

Local Government New Zealand
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- M E M O R A N D U M -

TO: Chief Executives, All Local Authorities

CC: Manager/Director of Resource Management/Regulation/
Environment

FROM: John Hutchings

**SUBJECT: USE OF NAMES AND POSTAL ADDRESSES FROM THE
RATING INFORMATION DATABASE FOR RESOURCE
MANAGEMENT PURPOSES**

Purpose

- To attach an opinion received from Simpson Grierson.
- To consider next steps.

Background

Many local authorities have raised questions about the use of the Rating Information Database (compiled as part of the Local Government (Rating) Act 2002), for the purposes of contacting resource consent parties who may be affected by an application, under the Resource Management Act, for a resource consent. The Rating Information Database has been used both by the council itself and by applicants for a resource consent, to allow them to contact affected parties.

On your behalf, we sought an opinion from Simpson Grierson on this matter (attached).

In essence that opinion says, if a person requests information from the Rating Information Database about a person other than themselves, the council is obliged to deal with that request as if it was a request under section 7 of the Local Government Official Information and Meetings Act (LGOIMA) 1987. Simpson

Grierson consider the need to protect the privacy of that person is likely to justify refusing the request.

However, the opinion considers that the council itself can probably use names and addresses from the Database to notify or contact affected parties, although it is preferable for this to be clarified (see below).

Options to overcome problem

Assume that the law is on your side

The first option is to assume that the use of information from the Rating Information Database, by the council itself, is authorised by the Local Government (Rating) Act and the Resource Management Act and therefore does not breach the Privacy Act. However, the release of this information for the use of a third party is another story. Councils could notify and/or contact affected parties but not grant access to the Database to applicants for resource consent.

Seek ratepayer permission

The second option is to enclose a form with your next rating demand that invites ratepayers, by exception, to decline to have their names and addresses disclosed for purposes such as those associated with the Resource Management Act.

Authorisation from the Privacy Commissioner

The third option is that an authorisation be sought from the Privacy Commissioner to use and disclose names and postal addresses from the Rating Information Database to a resource consent applicant. The grounds for seeking this authorisation could well be that the public interest in disclosure, and the benefit to the ratepayers whose details are disclosed, outweighs any interference to their privacy.

Use of Land Information New Zealand database

The fourth option is for councils to recommend that applicants for resource consent use the LINZ database to obtain the name of the landowner and that they then use the electoral roll to get the person's address.

Amendment to the Rating Act

The fifth option is to seek an amendment to the Local Government (Rating) Act to specifically authorise the use of names and postal addresses from the Rating Information Database, for disclosure to an applicant for resource consent.

Next Steps

An appropriate next step would be for *Local Government New Zealand* to seek the authorisation of the Privacy Commissioner, on behalf of all councils, for the use of the Rating Information Database for purposes that would enable both a council and a resource consent applicant to communicate with particular ratepayers about the details of a specific resource consent application.

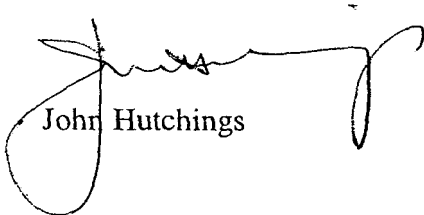
We will undertake this step immediately and will communicate the results to you as soon as they are available.

If the Privacy Commissioner should deny authorisation for the use of the Rating Information Database for these purposes, then we, on your behalf, would consider seeking legislative amendment, probably through the next Statutes Amendment Bill.

In the meantime, councils are left with three options:

- make contact with affected parties themselves (noting that this option still carries some risk);
- obtain the consent of ratepayers for the use of their names and postal addresses for non-rating purposes;
- recommend that applicants for resource consent use the LINZ database to obtain the name of the landowner and then use the electoral roll to get the person's address.

We will keep you informed of progress.



John Hutchings



27 May 2003

29 MAY 2003

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For: John Hutchings

Disclosure of Names and Postal Addresses from the Rating Information Database

Section 28 of the Local Government (Rating) Act 2002 ("Rating Act") provides that the copy of the Rating Information Database ("RID") which is made available for public inspection must not include the name of any person or postal addresses.

