

## Kylie Flood

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**From:** Administration Requests  
**Sent:** Thursday, 14 February 2019 11:16 AM  
**To:** Clive  
**Cc:** Administration Requests  
**Subject:** FW: LGOIMA request: Annual report 2017/2018: Graham Sibery remuneration  
**Attachments:** Boonham-AR Remuneration 12022019.pdf

Hi Mr Boonham

I refer to your email below. Please find attached a copy of page 60 of the 2017/18 Annual Report which shows the total remuneration for Mr Sibery as \$298,174, \$47,769 of which is severance pay.

Regards Linda



Linda Osborne | Administration Manager  
Kaipara District Council, Private Bag 1001, Dargaville 0340  
Freephone: 0800 727 059 | 09 439 3123  
[council@kaipara.govt.nz](mailto:council@kaipara.govt.nz) | [www.kaipara.govt.nz](http://www.kaipara.govt.nz)

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**From:** Clive [<mailto:clive@kaipara.govt.nz>]  
**Sent:** Tuesday, 12 February 2019 11:47 AM  
**To:** Chief Exec <[chiefexec@kaipara.govt.nz](mailto:chiefexec@kaipara.govt.nz)>  
**Subject:** Re: LGOIMA request: Annual report 2017/2018: Graham Sibery remuneration

Hi Louise

I refer to your email of 11 February 2019.

I have previously requested information relating to communications between the Council and its auditors re Mr Sibery. On the first occasion my request was ignored. On the second occasion you refused to supply the information but without providing a section 7 reason, as required by section 17 of LGOIMA.

I now have no alternative but to file a complaint with the Ombudsman under section 27.

So that the position you have taken is clearly presented to the Ombudsman I make the following LGOIMA requests again. I request the following:

1. A copy of all communications between the KDC and the KDC's auditor relating to the figures for Mr Sibery's remuneration and severance pay included in the KDC's Annual Report for 2017/2018. That applies to all communications prior to the release of the Annual Report, and all communications subsequent to my first LGOIMA request on this issue.
2. The amount of remuneration paid to Mr Sibery for the 2017/2018 rating year as required by clause 32 of Schedule 10 of the LGA 2002.
3. The amount of severance pay paid to Mr Sibery for the 2017/2018 rating year as required by clause 33 of Schedule 10 of the LGA 2002.
4. The reason why the correct figures for the two items above were not included in the KDC's Annual Report for 2017/2018.

Legal situation of KDC

You advise in your email of 11 February 2019 that the “Council’s auditors specified the wording” that was included in the Annual Report of 2017/2018 relating to Mr Sibery.

The law is quite clear. The KDC is responsible for an annual report’s compliance with the requirements of the LGA 2002. If the information provided in the Annual Report is incorrect or intended to mislead, the Council cannot pass the responsibility for a misstatement to the Council’s auditor by stating that the Council’s auditor supplied the specific wording used.

It appears, from the information provided by the Council pursuant to LGOIMA requests, that the Council made a deliberate decision to disguise the amount of Mr Sibery’s severance pay in the Annual Report and consulted with its auditor to see how this could be best achieved.

It therefore appears that the KDC included misstatements relating to Mr Sibery in the Annual Report for 2017/2018. It also appears that the misstatements were included knowing that they were incorrect.

It appears, from the information provided by the Council pursuant to LGOIMA requests, that the Council deliberately misstated the figures in the Annual Report to disguise the correct amount paid to Mr Sibery in severance pay and to mislead ratepayers in that respect. In this respect, section 98 of the LGA 2002 states:

*(2) The purposes of an annual report are—  
to promote the local authority’s accountability to the community for the decisions made throughout the year by the local authority.*

It also appears, from the information provided by the Council pursuant to LGOIMA requests, that the chief executive signed the statement of compliance knowing that the Council had not complied with requirements of the LGA 2002. (See clause 34 of Schedule 10) It is unknown if the Mayor was aware of the deliberate misstatement when signing the statement of compliance.)

### **Audit Report of Deloitte Limited**

From the information relating to Mr Sibery in in the KDC Annual Report 207/2018, and from the information provided by the Council pursuant to LGOIMA request, it appears that the figures for Mr Sibery’s remuneration and severance pay for the 2017/2018 annual year were misstated in the annual report for that year.

