



UPDATE - Ratepayer Information

We are sure you will either have seen or heard about the front page article and editorial comment in the Sunday Mail Sunday, 12 June 2011 (attached for your information in this email). The issue is a sensationalized suggestion that councils are selling personal information (databases) of ratepayer information to third party commercial organisations and, in so doing, are putting both high profile and vulnerable persons at risk. The editorial makes the statement that this "... is hardly an example of good governance."

Unfortunately, the article and the editorial had scant regard to the legal reality arising from the requirements that the *Local Government Act 1999* imposes upon councils, a failure to comply with which would put a council in breach of the law and subject to various potential sanctions.

In these circumstances, the Local Government Team at Wallmans thought it appropriate to set out the law and the facts so that if you are approached by the media or a resident, you will have, at your fingertips, the relevant advice:

- Section 172 of the LG Act requires you, as the CEO, to maintain a record of all valuation assessments of each separate piece of rateable land in your Council area. This record is the Assessment Record and it must include, amongst other things, the name and address of the owner of land, the name and address of the principal ratepayer if he/she/it is not the owner and, so far as is known to you, the name of any occupier of the land.
- Where you are satisfied that the inclusion of a name or address of a person would place them, a member of their family or any other person at risk for their personal safety, you have a discretion to (i.e you may) suppress their name or address from the Assessment Record.
- Where a person's address is suppressed from the House of Assembly Roll (under the *Electoral Act 1985*) you MUST:
 - where they are included as the owner but not the occupier, suppress their residential address; or
 - where their residential address is included as rateable land and their place or occupation, suppress their name from the Assessment Record.
- The Assessment Record is a public document. Section 174 of *the Act* entitles a person to inspect it during ordinary office hours and, upon payment of a fee, to obtain a copy of an entry made in it.
- Whilst the amount of the fee for a copy of an entry is set by the council under Section 188(1)(d) of *the Act*, it is to be noted that Section 188(2a) provides that such fee must not exceed a reasonable estimate of the direct cost to the council in providing the copy.

So what does this mean, what are the implications?

Firstly, it is clearly incumbent upon you as the CEO to ensure that all mandatory suppressions from the Assessment Record have, in fact, occurred.

Secondly, in respect of discretionary suppressions, you must determine whether the council has taken sufficient reasonable steps to advise people of their rights to make application in this regard. This might, for instance, require

additional information to be included in or with rates notices, for advisory pamphlets to be prepared and made available not only at all council offices (e.g. libraries, community centres) but also through local police stations, women's refuges, counselling services and at neighbourhood centres. In addition, specific contact should be made with high profile people residing or owning property in the council area to advise of this discretion.

Thirdly, you must ensure that you have appropriate application forms and guidance notes available for persons wishing to apply for suppression - and appropriate referral mechanisms for anyone wishing to seek suppression under the *Electoral Act 1985*.

Fourthly, you must be aware that you are not in a position to impose conditions upon a person wishing to inspect or to obtain a copy of an entry or entries in the Assessment Record - whilst at the same time we recommend that you give consideration to the development of a voluntary registration process for persons prepared to provide their details where inspecting or requesting copies of entries in the Assessment Record - as a matter of good public policy, demonstrable good faith, and out of respect for access to personal information of other ratepayers.

Fifthly, to be aware that the *Local Government Act 1999* prevents the council introducing what may be regarded as 'penalty fees' for copies of entries in the Assessment Record - see Section 188(2a) of the *Local Government Act 1999*.

Sixthly, to note that unless amendments are made to the *Local Government Act 1999* or until overriding State privacy legislation is enacted to deal with uses (or misuses) of personal information, that the law, in terms of public accessibility to and of information contained in the Assessment Record, is unequivocal and clear. As such your hands are metaphorically 'tied' when a request for inspection of or for a copy or copies of an entry or entries in the Assessment Record are made. At this point in time you do not have available the type of discretion available in Victoria and Western Australian in terms of this type of information being subject to the Privacy Principles and the council Chief Executive Officer having discretion to refuse a request for a copy of information where he/she considers it will likely be used for a commercial purpose.

Finally, be aware that there is also the voters roll which is in the possession of the council which contains personal information of residents and ratepayers and this is also a public document. Again, however, there are suppression opportunities available.

We will, of course, be writing to the Editor of the Sunday Mail to point out the law and the facts and hence the apparent mischief in the article and editorial.

If you require any further help, please contact me or any other member of the Local Government Team.

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