You have asked us whether this provision prevents a council from disclosing names and postal addresses on the RID to third parties for other purposes; specifically to applicants for resource consent who are seeking postal addresses to allow them to contact affected parties with a view to obtaining written approvals to their proposal. The existence of such approvals is usually a precondition to a council deciding under section 94 of the Resource Management Act 1991 ("RMA") not to notify the application.

An important related, but separate, question is whether the council itself can use names and postal addresses on the RID to communicate with residents of the district, for example to notify them of a resource consent application under section 93 of the RMA.

1. Summary

- 1.1 Section 28(2) of the Rating Act requires that the copy of the RID made available for public inspection *under that section* not include the name and postal address of a ratepayer.
- 1.2 In the absence of a specific statutory obligation to make certain information available, the context within a request for such information is to be considered is the Local Government Official Information and Meetings Act 1987 ("LGOIMA").
- 1.3 The LGOIMA governs whether- information which has been requested must be disclosed by a council, and overrides the Privacy Act 1993 by virtue of savings provisions in section 7 of that Act.

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- 1.4** The key issue, in our opinion, is whether in terms of section 7(2)(a) of LGOIMA it is necessary to withhold names and postal addresses from the RID in order to protect the privacy of the persons to whom that information relates. We think that ultimately an Ombudsman could take a strict approach to disclosure of names and postal addresses, in light of Parliament's clear intent (in section 28(2) of the Rating Act) that this type of information should not be made available as a matter of course.
- 1.5** In our view councils have five possible solutions to the difficulty in releasing names and postal addresses from the RID to a third party:
- 1.5.1** The first is obtaining the consent of ratepayers for the release of their names and postal addresses (having first obtained the Privacy Commissioner's endorsement for the specific form of consent).
 - 1.5.2** The second option is to seek an authorisation from the Privacy Commissioner to disclose names and postal addresses from the RID to applicants for resource consent, on the grounds that either the public interest in disclosure, or the benefit to the ratepayers whose details are disclosed, outweighs any interference to their privacy.
 - 1.5.3** The Council's third option is to disclose names and postal addresses without ratepayer or Privacy Commissioner authorisation, and risk a complaint to, and an adverse finding by, an Ombudsman. We do not recommend this option.
 - 1.5.4** A fourth option is not to use the RID at all. The Council could instead recommend that applicants for resource consent use the Land Information New Zealand ("LINZ") database to obtain the name of the land owner and then use the electoral roll to get the person's address. In rare cases where this method does not work, section 93 of the RMA allows the Council to excuse a failure to obtain written approvals from every person who may be adversely affected by the granting of the resource consent, where it would be unreasonable in the circumstances to require the obtaining of every such approval.
 - 1.5.5** A final option is for Local Government New Zealand, acting in the interests of all local authorities, to seek an amendment to the Rating Act. This would specifically authorise the disclosure of names and postal addresses from the RID to an applicant for resource consent. It would also allow councils to use such information to help notify affected parties of resource consent applications under section 93 of the RMA, and to contact ratepayers regarding the Council's intention to undertake any statutory function, power or duty.



- 1.6 A council's own use of information from the RID is subject to the Privacy Act. Subject to some limited exceptions, information privacy principle IO prevents the council from using personal information (such as the name and postal addresses of a ratepayer) for a purpose **other** than that for which the information was collected.
- 1.7 Use of personal information from **the** RID will not breach principle IO if that use or disclosure is authorised by another statute. It is arguable that enabling a council to communicate with ratepayers is a purpose for which information on the RID is obtained, given the wording of section 27(3)(b) of the Rating Act; and therefore that a council which uses names and postal addresses from the RID to help it communicate with ratepayers does not breach the Privacy Act.
- 1.8 In addition, section 93 of the RMA providing for notification of resource consent applications arguably allows a council to use information from the RID when notifying affected parties of a resource consent application.

