson Valley Road
Henderson
Auckland 0612

Dear Dr Warburton

Local Government Official Information and Meetings Act 1987

Re: requests for evidence of record

Please find enclosed a copy of a request for information received by us from Penny Bright.

Auckland Council does not hold the information requested in question six, we believe Auckland Transport holds this information.

Accordingly, we are transferring this part of the request to you for answering pursuant to section 12 of the Act.

12 Transfer of requests

Where –

(a) A request in accordance with section 10 of this Act is made to any local authority; and

(b) The information to which the request relates –

- i. Is not held by that local authority but is believed by the person dealing with the request to be held by another local authority or a Department or Minister of the Crown or organisation; or
- ii. Is believed by the person dealing with the request to be more closely connected with the functions of another local authority or a Department or Minister of the Crown or organisation,-

the [chief executive] of the local authority to which the request is made, or an officer or employee authorised by that [chief executive], shall promptly, and in no case later than 10 working days after the day on which the request is received, transfer the request to the other local authority, or the appropriate Department, Minister of the Crown, or organisation, and inform the person making the request accordingly.

Thank you for your cooperation with this request. If you require further assistance from me please contact me on (09) 301 0101 or email me at veena.kavia@aucklandcouncil.govt.nz, quoting Official Information Request No. 9000108231.

Yours sincerely

Veena Kavia
Information Advisor
Democracy Services



26 April 2011

Official Information Request No. 9000108231
(Please quote this in any correspondence)

John Brockies
Regional Facilities Auckland
Private Bag 92340
Victoria Street West
Auckland 1142

Dear Mr Brockies

Local Government Official Information and Meetings Act 1987

Re: requests for evidence of record

Please find enclosed a copy of a request for information received by us from Penny Bright.

Auckland Council does not hold the information requested in question six, we believe Regional Facilities Auckland holds this information.

Accordingly, we are transferring this part of the request to you for answering pursuant to section 12 of the Act.

12 Transfer of requests

Where –

(a) A request in accordance with section 10 of this Act is made to any local authority; and

(b) The information to which the request relates –

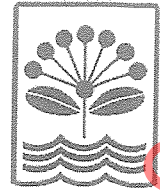
- i. Is not held by that local authority but is believed by the person dealing with the request to be held by another local authority or a Department or Minister of the Crown or organisation; or
- ii. Is believed by the person dealing with the request to be more closely connected with the functions of another local authority or a Department or Minister of the Crown or organisation;

the [chief executive] of the local authority to which the request is made, or an officer or employee authorised by that [chief executive], shall promptly, and in no case later than 10 working days after the day on which the request is received, transfer the request to the other local authority, or the appropriate Department, Minister of the Crown, or organisation, and inform the person making the request accordingly.

Thank you for your cooperation with this request. If you require further assistance from me please contact me on (09) 301 0101 or email me at veena.kavia@aucklandcouncil.govt.nz, quoting Official Information Request No. 9000108231.

Yours sincerely

Veena Kavia
Information Advisor
Democracy Services



26 April 2011

Official Information Request No. 9000108231
(Please quote this in any correspondence)

Mark Ford
Watercare Services Limited
Private Bag 92521
Wellesley Street
Auckland 1141

Dear Mr Ford

Local Government Official Information and Meetings Act 1987

Re: requests for evidence of record

Please find enclosed a copy of a request for information received by us from Penny Bright.

Auckland Council does not hold the information requested in question six, we believe Watercare Services Limited holds this information.

Accordingly, we are transferring this part of the request to you for answering pursuant to section 12 of the Act.

12 Transfer of requests

Where –

(a) A request in accordance with section 10 of this Act is made to any local authority; and

(b) The information to which the request relates –

- i. Is not held by that local authority but is believed by the person dealing with the request to be held by another local authority or a Department or Minister of the Crown or organisation; or
- ii. Is believed by the person dealing with the request to be more closely connected with the functions of another local authority or a Department or Minister of the Crown or organisation,-

the [chief executive] of the local authority to which the request is made, or an officer or employee authorised by that [chief executive], shall promptly, and in no case later than 10 working days after the day on which the request is received, transfer the request to the other local authority, or the appropriate Department, Minister of the Crown, or organisation, and inform the person making the request accordingly.