It appears from the information provided by the Council that the Council’s auditor specified the wording relating to Mr Sibery’s remuneration and severance pay.

It appears, therefore, that the auditor was aware that the information provided in the Annual Report was incorrect and/or misleading.

### **Misstatements**

The audit report states:

*Misstatements are differences or omissions of amounts or disclosures, and can arise from fraud or error. Misstatements are considered material if, individually or in the aggregate, they could reasonably be expected to influence the decisions of readers taken on the basis of this audited information.*

The misstatements relating to Mr Sibery could reasonably have been expected to mislead ratepayers reading the Annual Report.

The comment in the audit report in the annual report that “the Council has complied with the requirements of Schedule 10” of the LGA 2002 is not correct, and was made knowing it was not correct.

In summary, it appears to me, from the information you have provided, that the Council’s auditor failed to meet the auditing standards set down by the Auditor-General.

I look forward to receiving the information requested, as set out above.

If you feel any of the conclusions that I have reached above are incorrect then please let me know, and please provide me with the information that supports an alternative conclusion.

Regards

Clive

**From:** Administration Requests  
**Sent:** Monday, February 11, 2019 1:33 PM  
**To:** Clive  
**Cc:** Administration Requests  
**Subject:** FW: LGOIMA request: Annual report 2017/2018: Graham Sibery remuneration

Hi Mr Boonham

Further to your email received 4 February 2019, Council’s 2017/18 Annual Report provides the information we are required to provide to the public. Council’s auditors specified the wording for this so we can give you no further information than what is in our Annual Report. There is nothing further we can say on this matter.

Regards Linda



Linda Osborne | Administration Manager  
Kaipara District Council, Private Bag 1001, Dargaville 0340  
Freephone: 0800 727 059 | 09 439 3123  
[council@kaipara.govt.nz](mailto:council@kaipara.govt.nz) | [www.kaipara.govt.nz](http://www.kaipara.govt.nz)

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**From:** Clive <[REDACTED]>  
**Sent:** Monday, 4 February 2019 11:50 AM  
**To:** Chief Exec <[chiefexec@kaipara.govt.nz](mailto:chiefexec@kaipara.govt.nz)>  
**Subject:** Re: LGOIMA request: Annual report 2017/2018: Graham Sibery remuneration

Hi Louise

I am responding to the letter of 1 February 2019 from Linda Osborne in this matter.

I am concerned that there was no response to my email of 13 December 2018 which included a LGOIMA request in respect of payments to Mr Sibery and also a copy of the advice on the matter received from KDC's auditor.

Your letter of 1 February 2019 appears to be a response to the first request but there has been no response to the second request. I would be obliged if you could respond to that request.

You state again that the figures in the annual report relating to Mr Sibery are correct. You advise again that your auditors have checked the figures and they state that they are correct.

I ask you yet again as a LGOIMA request to confirm that Mr Sibery was paid, as part of his annual salary of approximately \$240,000 per annum, the sum of \$241,866 dollars for the two months that he was employed in the 2017/2018 rating year as stated in the annual report for that rating year.

I also ask you to confirm that Mr Sibery was also paid \$47,769 in severance payment in that rating year.

Your letter of 1 February 2019 states that you are withholding information relating to the different payments and what those payments are for under the provisions of LGOIMA. This suggests strongly that the figures and the description of payments in the report are incorrect and that you know they are incorrect.

I ask you to reconsider that advice in light of your statutory obligations.

### **Statutory obligations in respect of the annual report**

I refer you to clauses 32 and 33 of Schedule 10 of the LGA 2002 with the relevant parts highlighted:

#### **32 Remuneration issues**

*(1) An annual report must include a report on the remuneration that, in the year to which the report relates, was received by, or payable to, each of the following persons:*

- (a) the mayor or chairperson of the local authority;*
- (b) each of the other members of the local authority;*
- (c) the chief executive of the local authority.*

*(2) The report under subclause (1) must show, in relation to each person specified in that subclause, that person's total remuneration for the year.*

*(3) To avoid doubt, subclause (2) applies to the total remuneration (including the value of any non-financial benefits) that, during the year, was paid to the person, or was payable to the person, by the local authority and any council organisation of the local authority.*

#### **33 Severance payments**

*(1) An annual report must state—*

- (a) the amount of any severance payments made in the year to any person who vacated office as the chief executive of the local authority; and*
- (b) the number of employees of the local authority to whom, in the year, severance payments were made; and*
- (c) the amount of every such severance payment.*

*(2) In this section, **severance payment** means any consideration that a local authority has agreed to provide to an employee in respect of that employee's agreement to the termination of his or her employment, being consideration, whether of a monetary nature or otherwise, additional to any entitlement of that employee to—*

- (a) any final payment of salary; or*
- (b) any holiday pay; or*

***(c) any superannuation contributions.***

These are clear statutory obligations.