2. Rating Act Provisions

- 2.1 The purpose of the RID is set out in section 27 of the Rating Act:
 - (3) *The purpose of the database is-*
 - (a) *to record all information required for setting and assessing rates; and*
 - (b) *to enable a local authority to communicate with ratepayers; and*
 - (c) *to enable members of the public to have reasonable access to the information in the database relating to the calculation of liability for rates. "*
- 2.2 Section 28 of the Rating Act provides:
 - (1) *The rating information database must be available for inspection-*
 - (a) *at the principal public office of the local authority and any other place that the local authority considers necessary in order to provide reasonable access to all ratepayers and residents of the district; and*
 - (b) *during ordinary office hours or the hours at which the **place** is open to the public.*
 - (2) *The copy of the information database that is made available for inspection must not include the name of any person (unless it is*



necessary to identify the rating unit) or any address other than the street address of the rating unit."

- 2.3** The first question for present purposes is whether the limitation in subsection (2) applies beyond the copy of the RID made available for inspection under subsection (1) to the *disclosure of information from the RID* either at the Council's initiative or in response to a request. While there is room for argument either way, in our view it does not. On a literal interpretation, section 28 as a whole is only concerned with inspection of the RID, and does not govern how a council uses or discloses information from the RID in other circumstances.
- 2.4** Some guidance on the latter point can be drawn from section 27(3) setting out the purpose of the RID. One of the purposes of the RID is to enable a local authority to communicate with ratepayers. The wording of section 27(3)(b) of the Rating Act does not specifically exclude communication for matters unrelated to rating, despite there being an argument that council communications using RID information should be confined to rating matters. The reference to the communication being with "ratepayers", as opposed to a more general term like "residents of the district" which is used in section 28, arguably reflects the fact that the only persons included in the RID are ratepayers (see sections 10 and I 1); so logically the RID could not enable a council to communicate with anyone other than a ratepayer.
- 2.5** On balance, we think it would be unreasonably restrictive to read sections 27 and 28 as preventing a council from communicating with ratepayers, using their names and postal addresses drawn from the RID, on matters other than rating matters. Accordingly, subject to Privacy Act considerations which we consider below, we consider a council could use the RID to notify ratepayers of other council activities such as works that might affect them, or to notify persons likely to be directly affected by a resource consent application under section 93 of the RMA (see below).
- 2.6** However, section 27(3) does not provide authority for the RID to be used by anyone other than the council to communicate with ratepayers. Accordingly we do not think the Act provides any express or implied authority for a council to release names and postal addresses from the RID to third parties seeking that information, for example to inform them of a resource consent application that might affect them.

3. Local Government Official information and Meetings Act Provisions

- 3.7** In the absence of a specific statutory obligation to make certain information available, the context within which a request for information is to be considered is the Local Government Official Information and Meetings Act 1987 ("LGOIMA").

3.2 Section 7 of the LGOIMA establishes the primary principle that information is to be made available unless there is good reason for withholding it. The relevant withholding ground in these circumstances is section 7(2)(a) which provides good reason for withholding if this necessary to “protect the privacy of natural persons, including that of deceased natural persons”. For withholding to be justified, that privacy interest must not be “outweighed by other considerations which render it desirable, in the public interest, to make that information available.” The key issue, in our opinion, is whether in terms of section 7(2)(a) it is necessary to withhold the information in order to protect the privacy of the person to whom it relates.

3.3 We think there is a clear privacy interest associated with the names and postal addresses contained in the RID. The existence of this privacy interest is reflected in the fact that this type of information is specifically excluded from the copy of the RID made available for public inspection. In our view information about the assets owned by a person, including land, is of a character which people generally would regard as private and not to be disclosed by public authorities without specific authority to do so or some overriding public interest. In addition, the information in question has been or will be gathered by the council essentially for administrative purposes – see section 27(3). While there is a countervailing public interest in favour of making this information available, we think that ultimately an Ombudsman could take a strict approach to disclosure of names and postal addresses in light of Parliament’s clear intent that this type of information should not be made available as a matter of course.

3.4 The net result is that in our view, unless a council is prepared to risk a complaint to and adverse finding from an Ombudsman, or adverse comment from the Privacy Commissioner, before releasing names and postal addresses from the RID it must obtain either:

- an authorisation from the ratepayer concerned; or
- a general authorisation from the Privacy Commissioner to disclose any name and postal address from the RID.