Thank you for your cooperation with this request. If you require further assistance from me please contact me on (09) 301 0101 or email me at veena.kavia@aucklandcouncil.govt.nz, quoting Official Information Request No. 9000108231.

Yours sincerely

Veena Kavia
Information Advisor
Democracy Services



26 April 2011

Official Information Request No. 9000108231
(Please quote this in any correspondence)

John Dalzell
Auckland Waterfront Development Agency Ltd
Private Bag 92350
Auckland 1142

Dear Mr Dalzell

Local Government Official Information and Meetings Act 1987

Re: requests for evidence of record

Please find enclosed a copy of a request for information received by us from Penny Bright.

Auckland Council does not hold the information requested in question six, we believe Auckland Waterfront Development Agency holds this information.

Accordingly, we are transferring this part of the request to you for answering pursuant to section 12 of the Act.

12 Transfer of requests

Where –

(a) A request in accordance with section 10 of this Act is made to any local authority; and

(b) The information to which the request relates –

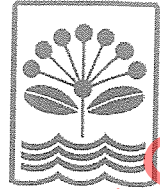
- i. Is not held by that local authority but is believed by the person dealing with the request to be held by another local authority or a Department or Minister of the Crown or organisation; or
- ii. Is believed by the person dealing with the request to be more closely connected with the functions of another local authority or a Department or Minister of the Crown or organisation,-

the [chief executive] of the local authority to which the request is made, or an officer or employee authorised by that [chief executive], shall promptly, and in no case later than 10 working days after the day on which the request is received, transfer the request to the other local authority, or the appropriate Department, Minister of the Crown, or organisation, and inform the person making the request accordingly.

Thank you for your cooperation with this request. If you require further assistance from me please contact me on (09) 301 0101 or email me at veena.kavia@aucklandcouncil.govt.nz, quoting Official Information Request No. 9000108231.

Yours sincerely

Veena Kavia
Information Advisor
Democracy Services



26 April 2011

Official Information Request No. 9000108231
(Please quote this in any correspondence)

Michael Redman
Auckland Tourism, Events and Economic Development
Level 4, 21 Pitt Street
Auckland 1010

Dear Mr Redman

Local Government Official Information and Meetings Act 1987

Re: requests for evidence of record

Please find enclosed a copy of a request for information received by us from Penny Bright.

Auckland Council does not hold the information requested in question six, we believe Auckland Tourism, Events and Economic Development holds this information.

Accordingly, we are transferring this part of the request to you for answering pursuant to section 12 of the Act.

12 Transfer of requests

Where –

(a) A request in accordance with section 10 of this Act is made to any local authority; and

(b) The information to which the request relates –

- i. Is not held by that local authority but is believed by the person dealing with the request to be held by another local authority or a Department or Minister of the Crown or organisation; or
- ii. Is believed by the person dealing with the request to be more closely connected with the functions of another local authority or a Department or Minister of the Crown or organisation,-

the [chief executive] of the local authority to which the request is made, or an officer or employee authorised by that [chief executive], shall promptly, and in no case later than 10 working days after the day on which the request is received, transfer the request to the other local authority, or the appropriate Department, Minister of the Crown, or organisation, and inform the person making the request accordingly.

Thank you for your cooperation with this request. If you require further assistance from me please contact me on (09) 301 0101 or email me at veena.kavia@aucklandcouncil.govt.nz, quoting Official Information Request No. 9000108231.

Yours sincerely

Veena Kavia
Information Advisor
Democracy Services

16 May 2011

Penny Bright
Media Spokesperson
Water Pressure Group

Via email: waterpressure@gmail.com

Dear Penny

Official Information Request No 9000108231 – Register of Contracts

Thank you for your further email dated 5 May 2011, regarding a Register of Contracts.

