

15 May 2024

File Ref: OIAPR-1274023063-26353

Tēnā koe [REDACTED]

Request for information 2024-076

I refer to your request for information dated 16 April 2024, which was received by Greater Wellington Regional Council (Greater Wellington) on 16 April 2024. You have requested the following:

“Could you please send me:

- A copy of the contract entered into between the Council and the provider of the train services in Wellington? (Am I correct that this is Transdev?)*
- Any variations to that contract*
- Any correspondence between the Council and the train service provider in relation to the performance of that contract*
- Any legal advice the council has received in respect of this contract*
- Assuming there is such a contractual stipulation, any information on whether the council has penalised the service provider, warned the service provider, notified the provider they are in breach of contract, or considered cancelling the contract.”*

On 24 April 2024, an officer emailed you to clarify your question regarding correspondence between Metlink and Transdev regarding performance of the contract given that it is quite broad and would likely capture all correspondence between Metlink and Transdev as they all generally fall under managing services and therefore managing performance of the contract.

On 24 April 2024, you responded:

“Would this be narrower? Any correspondence between the Council and the train service provider in relation to the non-performance of that contract.

I am basically trying to see whether the Council has talked with the operator about it failing to meet its contractual requirements.”

Greater Wellington’s response follows:

A copy of the contract entered into between the Council and the provider of the train services in Wellington? (Am I correct that this is Transdev?)

You are correct that this contract is between Greater Wellington and Transdev.

Please refer to the Greater Wellington website where the representative version of the Rail Partnering Contract and the associated Schedules are publicly available:

<https://www.gw.govt.nz/transport/metlink-bus-train-and-ferry/public-transport-contracts/>.

Any variations to that contract

Please see **Attachment 1** which contains copies of variations made in regard to the rail partnering contract. This also contains associated attachments, schedules, and appendices relating to the variations. You may note the different numbers on the variations. There are other variations which have been proposed or are in progress which are not finalised. Some of these will not be finalised at all. We are only releasing copies of the variations that have been agreed and signed by each party.

The attachment is made up of the following documents:

- Variation proposal – Partnering Contract (redacted)
- Variation proposal – Partnering Contract Number 1 – Annexure 19 (redacted)
- Variation proposal – Partnering Contract Number 2 (redacted)
- Variation proposal – Partnering Contract Number 3 – Schedule 7 (Operator Insurance requirements) (redacted)
- Contract Variation 5 (redacted)
- Contract Variation 6 (redacted)
- Contract Variation 7 (redacted)
- Contract Variation 9 (redacted)
- Contract Variation 10 (redacted)
- Contract Variation 12 (redacted)
- Contract Variation 12 Part 1 (redacted)
- Contract Variation 12 Part 2 (redacted)

- Contract Variation 16 (redacted)
- Attachment 1 ECPSS Revision of BFM Overhaul
- Attachment 2 Matangi Brake Module
- Attachment 3 Matangi Brake Module
- Attachment 4 Brake Frame Module
- Attachment 5 Letter Revision of BFM Overhaul
- Attachment 1 ECR 771 redacted
- Attachment 1 ECR 778 redacted
- Attachment 2 ECR 758
- Deed of variation Snapper on Rail

We have withheld parts of the above documents under section 7(2)(b)(ii) of the Local Government Official Information and Meetings Act 1987 (the Act) in that the release would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.

When withholding information under this section we are required to consider the public interest in its release. We have considered this and do not believe that the public interest in this information outweighs our decision to withhold it.

Any correspondence between the Council and the train service provider in relation to the performance of that contract.

Greater Wellington does have a list of letters and correspondence related to potential breach action that was previously being considered by Greater Wellington against Transdev for poor performance of the maintenance aspects of the contract. The issues were resolved, and further breach action was not taken.

We are withholding this information under section 7(2)(b)(ii) of the Act in that the release would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.

When withholding information under this section we are required to consider the public interest in its release. We have considered this and do not believe that the public interest in this information outweighs our decision to withhold it.

The letters and correspondence resulted in audits and a correction plan. The correction plan is still underway and when completed, the maintenance aspect of the partnering contract has met expectations.

Any legal advice the council has received in respect of this contract

This part of your request for information is withheld under section 7(2)(g) of the Act to maintain legal professional privilege.

When withholding under this section, we are required to consider the public interest. We have considered the public interest in this information and do not believe it outweighs our decision to withhold.

We are also required to consider waiving our legal professional privilege. We have considered this and have made the decision not to waive this in this instance.

Assuming there is such a contractual stipulation, any information on whether the council has penalised the service provider, warned the service provider, notified the provider they are in breach of contract, or considered cancelling the contract.

The Partnering Contract provides provision for penalties based on service performance. There has not been material consideration of cancelling the contract, nor notification of breach of contract issued aside from the letters and correspondence mentioned above.

We have applied abatements to Transdev's payments every month since commencement of the contract. However, we would not share the value of these associated financial deductions as these are considered commercially sensitive information.

If you have any concerns with the decision(s) referred to in this letter, you have the right to request an investigation and review by the Ombudsman under section 27(3) of the Local Government Official Information and Meetings Act 1987.

Please note that it is our policy to proactively release our responses to official information requests where possible. Our response to your request will be published shortly on Greater Wellington's website with your personal information removed.

Nāku iti noa, nā



Samantha Gain

Kaiwhakahaere Matua Waka-ā-atea | Group Manager Metlink