4. Privacy Act Provisions

4.1 Section 7(1) of the Privacy Act states that nothing in information privacy principle 11 in that Act (regarding disclosure of information) derogates from any provision in another Act that authorises or requires personal information to be made available. Section 7(2) states that nothing in principle 11 derogates from another statutory provision that “regulates the manner in which personal information may be obtained or made

available”. On this basis, we consider that disclosure of information from the RID in response to a request is governed by the LGOIMA provisions noted above, rather than the Privacy Act.

- 4.2 However, a council’s own use of information it holds on the RID is subject to principle 10 of the Privacy Act which provides (so far as relevant):

“Limits on use of personal information.

An agency that holds personal information that was obtained in connection with one purpose shall not use the information for any other purpose unless the agency believes, on reasonable grounds, -

(a) That the source of information is a publicly available publication; or

(b) That the use of the information for that other purpose is authorised by the individual concerned; or

...

(e) That the purpose for which the information is used is directly related to the purpose in connection with which the information was obtained, or

...

(g) That the use of the information is in accordance with an authority granted under section 54 of this Act.. ”.

- 4.3 This provision prevents a council from using names and postal addresses contained on the RID (the other information in the RID is publicly available) for anything other than the purpose for which this information was collected, unless such use is authorised by the individual. The purposes for which the information is obtained in our view tie back in with the purposes of the RID as set out in section 27(3). The overriding purpose of collecting the information, on a common sense view, is to help the local authority in “setting and assessing rates”, which is referred to in section 27(3)(a).

- 4.4 It is arguable that enabling a council to communicate with ratepayers is also a purpose for which information on the RID is obtained, given the wording of section 27(3)(b).

- 4.5 Section 7(4) of the Privacy Act provides that an action “authorised or required by or under law” does not breach principle 10. This raises the question whether use of RID information to notify persons likely to be affected by resource consents is specifically authorised under the RMA.

- 4.6 Section 93 of the RMA provides that a local authority:

" . . shall ensure that notice of every application for a resource consent made to it in accordance with this Act is—

(a) Served on every person (other than the applicant) who is known by the authority to be an owner or occupier of any land to which the application relates,

(e) Served on such persons who are, in its opinion, Likely to be directly affected by the application, including adjacent owners and occupiers of land, where appropriate,.

... unless the application does not need to be notified in terms of section 94. "

4.7 In our view therefore, a council could, through a combination of section 27(3)(b) of the Rating Act and section 93 of the RMA, assert that where it has decided that a resource consent is to be notified, it can use RID information to contact affected parties without breaching information privacy principle 10.

5. Ratepayer Consent To Release Details

5.1 A council can seek an authorisation from ratepayers for use and disclosure of the RID information for purposes other than those set out in section 27(3). The safest and simplest option is for the council is to include a statement in a rates notice asking for ratepayers' consent to the use and disclosure of RID information.

5.2 In order to allow a council to disclose the details to third parties a broad statement is required, although anything approaching a blanket consent is unlikely to be acceptable to the Privacy Commissioner, as it would effectively be contracting out of the Privacy Act and defeating its purpose.

5.3 In our view it would be appropriate to include a statement on the rates assessment notice or invoice saying:

"It would be helpful if this information could be:

- used by the Council to contact you regarding other Council activities;

- disclosed by the Council to people seeking resource consent for an activity(which affects you, and used by those people or the Council to notify you of their application.

Please let us know if you do not agree to the information being used in these ways by ticking the box and returning to Freepost X District Council. "

6. General Authorisation from the Privacy Commissioner

6.1 Section 54 of the Privacy Act states:

(1) The Commissioner may authorise an agency to collect, use, or disclose personal information, even though that collection, use, or disclosure would otherwise be in breach of principle 2 or principle 10 or principle 11, if the Commissioner is satisfied that, in the special circumstances of the case,-

(a) The public interest in that collection or, as the case requires, that use or that disclosure outweighs, to a substantial degree, any interference with the privacy of the individual that could result from that collection or, as the case requires, that use or that disclosure,- or

(b) That collection or, as the case requires, that use or that disclosure involves a clear benefit to the individual concerned that outweighs any interference with the privacy of the individual that could result from that collection or, as the case requires, that use or that disclosure.