I can confirm that the register of contracts is not publicly available as it contains information that is deemed to be commercially sensitive between Regional Facilities Auckland, individuals and organisations. We are therefore withholding this information under section 7(2)(h) of the Local Government Official Information and Meetings Act.

7. Other reasons for withholding official information

- (2) Subject to sections 6, 8, and 17 of this Act, this section applies if, and only if, the withholding of the information is necessary to—
- (h) Enable any local authority holding the information to carry out, without prejudice or disadvantage, commercial activities; or

We do however hold a register of Directors interests that is part of the public section of Board papers for each meeting. Please contact us if you wish to be provided with a copy of this.

Please note that for privacy reasons we do not provide details concerning staff but we do have processes in place to address matters of any potential conflict in any tender and/or contracting process. This information is withheld under section 7(2)(a) of the Act.

7. Other reasons for withholding official information

- (2) Subject to sections 6, 8, and 17 of this Act, this section applies if, and only if, the withholding of the information is necessary to—
- (a) Protect the privacy of natural persons, including that of deceased natural persons;

You have the right to seek review of the council's refusal to release any information under this letter by application to the Office of the Ombudsmen.

Yours sincerely


Patrick Cleaver
Acting Chief Executive

Speros Macris

From: Penny Bright <waterpressure@gmail.com>
Sent: 22 May 2011 9:33 p.m.
To: speros
Cc: Penny Bright
Subject: Fwd: 'Open Letter' /LGOIMA request to the CEO of Auckland Council, Doug McKay re: Statutory duties arising from s.17 (1) of the Public Records Act 2005:

----- Forwarded message -----

From: Jess van Haarlem (MIN) <Jess.VanHaarlem@parliament.govt.nz>
Date: Fri, Mar 11, 2011 at 2:25 PM
Subject: RE: 'Open Letter' /LGOIMA request to the CEO of Auckland Council, Doug McKay re: Statutory duties arising from s.17 (1) of the Public Records Act 2005:
To: Penny Bright <waterpressure@gmail.com>

Dear Ms Bright

On behalf of the Hon Rodney Hide, Minister of Local Government, I wish to acknowledge receipt of your email.

Your comments have been noted and your correspondence has been placed in front of the Minister for his information.

Yours sincerely

Jess van Haarlem

Ministerial Secretary

Office of the Hon Rodney Hide

Minister of Local Government | Minister for Regulatory Reform

Associate Minister of Education | MP for Epsom

Level 11 | Bowen House | Parliament Buildings | Wellington

P: (04) 8179496 F: (04) 8176523

E: jess.vanhaarlem@parliament.govt.nz

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From: waterpressure@gmail.com [mailto:waterpressure@gmail.com]

Sent: Thursday, 10 March 2011 7:32 pm

To: R Hide (MIN)

Subject: 'Open Letter' /LGOIMA request to the CEO of Auckland Council, Doug McKay re: Statutory duties arising from s.17 (1) of the Public Records Act 2005:

'Open Letter' /LGOIMA request to the CEO of Auckland Council, Doug McKay



10 March 2011

Auckland Council CEO
Doug McKay

'Open Letter' /LGOIMA request'
re: Statutory duties arising from s.17 (1) of the Public Records Act 2005:

"Every public office and local authority must create and maintain full and accurate records of its offices in accordance with normal prudent business practice, including the records of any matter which is contracted out to an independent contractor".

Dear Doug,

Please provide the following information:

1) The information which confirms that prior to amalgamation under the Auckland Council, each of the following local authorities had created and maintained a (central) 'Register of Contracts' for any matter which was contracted out to an independent contractor:

(Independent contractor to include 'consultant' contractors.)

- a) Auckland Regional Council (ARC)
- b) Auckland City Council
- c) Manukau City Council
- d) Waitakere City Council
- e) North Shore City Council
- f) Rodney District Council
- g) Papakura District Council
- h) Franklin District Council

2) Please provide the information which confirms that prior to amalgamation under the Auckland Council, how many Council Controlled Organisations (CCOs) operated under each of the following local authorities:

- a) Auckland Regional Council (ARC)

- b) Auckland City Council
- c) Manukau City Council
- d) Waitakere City Council
- e) North Shore City Council
- f) Rodney District Council
- g) Papakura District Council
- h) Franklin District Council

3) Please provide the information which confirms that prior to amalgamation under the Auckland Council, that each 'Council Controlled Organisation' (CCO) operating under each of the above-mentioned local authorities had created and maintained a (central) 'Register of Contracts' for any matter which was contracted out to an independent contractor.