Clause 34 recognises this and requires the mayor and the chief executive to sign a statement of compliance:

**34 Statement of compliance**

*(1) An annual report must include a statement that all statutory requirements in relation to the annual report have been complied with.*

*(2) The statement must be signed—*

*(a) by the mayor or chairperson of the local authority; and*

*(b) by the chief executive of the local authority.*

The statement of compliance for the annual report for 2017/2018 was signed by the Mayor Dr Jason Smith and yourself as chief executive on 27 September 2018. The statement states:

**Statement of Compliance**

*The Kaipara District Council hereby confirms that all statutory requirements in relation to the preparation and publication of information required to be included in this Report as outlined in the Local Government Act 2002 have been complied with.*

The statement is incorrect for the following reasons:

1. The annual report does not state accurately the remuneration received by Mr Sibery as chief executive for the relevant year as required by clause 32 of Schedule 10 of the LGA 2002.
2. The annual report does not state accurately the severance pay received by Mr Sibery as chief executive for the relevant year as required by clause 33 of Schedule 10 of the LGA 2002.
3. The figures in the annual report for Mr Sibery's remuneration and severance pay were deliberately falsified to disguise the real nature of the payments to Mr Sibery.
4. Those who contributed the figures and description of payments relating to Mr Sibery to the annual report were aware that the figures were wrong and misrepresented the true situation.
5. It is unclear at this stage if the chief executive and the Mayor were aware of the incorrect figures and misrepresentation when they signed the statement of compliance.
6. It is unclear if the Council's auditors were aware of the incorrect figures and misrepresentation at the time the audit report signed off.
7. The chief executive and the auditors are now aware that the figures are incorrect and misrepresent the true situation in respect of Mr Sibery's remuneration and severance pay. However, the chief executive and the auditors still maintain that the figures and the description of payments in the annual report are correct.

**LGOIMA objections**

In respect of your objection under section 7(2)(a) I respond as follows:

1. The payments made to a chief executive in respect of remuneration and severance pay are matters of public interest. This is made clear by the statutory obligation to provide the information in the annual report.
2. Ratepayers fund, through rates, any payments made to a chief executive and are entitled to know the remuneration and severance pay of a chief executive.
3. The amount of remuneration and the amount of severance pay of chief executives in local authorities are matters of public knowledge and are not matters of personal privacy.
4. Any confidentiality clause in a severance agreement cannot override the statutory obligation to state the amount of remuneration and the amount of severance pay of a chief executive in an annual report. Such confidentiality may, however, apply to reasons for the departure and the calculations behind the severance pay. The severance agreement should make this clear so that there is no dispute about which matters are matters of confidence and which are matters that must be disclosed publicly.

In respect of your objection under section 7(2)(c) I respond as follows:

1. As stated above, there can be no obligation of confidence in respect of information relating to the amount of remuneration or the amount of severance pay of a chief executive stated in a severance agreement because the LGA 2002 requires such information to be public knowledge and to be stated in an annual report. A private agreement that the amount of severance pay is confidential cannot override the clear obligations under the LGA 2002.
2. Making the information available is not likely to damage the public interest by detracting from Council's ability to manage its employee relationships in confidence because:
  1. The Council and the chief executive are both bound by the provisions of the LGA 2002 and are aware that there can be no obligation of confidence in respect of the amount of remuneration and the amount of severance pay.
  2. The disclosure of the amount of a chief executive's remuneration and severance pay pursuant to statutory obligations cannot detract from the Council's ability to manage its employee relationships in confidence because it is not a breach of confidence and does not affect other employees.
  3. The LGA 2002 provisions apply to all chief executives of local authorities. All chief executives and applicants for chief executive positions are bound by the law and understand that the amount of their remuneration and the amount of any severance pay is public knowledge. The disclosure of that information is part of the normal statutory process relating to the employment of a chief executive and cannot damage any relationship.
4. As for public interest, the public interest is served by the Council complying with the statutory obligations which Parliament clearly enacted because it considered that the disclosure of the information in question is in the public interest.