*...
(3) The Commissioner shall not grant an authority under subsection (1) of this section in respect of the collection, use, or disclosure of any personal information for any purpose if the individual concerned has refused to authorise the collection or, as the case requires, the use or disclosure of the information for that purpose.*

6.2 In our view there is strong argument that the benefit to the ratepayer of being informed by a resource consent applicant of his or her proposal outweighs any interference to the ratepayer's privacy (which in our view is negligible). There is also an argument that there is a public interest in applicants talking to potentially affected parties so that the latter can either signify their grounds of opposition to the applicant or provide their written approval, taking a council one step closer to being able to dispense with notification under section 94. There is a public interest in resource consent applications not being notified when the tests for non-notification in section 94, including the limb relating to written approval from affected parties, are capable of being met.

6.3 On this basis, we think there is a clear basis, under either section 54(1)(a) or section 54(1)(b), on which the Privacy Commissioner could grant **an** authorisation for councils to disclose names and postal addresses from the RID to resource consent applicants. If such an authorisation was sought from the Privacy Commissioner, it might also be worth seeking, at the same time, express authorisation to use names and postal addresses



from the RID to assist a council when undertaking any communication with ratepayers (for example, to notify them of works that the council will be undertaking in the area).

- 6.4** Like the option of legislative change which we discuss below, an advantage of this approach is that an authorisation from the Commissioner would allow all councils to use and disclose RID information and prevent differences in practice arising across the country.

7. Release without authorisation

- 7.1** If neither an authorisation from the ratepayer nor an authorisation from the Privacy Commissioner can be obtained, a council may decide to disclose the names and postal addresses; but if it does so it risks a possible complaint to, and adverse finding by, the Ombudsman. We would not recommend this option.

8. Council Recommending Use Of Other Databases

- 8.1** If obtaining ratepayer or Privacy Commissioner authorisation is going to be too time consuming there is another option available to a council. Taking the example of a resource consent application, a council could under section 28(2) release the residential address of the landowner who may be affected by the resource consent. This would enable the applicant to write to the "the owner" (this may not guarantee that the owner will receive it). The council can also lawfully advise the resource consent applicant of the following procedure for finding the name and postal address of the property owner concerned.

8.1.1 The resource consent applicant can search the Land Information New Zealand (LINZ) register pursuant to section 39 of the Land Transfer Act 1952.

8.1.2 From the LINZ register, the resource consent applicant will be able to find the name of the property owner.

8.1.3 Pursuant to section 110(3) of the Electoral Act 1993 the applicant can then use the electoral roll to find the postal address of the person concerned.

- 8.2** Admittedly this process is problematic. It is long-winded and in some situations, e.g. in the case a land owner who is not on the electoral roll, the procedure may not reveal the name or postal address of the land owner.



9. **Legislative Change**

- 9.1 A final option is to seek an amendment to the Rating Act. This would specifically authorise the disclosure of names and postal addresses from the RID to an applicant for resource consent. It would also allow councils to use such information to help notify affected parties of resource consent applications under section 93 of the RMA, and to contact ratepayers regarding the Council's intention to undertake any statutory function, power or duty.
- 9.2 We consider such an amendment is warranted given the widespread uncertainty over this issue, which has already prompted a number of councils to seek our advice. A scenario under which some councils use and release personal information from the RID, while others do not, is clearly undesirable. Moreover, we doubt that Parliament was fully aware, when it passed the Rating Act, of the practical difficulties and uncertainty that section 28(2) would create for councils.
- 9.3 Finally, we consider strong arguments can be made that the privacy interests that Parliament clearly sought to protect in passing section 28(2) would not be harmed by a tightly-worded amendment authorising use and disclosure of names and addresses from the RID for certain defined purposes.
- 9.4 We would of course be happy to assist you with such an amendment or an authorisation from the Privacy Commissioner.

Yours faithfully
SIMPSON GRIERSON

A handwritten signature in black ink, appearing to read "Padraig McNamara".

Padraig McNamara
Senior Associate