4) Please provide the information which confirms that for the time that the Auckland Transition Agency (A.T.A.) was operating, that they had created and maintained a (central) 'Register of Contracts' for any matter which was contracted out to an independent contractor.

5) Please provide the information which confirms that for the time the Auckland Council has been operating, there has been created and maintained a (central) 'Register of Contracts' established for for any matter which has been contracted out to an independent contractor.

6) Please provide the information which confirms that for the time the each of the following Auckland Council 'Council Controlled Organisations' (CCOs); Council organisations and 'statutory entities' has been operating, there has been created and maintained a (central) 'Register of Contracts' established for for any matter which was contracted out to an independent contractor.

- a) Auckland Council Investments (ACIC)
- b) Auckland Tourism, Events and Economic Development (TEED)
- c) Regional Facilities Auckland (RFA)
- d) Auckland Council Property Ltd (ACPL)
- e) Auckland Waterfront Development Agency (AWDA)
- f) Watercare Services Ltd
- g) Auckland Transport

7) Please provide the information which confirms that in each of the above-mentioned categories, auditors responsible to the Office of the Auditor-General, have double-checked that a (central) 'Register of Contracts' has been created and maintained.

8) Please provide the information which confirms that in accordance with normal prudent business practice, Auckland Council has now 'amalgamated', created and maintains full and accurate records of any matter which has been contracted out to an independent contractor, including the above-mentioned Auckland Council 'Council Controlled Organisations' (CCOs); Council organisations and 'statutory entities'.

9) Please provide the name and position of the Auckland Council employee who is ultimately responsible for the creation and maintenance of records of any matter which is contracted out to an independent contractor, as defined in s17 of the Public Records Act 2001, and would bear ultimate responsibility for any of the following offences:

http://www.legislation.govt.nz/act/public/2005/0040/latest/DLM345796.html?search=ts act Public+Records+Act+2005_re sel&p=1#DLM345796

61 Offences

Every person commits an offence who wilfully or negligently—

- (a) damages a public record; or
- (b) disposes of or destroys a public record otherwise than in accordance with the provisions of this Act; or
- (c) contravenes or fails to comply with any provision of this Act or any regulations made under it.

Yours sincerely,

Penny Bright

Media Spokesperson

Water Pressure Group
Judicially recognised Public Watchdog on Metrowater, water and Auckland regional governance matters.

"Anti-corruption campaigner".

Attendee: Australian Public Sector Anti-Corruption Conference 2009
Attendee: Transparency International's 14th Anti-Corruption Conference 2010
Auckland Mayoral Candidate 2010.

Independent Candidate Botany by-election 2011.

<http://waterpressure.wordpress.com>

Ph (09) 846 9825
021 211 4 127

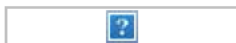
Released under the Official Information Act 1982

From: [Bruce Thomas](#)
To: [Shanann Carr](#)
Subject: Public Records Act - Penny Bright
Date: Friday, 24 October 2014 10:29:32 AM
Attachments: [SKMBT_C35314102409180.pdf](#)

Hi Shannan, please find attached a further response from Council.

Bruce Thomas
Principal Advisor Panels
Public Information Office | Democracy Services

Auckland Council | Level 14 | Civic Administration Building | 1 Greys Avenue | Auckland
Phone: 3753374 | Extension: (40) 7479
Mob: 021417856



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23 October 2014

Shanann Carr
Senior Archives Advisor
Recordkeeping Capability
Archives New Zealand Te Rua Mahara o te Kawanatanga

BY EMAIL: Shanann.Carr@dia.govt.nz

Dear Shanann

RE: Investigation under Public Records Act

I refer to our previous correspondence, and your email of 9 October 2014 requesting confirmation of a discrepancy in Auckland Council's original response to Ms Bright following her request under the Local Government Official Information and Meetings Act 1987 dated 10 March 2011.

