

Our ref 458394, 459877, 465831 and 462166
Contact Andrew McCaw and John Lindeman
8 December 2017



Mr David Clapperton
Chief Executive
Horowhenua District Council

By email: davidc@horowhenua.govt.nz

Dear Mr Clapperton

Complaints about email blocking

I refer to previous correspondence and to discussions between you and your senior staff and Andrew McCaw (Principal Advisor – Systemic Improvement, Monitoring and Resolution).

Following full consideration of the additional material you provided to me by letter dated 21 September 2017, along with the content of the new formal policy that was adopted by the Council on 11 October 2017 subject to my comments and those of the Privacy Commissioner, I am writing to indicate how I intend to proceed.

As you are aware, the previous practice of quarantining emails as identified in the internal auditor's report of March 2017 raised a number of concerns for me, including:

- The fact that the policy was not captured in documentary form, with clear, consistent and principled parameters for application;
- The lack of visibility of the policy by those who may be affected by its application;
- The lack of clear accountability structures for the application of the policy;
- The fact that some individuals whose emails were diverted were apparently not made aware of this fact at the time; and
- The application of the diversion practice not just to Council staff, but also to Councillors, raising the prospect that communication between a constituent and their local government representative could be affected.

It was also alarming to me that, when the internal audit report identified the practice as an 'extreme' risk, the response of management was:

Management are comfortable that appropriate and fit for purpose processes are in place for the management of Council's email system.

Decisions as to the re-direction or blocking of emails for valid reasons, is the responsibility of the Chief Executive.

In light of these concerns about ongoing application of the policy, I commenced consideration of whether a systemic investigation of the email policy and practice of the Council was warranted. My staff subsequently discussed the issues with the Council, along with the Offices of the Auditor-General and the Privacy Commissioner, the Department of Internal Affairs, Local Government New Zealand and the Society of Local Government Managers.

During the course of my inquiries, the Council received the report of a peer review of the internal audit that it had engaged KPMG to undertake. With respect to the email quarantining issue, KPMG concluded that the issue was out of the scope of a sensitive expenditure review and therefore no conclusions could be drawn in the context of such a review.

Nonetheless, the report included the following recommendations:

- *HDC to cease quarantining/vetting of emails into the domain in order to develop robust process in order to protect all staff and elected officials' health and safety.*
- *Advice to be provided to each recipient that was quarantined that the process has ceased.*
- *The council, as the employer of the CE, the CE as employer of all council staff and elected officials need to be considered whilst developing the quarantine/vetting process for emails.*

The Council accepted all these recommendations and developed new formal policy accordingly. This was adopted at a full Council meeting on 11 October 2017, with the relevant motion being:

THAT, as recommended by the Finance, Audit & Risk Subcommittee, the Horowhenua District Council adopts the Electronic Communications (E-mail Quarantine) Policy, with suggested amendments, noting that it has been sent to the Office of the Ombudsman, the Office of the Privacy Commissioner, Netsafe and Council's legal advisors for comment/feedback.

I have interpreted this motion as accepting that the policy would still be subject to further amendment following consideration of feedback from all these parties. I am aware that the Privacy Commissioner has provided his comments following receipt of the Council's request for feedback on 9 October 2017. I sought and have now received a copy of those comments, and will provide my own feedback and suggestions shortly. However, I am pleased that the policy as adopted addresses the most pressing areas of concern that prompted me to consider a systemic investigation.

Decision on systemic investigation

In light of developments to date, I have decided that it is not necessary to undertake a systemic investigation. However, my Office will proceed with investigations of the individual complaints we have received from [REDACTED], [REDACTED], [REDACTED] and [REDACTED] who have been directly affected by the previous quarantining practice.

Investigation of individual complaints

This Office will contact the Council shortly to discuss what further information we will need to proceed with the investigations of the individual complaints. This will likely involve requesting a copy of the affected parties' emails that were quarantined, including (if possible) an audit trail of how the emails were handled.

Other matters

You will also be aware that my colleague, Leo Donnelly, is currently investigating the following complaints and is corresponding separately with you on these matters:

- complaints received from [REDACTED] and [REDACTED] under the Local Government Official Information and Meetings Act (LGOIMA) about the Council's decision to withhold a copy of its Sensitive Expenditure Review report (reference numbers: **458310** and **459414**);
- a complaint received from [REDACTED] (made on behalf of [REDACTED]) regarding the Council's action in shutting off the water to a nursery building in the Lake Horowhenua Domain (reference: **464133**) ; and,
- a complaint received from [REDACTED] about the Council's response to 30 questions she had asked about issues relating to the Mayor (reference: **464255**).

This Office has also recently received the following two complaints that are currently being assessed:

- [REDACTED] has complained about the Council's decision of 12 September 2017 to refuse her request for the identity of the person who requested a copy of her emails to the Council under section 7(2)(a) of LGOIMA (reference: **465798**); and,
- [REDACTED] has complained about the Council's decision of 27 October 2017 to refuse his request for information regarding the qualifications and experience of Council staff under section 7(2)(a) of LGOIMA (reference: **466746**).

Thank you for your assistance with my enquiries to date.

Yours sincerely



Peter Boshier
Chief Ombudsman