### **Section 71 LGA 2002**

Section 71 of the LGA 2002 offers some protection from disclosure of sensitive information in an annual report. However, it may only be withheld if may be properly withheld under a LGOIMA request.

For the reasons stated above, the information requested cannot be withheld.

I therefore ask you to reconsider your refusal to withhold the information requested and to make it available to me.

I also ask you to make the appropriate amendments to the annual report so that it is compliant with the requirements of the LGA 2002.

I look forward to hearing from you.

Regards

Clive

**From:** Administration Requests  
**Sent:** Friday, February 1, 2019 1:40 PM  
**To:** Clive  
**Cc:** Administration Requests  
**Subject:** FW: LGOIMA request: Annual report 2017/2018: Graham Sibery remuneration

Hi Mr Boonham

Further to your latest email under the Local Government Official Information and Meetings Act 1987 (LGOIMA) our response remains the same. There is no mistake in the 2017/18 Annual Report and our Auditors have checked the figures.

Under section 7(2)(a) of the LGOIMA information relating to different payments and what those payments were for, has been withheld to avoid infringing upon Mr Sibery's personal privacy. There is also good reason for withholding under section 7(2)(c), to protect information which is subject to an obligation of confidence because the release of the information would be likely to damage the public interest by detracting from Council's ability to manage its employee relationships in confidence. I am of the view that those good reasons for withholding outweigh the public interest in the matter.

In accordance with section 27 of the LGOIMA, you have the right to complain to the Ombudsman for an investigation or review of the decisions to refuse to supply information in response to your request.

Regards Linda



Linda Osborne | Administration Manager  
Kaipara District Council, Private Bag 1001, Dargaville 0340  
Freephone: 0800 727 059 | 09 439 3123  
[council@kaipara.govt.nz](mailto:council@kaipara.govt.nz) | [www.kaipara.govt.nz](http://www.kaipara.govt.nz)

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**From:** Clive <[REDACTED]>  
**Sent:** Wednesday, 30 January 2019 9:45 PM  
**To:** Chief Exec; Administration Requests  
**Subject:** Fw: LGOIMA request: Annual report 2017/2018: Graham Sibery remuneration

Hi Louise

I do not appear to have received any response to the email below.

The LGOIMA response period has long expired.

A prompt reply would be appreciated.

Regards

Clive

**From:** Clive  
**Sent:** Thursday, December 13, 2018 9:12 AM  
**To:** Louise Miller  
**Cc:** Administration Requests  
**Subject:** Re: LGOIMA request: Annual report 2017/2018: Graham Sibery remuneration

FOR: CHIEF EXECUTIVE, KDC

Hi Louise

Below is the chain of letters in respect of this LGOIMA request.

The letter from your staff does not respond to the questions that I posed.

I have consulted with an auditor who advises that the figures in the annual report are clearly wrong despite what your staff says, and despite what the KDC auditors are purported to have said.

It also appears to me, without being too dramatic, that on the facts supplied by your staff the KDC and its auditors have conspired to misrepresent the situation in respect of monies paid to the former chief-executive for the 2017/2018 rating year. That is a serious matter.

Please advise the total amount paid to Mr Sibery during the 2017/2018, how that amount was broken down into different payments, and what those payments were for.

This is the same request as before so the LGOIMA response period does not run.

I also request a copy of the advice on the matter received from the the KDC auditor. This is not legal advice but the auditors' clarification in respect of an apparent mistake in figures in the annual report. You cannot therefore claim that it is privileged.

I will withhold further action until I get a response from you.

Regards

Clive

**From:** Administration Requests  
**Sent:** Tuesday, December 11, 2018 5:36 PM  
**To:** Clive  
**Cc:** Administration Requests  
**Subject:** FW: LGOIMA request: Annual report 2017/2018: Graham Sibery remuneration

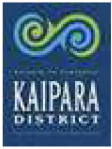
Hello Mr Boonham

Thank you for your email relating to payment to Mr Sibery.



While the figures in Council's 2017/18 Annual Report may look incorrect they are in fact correct and Council's Auditors have confirmed this. Mr Sibery was not paid \$1.5 million, his annual salary was \$241,866.