As we have discussed, the particular request was for information confirming that Auckland Council creates and maintains full and accurate records of any matter contracted out to an independent contractor. That information can be easily shown in the form of a register of contractors. However, at the date of Ms Bright's request, no such register existed, and no other information held by the council demonstrated this compliance in a simple document. Accordingly, the request was refused under section 17(e) of LGOIMA.

As mentioned in our previous correspondence, the council was under no obligation to maintain a register, and the fact that a register did not exist at the relevant time does not mean that the council failed to comply with section 17(1) of the Public Records Act. The council maintains that it has always complied with this requirement.

In the absence of a register, the only way for the council to provide the information sought by Ms Bright would have been to provide **all** of the relevant contracts, requests for service and/or purchase orders. These would clearly demonstrate that the council created and maintained full and accurate records of any matter contracted out to an independent contractor. However, given the number of relevant contracts, and the fact that the records and contracts in question had been carried over from legacy councils and were in the process of being standardised, centralised and amalgamated, the enormity of the process meant that any request for these documents would have been refused under section 17(f) of LGOIMA.

Accordingly, if Ms Bright's request is interpreted as a request for all of these documents, the council could have relied on section 17(f) of LGOIMA to refuse the request.

As previously mentioned, the council does now maintain a register of contracts, and has provided a list of these contractors in response to requests from other parties.

Please let me know if you have any further questions, or require further clarification on any matter. I would happy to discuss this with you.

Kind regards



Bruce Thomas
Public Information Manager

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Archives New Zealand, 10 Mulgrave Street, Thorndon, Wellington 6011
PO Box 12050, Thorndon, Wellington 6144
Phone +64 4 499 5595
Fax +64 4 495 6210
Website www.d.a.govt.nz www.archives.govt.nz

19 December 2014

Penny Bright
waterpressure@gmail.com

Dear Ms Bright

Request for information

Thank you for your request for information about your complaint of 23 May 2011 regarding the recordkeeping obligations of Auckland Council under the Public Records Act 2005.

At the time of your original complaint we started to investigate the issues raised. The investigation was not complete and there was no response provided to you. I apologise again for this failure.

My staff have approached Auckland Council regarding your initial complaint, which was that Auckland Council had not complied with section 17(1) of the Public Records Act pertaining to creation and maintenance of records. Your complaint specifically related to the alleged failure of Auckland Council to create and maintain a central register of contracts, and full and accurate records of any matter dealt with by an independent contractor.

Auckland Council did not provide access to the information you requested for a number of reasons in reference to section 17 of the Local Government Official Information and Meetings Act 1987:

- s17(e) the information does not exist or cannot be found,
- s 7(i) the information could not be made available without substantial collation or research,
- s17(g) the information was not held specifically by Auckland Council.

Where the Council claimed the information did not exist is the point where you argued that the Council breached the Public Records Act.

After following up with Auckland Council, my staff have not found any evidence that the Council was in breach of the Public Records Act at the time of your request. Auckland Council maintains they had records relating to contracts, but had not yet created a central register relating to this information. They claim that your request for a central register was refused because one had not been created. Auckland Council also claim that at the time of your request, information regarding contracts was not in an accessible form and would have required substantial collation and research to provide access.

Following the establishment of the Auckland Council, the Council agrees it took some time to create a complete system for maintaining contractor records for all predecessor councils. However they have presented us with evidence that systems are now in place to manage contractor records, so we are satisfied that steps have been made to improve management of the records since the time of your original complaint. If you were to make the same request for a central register of contracts today, it seems likely that the request could not be refused on the grounds of the information not existing.

Requests for information held by local authorities are regulated by the Local Government Official Information and Meetings Act. According to section 17B of that Act, if a request for information is refused under sections 17(e) or 17(f) the council has a duty to consult with the requester to ensure a request for information can be managed. If you believe the Auckland Council has not cooperated appropriately regarding your request for information you may make a formal complaint to the Ombudsman.

