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**Bcc:** ["Penny Bright"](#); ["Gary Osborne"](#)  
**Subject:** OIA LGOIMA request where do councils get the power from to make up rules?  
**Date:** Wednesday, 19 May 2010 1:17:00 p.m.

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Open letter to minister of local government

This is an official information act request for minister of local government and a LGOIMA request for the Mayor of Auckland

Sirs,

We have a hierarchy of legislation and below legislation we have By laws which are kept in check by section 155 of the local Government Act 2002

*Determination whether bylaw made under this Act is appropriate*

*(1AA) This section applies to a bylaw only if it is made under this Act.*

*(1) A local authority must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problem.*

*(2) If a local authority has determined that a bylaw is the most appropriate way of addressing the perceived problem, it must, before making the bylaw, determine whether the proposed bylaw—*

*(a) is the most appropriate form of bylaw; and*

*(b) gives rise to any implications under the New Zealand Bill of Rights Act 1990.*

I have by way Of LGOIMA to Auckland city council requested that they supply the references to any legal requirement to have swimming pools inspected every three or so years they have failed to provide this information but have had a reply in which they quote is section 10 and 11 of the fencing of swimming pools act 1987 .

#### *FENCING OF SWIMMING POOLS ACT 1987*

*Section 10. Obligation of territorial authorities- Every territorial authority shall take all reasonable steps to ensure that this Act is complied with within its district.*

*Section 11. Power of entry for territorial authority officers- Without limiting any other powers of any territorial authority, any officer of a territorial authority who has reasonable grounds to believe-*

- a. that there is on any land within the district of the territorial authority a swimming pool to which the Act applies; and*
- b. that the pool is not fenced as required by this Act, or any condition imposed under section 6(2) of this Act is not being complied with,-*

*may at any reasonable time enter on the land and carry out an inspection to determine whether or not there is on the land such a pool that is not fenced as required by this Act, or whether or not the condition is being complied with.*

Neither of those sections provide for the ability of council to schedule inspections, however section 11 does provide for council to be able to enter if and when they have reasonable grounds to believe that the pool does not comply.

To be subjected to inspections when **there is no reasonable grounds to suspect** that the pool does not comply with the act is an abuse of power and contrary to *Section 21 of the bill of rights* states *Unreasonable search and seizure*

- *Everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, or correspondence or otherwise.*

I have now been threatened by Auckland city that if I do not comply with their demand to enter my property they will seek a warrant, I have not been given any reason as to why they suspect that my pool does not comply with the legislation, they have inspected it in the past have signed it off as complying, so why do they think things have changed?

To that end I would ask the mayor of Auckland to advise me why a warrant is being threatened to force me to comply with what I believe to be an unlawful order and please provide me with the policies which give the council staff the right to make such a threat.

It appears to me that Auckland city in, trying to enforce regular pool inspections are not relying on any law or by law and are actively ignoring people's rights by "making up rules".

I seek information as to how councils can seek to enforce something which is not backed with legislation or By law, even to the extent of subscribing a charge for the services (being \$210 for repeat inspections) and **therefore request from**

- the Mayor Of Auckland documents relating to any By laws which enable rules and enforcement issues and charges **to be made up** and the process by which this is done. And please also provide documentary evidence of how these particular rules regarding swimming pools were formulated and came about, who was involved in the decision making and when these were passed through council. (that is the inspection and the charging) I would also like documentation in which council examined and questioned the impact of these rules on the bill of rights and any evidence that the bill of rights was considered in formulating these rules.
- The minister if there are any provisions which enable council officers to make up rules without the involvement and direction of councillors and which do not rely on any statute or by law, I request all documentation which relates to any discussion enquiry, investigation or correspondence which either prohibits, endorses or facilitates the ability or council staff to make up their own rules and specifically the rule with regards to inspections and charging for pool inspections made subsequent to any unlawful search procedure. And also any exemption from complying with the provisions of the bill of rights

For the record I have never denied the council access to my pool, I have only asked for them to show that they had a right of inspection, they have as yet not provided any legal grounds on which they have a right to enter my property for inspection and until they do, I will not consent to an inspection.

It appears to me that many people are being bullied into compliance (by threats of warrants)

when there is a have a statutory right to be secure against unreasonable search and council has the ability to enter the property and inspect the pool in any case **if they have reasonable grounds to suspect** that the pool does not comply with the legislation .

I would further like to know from both the Mayor and the minister of local government if this action, which I consider to be bullying , is sanctioned by them and what other matters which are not set in legislation are being enforced by council by coercion and what they are going to do to ensure that councils are not acting outside their scope of powers.

Regards  
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