Regards Linda



Linda Osborne | Administration Manager  
Kaipara District Council, Private Bag 1001, Dargaville 0340  
Freephone: 0800 727 059 | 09 439 3123  
[council@kaipara.govt.nz](mailto:council@kaipara.govt.nz) | [www.kaipara.govt.nz](http://www.kaipara.govt.nz)

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**From:** Administration Requests

**Sent:** Friday, 16 November 2018 10:19 a.m.

**To:** Clive [REDACTED]

**Cc:** Administration Requests <[administrationrequests@kaipara.govt.nz](mailto:administrationrequests@kaipara.govt.nz)>

**Subject:** RE: LGOIMA request: Annual report 2017/2018: Graham Sibery remuneration

Hi Mr Boonham

Thank you for your request for information received under the Local Government Official Information and Meetings Act 1987. Pursuant to the Act you will receive a response within 20 working days. Your response is due 12 December 2018.

Regards Linda



Linda Osborne | Administration Manager  
Kaipara District Council, Private Bag 1001, Dargaville 0340  
Freephone: 0800 727 059 | 09 439 3123  
[council@kaipara.govt.nz](mailto:council@kaipara.govt.nz) | [www.kaipara.govt.nz](http://www.kaipara.govt.nz)

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**From:** Council

**Sent:** Wednesday, 14 November 2018 12:22 p.m.

**To:** Administration Requests <[administrationrequests@kaipara.govt.nz](mailto:administrationrequests@kaipara.govt.nz)>

**Subject:** FW: LGOIMA request: Annual report 2017/2018: Graham Sibery remuneration

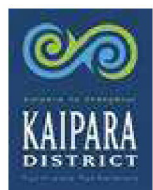
Tēnā koe

Please find forwarded LGOIMA request received in Council Inbox.

If you require any further assistance please contact the Kaipara District Council email [council@kaipara.govt.nz](mailto:council@kaipara.govt.nz), telephone 0800 727 059 from Monday to Friday 8 am to 4.30 pm or visit our website [www.kaipara.govt.nz](http://www.kaipara.govt.nz).

Kind regards

Customer Services



Shalisha Blom | Kaitiaki Kiritaki | Customer Services  
Kaipara te Oranganui | Kaipara District Council, Private Bag 1001, Dargaville 0340  
Freephone: 0800 727 059 | 09 439 7059  
[council@kaipara.govt.nz](mailto:council@kaipara.govt.nz) | [www.kaipara.govt.nz](http://www.kaipara.govt.nz)  
Dargaville Office: 42 Hokianga Road, Dargaville 0310  
Mangawhai Office: Unit 6, The Hub, 6 Molesworth Drive, Mangawhai 0505  
Opening Hours: Monday - Friday 8 am to 4.30 pm

-----Original Message-----

**From:** Clive [mailto: ]  
**Sent:** Wednesday, 14 November 2018 11:35:31 AM

**To:** Council

**Subject:** LGOIMA request: Annual report 2017/2018: Graham Sibery remuneration

FOR THE CHIEF EXECUTIVE KAIPARA DISTRICT COUNCIL

LGOIMA REQUEST

**Remuneration for Graham Sibery in the 2017/2018 annual report**

The [annual report for 2017/2018](#) at page 60 states that the outgoing chief executive (Graham Sibery) was paid \$47,769 in severance pay and \$8,539 in other benefits. It also shows that for the first two months of the 2017/2018 rating year he was paid a salary of \$241,866. That amounts to a salary of nearly \$1.5 million annually.

The figures are clearly wrong and may be the wrong way round.

Please check and correct the figures in the annual report.

**Please advise what salary was paid to Mr Sibery for the two first months of the 2017/2018 year and what severance pay and other benefits were paid to Mr Sibery on his departure.**

Thank you for your assistance.

Clive Boonham

## Linda Osborne

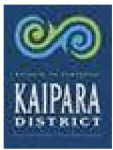
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**From:** Administration Requests  
**Sent:** Monday, 11 February 2019 1:34 PM  
**To:** Clive  
**Cc:** Administration Requests  
**Subject:** FW: LGOIMA request: Annual report 2017/2018: Graham Sibery remuneration

Hi Mr Boonham

Further to your email received 4 February 2019, Council's 2017/18 Annual Report provides the information we are required to provide to the public. Council's auditors specified the wording for this so we can give you no further information than what is in our Annual Report. There is nothing further we can say on this matter.