Thank for your patience while we have investigated your complaint.

Yours sincerely

Marilyn Little
Chief Analyst

From: [Kylie Welch](#)
To: [Penny Bright](#)
Subject: Letter from the Chief Archivist, Marilyn Little
Date: Tuesday, 23 December 2014 11:38:00 AM
Attachments: [Penny Bright Letter from Chief Archivist 19 December 2014.pdf](#)
[image001.png](#)

Dear Penny,

Please find attached a letter from our Chief Archivist, Marilyn Little. Please note that the attached is a scan of the original letter. If you would also like for me to send the physical letter, please advise the address you would like this sent to.

Best regards,

Kylie Welch | Archives NZ Advisor | Advice and Compliance Team

Archives New Zealand Te Rua Mahara o te Kawanatanga

Direct Dial: +64 4 894 6055 | Extn: 9255

10 Mulgrave Street | PO Box 12-050, Wellington 6011, New Zealand

www.archives.govt.nz | www.thecommunityarchive.org.nz



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Archives New Zealand, 10 Mulgrave Street, Thorndon, Wellington 6011
PO Box 12050, Thorndon, Wellington 6144
Phone +64 4 499 5595
Fax +64 4 495 6210
Website www.dia.govt.nz www.archives.govt.nz

19 December 2014

Penny Bright
waterpressure@gmail.com

Dear Ms Bright

Request for information

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Following the establishment of the Auckland Council, the Council agrees it took some time to create a complete system for maintaining contractor records for all predecessor councils. However they have presented us with evidence that systems are now in place to manage contractor records, so we are satisfied that steps have been made to improve management of the records since the time of your original complaint. If you were to make the same request for a central register of contracts today, it seems likely that the request could not be refused on the grounds of the information not existing.

Requests for information held by local authorities are regulated by the Local Government Official Information and Meetings Act. According to section 17B of that Act, if a request for information is refused under sections 17(e) or 17(f) the council has a duty to consult with the requester to ensure a request for information can be managed. If you believe the Auckland Council has not cooperated appropriately regarding your request for information you may make a formal complaint to the Ombudsman.

Thank for your patience while we have investigated your complaint.

Yours faithfully



Marilyn Little
Chief Archivist and General Manager
Archives New Zealand

From: [Antony Moss](#)
To: [Marilyn Little](#)
Cc: [Polly Martin](#)
Subject: Record of conversation with Penny Bright 22 May 2015
Date: Friday, 22 May 2015 5:11:29 PM
Importance: Low

Marilyn

Penny Bright visited 10 Mulgrave Street today hoping to speak with you, but I did instead since you were in Dunedin.

I took a copy of your letter to Penny of 19 December 2014 (A818240) that concluded our work on her delayed 2011 complaint about Auckland Council's lack of a register of contracts. Penny said she had not received the letter. We (Kylie Welch) had emailed it to Penny on 23 December. The correct email address was used, so it's not clear why the email was not received.

I therefore took Penny through the letter, apologising again for the long delay in finalising the matter and outlining our reasoning, which she understood. She advised that there have been some developments in making contract information publicly available, for example Auckland Transport now has a public register of contracts of over \$100,000 value.

Penny also discussed some of her other interactions with Auckland Council on transparency and rates, with select committees and with the Local Government Commission. She also outlined her ideas about how the PRA could be a foundation for public accountability and how the Chief Archivist and Ombudsman roles could develop. I noted that there were many views about how core information and accountability statutes could work together better. Penny left me with some written material which I have not filed because it is not directly relevant to PRA matters. I will pass this material on to you Marilyn once I've been through it.

Direct dial 04 496 1392 - Extn 9392 - Mobile: 027 476 0361

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CONVICTED BLACKMAILER AND TAX FRAUDSTER RIDES AGAIN... WITH PENNY "NOT SO" BRIGHT FOR A SIDEKICK

by Cameron Slater on September 20, 2016 at 8:30am

Serial litigant, convicted blackmailer and tax fraudster Graeme McCreedy is at it again, this time on behalf of ratbag rates dodger Penny Bright.

