

11 March 2009

Grace Haden
23 Wapiti Avenue
Epsom
Auckland

Dear Ms Haden

LGOIMA REQUEST

1. The Chief Executive has referred your letter of 2 March 2009 to me for reply.

Acting outside powers

2. We do not share your view that the provision of animal services is a function which is outside the Council's powers. You have seen the file and the opinions on that topic written in 2000. The Council was comfortable to rely upon the advice received from Matthew Casey, at Kensington Swan, that animal welfare activities were a lawful activity for a local authority under the Local Government Act 1974. (Mr Casey is now a senior member of the independent bar and has recently been appointed Queen's Counsel.)
3. Those opinions are however academic in the context of the Local Government Act 2002 and the powers of general competence conferred by that statute.

"Contracting"

4. You say that "Council is contracting to the head of animal welfare services" for animal welfare services. All staff at the Concourse, including the Manager Animal Welfare, are employees of the Council. Their duties and responsibilities are set out in their employment contracts. To attempt to assert that there might be some other relationship between the Council and the people who work in the Animal Welfare Unit is both mischievous and wrong. Those Council officers who are warranted animal welfare officers perform those services for the Council as a term of their contracts of employment. The Council makes no payment to any other party in relation to the performance of those services.

Documents which are not available

5. Turning to the numbered questions in your email, we have previously provided you with access to the Council's file, such as it. Nothing has been withheld. There is simply no point in continuing to request copies of documents which are not on the file. If they cannot be found there are 2 explanations: either the record keeping was inadequate and the item has been lost or the document did not exist in the first place. In either circumstance s17(e) LGOIMA applies.

6. I note that you say that it is "convenient" that parts of the file are missing. From my perspective that circumstance is far from "convenient" since far more of valuable staff time has been devoted to your enquiries than might otherwise have been the case had the file contained a detailed chronicle of the events that occurred over the years in question. Furthermore the gaps in the file record seems only to have served to fuel to your curiosity about the (long past) history of the Animal Welfare unit and its activities

"Mandate"

7. Your principle concern, (apart from the issue relating to Council powers already discussed at paragraphs 2 and 3) seems to be that Council has performed animal welfare functions without the knowledge of elected members.
8. I do not know from my own knowledge (I did not join the Council until March 2003) nor do I need to know, at what level these matters were discussed in the relevant years leading up to 2002. What is clear is that at a Council meeting on 24 April 2002 a formal presentation was made to the first council officers to be appointed as animal welfare officers. This presentation would not have been made if elected members (and the Chief Executive of the day) did not approve of those appointments.
9. More importantly, in every year since the Council has been involved with providing animal welfare services it will have voted budget to perform those services as part of its annual plan process. There can be no better evidence of "mandate" from elected members, and the community, for the conduct of animal welfare activities by the Council than the provision of budget for that purpose.
10. The financial disciplines of local government require the costs of identifiable activities to be analysed and decisions made as to how to fund those costs. In the case of animal welfare services the choice is between funding the activity from user charges (e.g. dog registration fees) or from rates. I have previously informed you that my investigations have confirmed that a portion of the costs relating to the provision of dog control services, and all of the costs associated with animal welfare activities, are rates funded. (The balance of the costs relating to dog control is funded from user charges.)
11. The setting of rates and charges is a task which takes place over several months each year during the annual plan process. Elected members always take a very close interest in such matters. Line by line scrutiny of items in the budget is the norm rather than the exception. Unit managers are required to attend upon the relevant Council committee to justify their budgets. In a case where the Council's funding policy would ordinarily require a full cost recovery from user charges, but it is proposed to partially fund those costs from rates, a detailed explanation is required from the relevant unit manager to justify a partially rates funded outcome.
12. The annual plan process is the subject of public consultation and commonly attracts much attention from the community. There is always a close focus on funding principles and the appropriate balance between user pays and rates funding before the annual plan is approved. It is difficult to imagine a more detailed and transparent budget process.

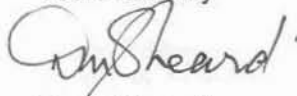
AWINZ

13. Finally I note that you continue to allege that AWINZ operates from the Concourse, despite the firm denial in my letter dated 28 January 2009, paragraph 5(h). The basis for that allegation is not clear. In this regard I record that I have seen a transcript of your telephone conversation with the Council's call centre on 1 February 2009. The conversation which took place does not provide any factual basis for continuing to make this allegation.

Conclusion

14. If you wish to continue with your "crusade" about these issues, and to make further information requests under LGOIMA, Council will deal with those requests in accordance with statutory requirements. The Council reserves the right to make a charge for the supply of any information that you may request when the making of a charge is appropriate.

Yours faithfully



Denis Sheard
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