Regards Linda



Linda Osborne | Administration Manager  
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**From:** Clive <[REDACTED]>  
**Sent:** Monday, 4 February 2019 11:50 AM  
**To:** Chief Exec <[chiefexec@kaipara.govt.nz](mailto:chiefexec@kaipara.govt.nz)>  
**Subject:** Re: LGOIMA request: Annual report 2017/2018: Graham Sibery remuneration

Hi Louise

I am responding to the letter of 1 February 2019 from Linda Osborne in this matter.

I am concerned that there was no response to my email of 13 December 2018 which included a LGOIMA request in respect of payments to Mr Sibery and also a copy of the advice on the matter received from KDC's auditor.

Your letter of 1 February 2019 appears to be a response to the first request but there has been no response to the second request. I would be obliged if you could respond to that request.

You state again that the figures in the annual report relating to Mr Sibery are correct. You advise again that your auditors have checked the figures and they state that they are correct.

I ask you yet again as a LGOIMA request to confirm that Mr Sibery was paid, as part of his annual salary of approximately \$240,000 per annum, the sum of \$241,866 dollars for the two months that he was employed in the 2017/2018 rating year as stated in the annual report for that rating year.

I also ask you to confirm that Mr Sibery was also paid \$47,769 in severance payment in that rating year.

Your letter of 1 February 2019 states that you are withholding information relating to the different payments and what those payments are for under the provisions of LGOIMA. This suggests strongly that the figures and the description of payments in the report are incorrect and that you know they are incorrect.

I ask you to reconsider that advice in light of your statutory obligations.

**Statutory obligations in respect of the annual report**

I refer you to clauses 32 and 33 of Schedule 10 of the LGA 2002 with the relevant parts highlighted:

### **32 Remuneration issues**

*(1) An annual report must include a report on the remuneration that, in the year to which the report relates, was received by, or payable to, each of the following persons:*

- (a) the mayor or chairperson of the local authority;*
- (b) each of the other members of the local authority;*
- (c) the chief executive of the local authority.*

*(2) The report under subclause (1) must show, in relation to each person specified in that subclause, that person's total remuneration for the year.*

*(3) To avoid doubt, subclause (2) applies to the total remuneration (including the value of any non-financial benefits) that, during the year, was paid to the person, or was payable to the person, by the local authority and any council organisation of the local authority.*

### **33 Severance payments**

*(1) An annual report must state—*

- (a) the amount of any severance payments made in the year to any person who vacated office as the chief executive of the local authority; and*
- (b) the number of employees of the local authority to whom, in the year, severance payments were made; and*
- (c) the amount of every such severance payment.*

*(2) In this section, **severance payment** means any consideration that a local authority has agreed to provide to an employee in respect of that employee's agreement to the termination of his or her employment, being consideration, whether of a monetary nature or otherwise, additional to any entitlement of that employee to—*

- (a) any final payment of salary; or*
- (b) any holiday pay; or*
- (c) any superannuation contributions.*

These are clear statutory obligations.

Clause 34 recognises this and requires the mayor and the chief executive to sign a statement of compliance:

### **34 Statement of compliance**

*(1) An annual report must include a statement that all statutory requirements in relation to the annual report have been complied with.*

*(2) The statement must be signed—*

- (a) by the mayor or chairperson of the local authority; and*
- (b) by the chief executive of the local authority.*

The statement of compliance for the annual report for 2017/2018 was signed by the Mayor Dr Jason Smith and yourself as chief executive on 27 September 2018. The statement states:

### **Statement of Compliance**

*The Kaipara District Council hereby confirms that all statutory requirements in relation to the preparation and publication of information required to be included in this Report as outlined in the Local Government Act 2002 have been complied with.*

The statement is incorrect for the following reasons:

1. The annual report does not state accurately the remuneration received by Mr Sibery as chief executive for the relevant year as required by clause 32 of Schedule 10 of the LGA 2002.
2. The annual report does not state accurately the severance pay received by Mr Sibery as chief executive for the relevant year as required by clause 33 of Schedule 10 of the LGA 2002.
3. The figures in the annual report for Mr Sibery's remuneration and severance pay were deliberately falsified to disguise the real nature of the payments to Mr Sibery.
4. Those who contributed the figures and description of payments relating to Mr Sibery to the annual report were aware that the figures were wrong and misrepresented the true situation.
5. It is unclear at this stage if the chief executive and the Mayor were aware of the incorrect figures and misrepresentation when they signed the statement of compliance.
6. It is unclear if the Council's auditors were aware of the incorrect figures and misrepresentation at the time the audit report signed off.
7. The chief executive and the auditors are now aware that the figures are incorrect and misrepresent the true situation in respect of Mr Sibery's remuneration and severance pay. However, the chief executive and the auditors still maintain that the figures and the description of payments in the annual report are correct.

#### **LGOIMA objections**

In respect of your objection under section 7(2)(a) I respond as follows:

1. The payments made to a chief executive in respect of remuneration and severance pay are matters of public interest. This is made clear by the statutory obligation to provide the information in the annual report.
2. Ratepayers fund, through rates, any payments made to a chief executive and are entitled to know the remuneration and severance pay of a chief executive.
3. The amount of remuneration and the amount of severance pay of chief executives in local authorities are matters of public knowledge and are not matters of personal privacy.
4. Any confidentiality clause in a severance agreement cannot override the statutory obligation to state the amount of remuneration and the amount of severance pay of a chief executive in an annual report. Such confidentiality may, however, apply to reasons for the departure and the calculations behind the severance pay. The severance agreement should make this clear so that there is no dispute about which matters are matters of confidence and which are matters that must be disclosed publicly.

In respect of your objection under section 7(2)(c) I respond as follows:

1. As stated above, there can be no obligation of confidence in respect of information relating to the amount of remuneration or the amount of severance pay of a chief executive stated in a severance agreement because the LGA 2002 requires such information to be public knowledge and to be stated in an annual report. A private agreement that the amount of severance pay is confidential cannot override the clear obligations under the LGA 2002.

2. Making the information available is not likely to damage the public interest by detracting from Council's ability to manage its employee relationships in confidence because:
  1. The Council and the chief executive are both bound by the provisions of the LGA 2002 and are aware that there can be no obligation of confidence in respect of the amount of remuneration and the amount of severance pay.
  2. The disclosure of the amount of a chief executive's remuneration and severance pay pursuant to statutory obligations cannot detract from the Council's ability to manage its employee relationships in confidence because it is not a breach of confidence and does not affect other employees.
  3. The LGA 2002 provisions apply to all chief executives of local authorities. All chief executives and applicants for chief executive positions are bound by the law and understand that the amount of their remuneration and the amount of any severance pay is public knowledge. The disclosure of that information is part of the normal statutory process relating to the employment of a chief executive and cannot damage any relationship.
  4. As for public interest, the public interest is served by the Council complying with the statutory obligations which Parliament clearly enacted because it considered that the disclosure of the information in question is in the public interest.

### **Section 71 LGA 2002**

Section 71 of the LGA 2002 offers some protection from disclosure of sensitive information in an annual report. However, it may only be withheld if may be properly withheld under a LGOIMA request.

For the reasons stated above, the information requested cannot be withheld.

I therefore ask you to reconsider your refusal to withhold the information requested and to make it available to me.

I also ask you to make the appropriate amendments to the annual report so that it is compliant with the requirements of the LGA 2002.

I look forward to hearing from you.

Regards

Clive

**From:** Administration Requests  
**Sent:** Friday, February 1, 2019 1:40 PM  
**To:** Clive  
**Cc:** Administration Requests  
**Subject:** FW: LGOIMA request: Annual report 2017/2018: Graham Sibery remuneration

Hi Mr Boonham

Further to your latest email under the Local Government Official Information and Meetings Act 1987 (LGOIMA) our response remains the same. There is no mistake in the 2017/18 Annual Report and our Auditors have checked the figures.

Under section 7(2)(a) of the LGOIMA information relating to different payments and what those payments were for, has been withheld to avoid infringing upon Mr Sibery's personal privacy. There is also good reason for withholding under section 7(2)(c), to protect information which is subject to an obligation of confidence because the release of the information would be likely to damage the public interest by detracting from Council's ability to manage its employee relationships in confidence. I am of the view that those good reasons for withholding outweigh the public interest in the matter.