NBR reports:

Self-styled anti-corruption public watchdog Penny Bright has upped the ante in her fight with Auckland Council to have its books opened before she pays her rates.

She has enlisted serial litigant Graham McCreedy who will take a private prosecution against council chief executive Stephen Town under the Public Records Act.

The draft charging document, served on Mr Town by fax, alleges he has committed an offence under the act by refusing to allow Ms Bright access to the list of contracts let by the council, the amount of each and details of the successful bidder.

The document claims Mr Town failed to let Ms Bright access the public records, despite several formal requests to do so over several years and "has therefore knowingly and willingly breached the act."

It is the first time a prosecution has been taken under the act which, according to the charging document's brief summary, is to enable the government to be held accountable for ensuring full and accurate records of the affairs of central and local government are created and maintained, providing the preservation of the records and enhancing public confidence in the integrity of public and local authority records.

Anybody committing an offence under the act can be fined up to \$5000.

Mr McCreedy told NBR Radio the council has no right to deny people access to public records as it is spending public money.

Mr McCreedy, a retired accountant who has been convicted of blackmail and tax fraud, is well

known for taking private prosecutions mainly in cases he has no connection with on a personal level.

Penny Bright is a ratbag. She needs to pay her rates. She is posturing on a premise that is a lost cause.

As for McCready, the sooner he is prevented from taking litigation the better. The man is a menace and a bully, he just likes using court processes to cause harm.

– NBR

Tagged: Auckland • Auckland Council • Graeme McCready • Penny Bright

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From: [Vanessa L. King](#)
To: [Antony Moss](#)
Subject: RE: Penny Bright private prosecution under the Public Records Act of Auckland Council
Date: Friday, 23 September 2016 11:57:31 AM

Hi Tony

I've now read through:

- The NBR article, dated 19 September 2016
- The [NBR Radio interview](#) with Graham McCreedy, dated 19 September 2016
- The Whaleoil article, dated 20 September 2016

These sources do not provide any new information that would lead us to revisit Penny Bright's complaint.

Kind Regards

Vanessa King | Senior Archivist/Archives Advisor | Advice and Compliance
 Archives New Zealand Te Rua Mahara o te Kawanatanga

From: Antony Moss
Sent: Wednesday, 21 September 2016 8:24 a.m.
To: Vanessa L. King
Cc: Rebecca Smart
Subject: FW: Penny Bright private prosecution under the Public Records Act of Auckland Council

Vanessa, could you take a look at the Whaleoil article in the link below and the earlier NBR that it links to? Library & Research Services should be able to source the NBR article.

Archives New Zealand has previously assessed this issue at Penny Bright's prompting (see attached Objective link). Please check whether there is any new information that would lead us to look at it again.

Thanks

Antony Moss | Director Government Recordkeeping
Archives New Zealand Te Rua Mahara o te Kawanatanga
 Direct dial +64 4 496 1392 | Extn 9392 | Mobile: +64 27 476 0361 |
www.records.archives.govt.nz
Archives New Zealand is part of the Department of Internal Affairs

From: Rebecca Smart
Sent: Wednesday, 21 September 2016 8:00 a.m.
To: Antony Moss; Mike Chapman
Subject: Fwd: Penny Bright private prosecution under the Public Records Act of Auckland Council

Have you seen this

Sent from my iPhone

Begin forwarded message:

From: Simon Caseley <xxxxx.xxxxxxx@xxxxxxxxxxx.xxxx.xx>

Date: 20 September 2016 at 7:20:15 PM NZST

To: Rebecca Smart <xxxxxxx.xxxxx@xxx.xxxx.xx>

Subject: Penny Bright private prosecution under the Public Records Act of Auckland Council

<http://www.whaleoil.co.nz/2016/09/convicted-blackmailer-and-tax-fraudster-rides-again-with-penny-not-so-bright-for-a-sidekick/#more-273096>

Sent from my Sony Xperia™ smartphone

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