In accordance with section 27 of the LGOIMA, you have the right to complain to the Ombudsman for an investigation or review of the decisions to refuse to supply information in response to your request.

Regards Linda



Linda Osborne | Administration Manager  
Kaipara District Council, Private Bag 1001, Dargaville 0340  
Freephone: 0800 727 059 | 09 439 3123  
[council@kaipara.govt.nz](mailto:council@kaipara.govt.nz) | [www.kaipara.govt.nz](http://www.kaipara.govt.nz)

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**From:** Clive <[REDACTED]>  
**Sent:** Wednesday, 30 January 2019 9:45 PM  
**To:** Chief Exec; Administration Requests  
**Subject:** Fw: LGOIMA request: Annual report 2017/2018: Graham Sibery remuneration

Hi Louise

I do not appear to have received any response to the email below.

The LGOIMA response period has long expired.

A prompt reply would be appreciated.

Regards

Clive

**From:** Clive  
**Sent:** Thursday, December 13, 2018 9:12 AM  
**To:** Louise Miller  
**Cc:** Administration Requests  
**Subject:** Re: LGOIMA request: Annual report 2017/2018: Graham Sibery remuneration

FOR: CHIEF EXECUTIVE, KDC

Hi Louise

Below is the chain of letters in respect of this LGOIMA request.

The letter from your staff does not respond to the questions that I posed.

I have consulted with an auditor who advises that the figures in the annual report are clearly wrong despite what your staff says, and despite what the KDC auditors are purported to have said.

It also appears to me, without being too dramatic, that on the facts supplied by your staff the KDC and its auditors have conspired to misrepresent the situation in respect of monies paid to the former chief-executive for the 2017/2018 rating year. That is a serious matter.

Please advise the total amount paid to Mr Sibery during the 2017/2018, how that amount was broken down into different payments, and what those payments were for.

This is the same request as before so the LGOIMA response period does not run.

I also request a copy of the advice on the matter received from the the KDC auditor. This is not legal advice but the auditors' clarification in respect of an apparent mistake in figures in the annual report. You cannot therefore claim that it is privileged.

I will withhold further action until I get a response from you.

Regards

Clive

**From:** Administration Requests

**Sent:** Tuesday, December 11, 2018 5:36 PM

**To:** Clive

**Cc:** Administration Requests

**Subject:** FW: LGOIMA request: Annual report 2017/2018: Graham Sibery remuneration

Hello Mr Boonham

Thank you for your email relating to payment to Mr Sibery.

While the figures in Council's 2017/18 Annual Report may look incorrect they are in fact correct and Council's Auditors have confirmed this. Mr Sibery was not paid \$1.5 million, his annual salary was \$241,866.

Regards Linda



Linda Osborne | Administration Manager  
Kaipara District Council, Private Bag 1001, Dargaville 0340  
Freephone: 0800 727 059 | 09 439 3123  
[council@kaipara.govt.nz](mailto:council@kaipara.govt.nz) | [www.kaipara.govt.nz](http://www.kaipara.govt.nz)

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**From:** Administration Requests

**Sent:** Friday, 16 November 2018 10:19 a.m.

**To:** Clive <[REDACTED]>

**Cc:** Administration Requests <[administrationrequests@kaipara.govt.nz](mailto:administrationrequests@kaipara.govt.nz)>

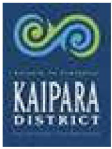
**Subject:** RE: LGOIMA request: Annual report 2017/2018: Graham Sibery remuneration

Hi Mr Boonham

Thank you for your request for information received under the Local Government Official Information and Meetings Act 1987. Pursuant to the Act you will receive a response within 20 working days. Your response is due 12 December 2018.



Regards Linda



Linda Osborne | Administration Manager  
Kaipara District Council, Private Bag 1001, Dargaville 0340  
Freephone: 0800 727 059 | 09 439 3123  
[council@kaipara.govt.nz](mailto:council@kaipara.govt.nz) | [www.kaipara.govt.nz](http://www.kaipara.govt.nz)

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**From:** Council

**Sent:** Wednesday, 14 November 2018 12:22 p.m.

**To:** Administration Requests <[administrationrequests@kaipara.govt.nz](mailto:administrationrequests@kaipara.govt.nz)>

**Subject:** FW: LGOIMA request: Annual report 2017/2018: Graham Sibery remuneration

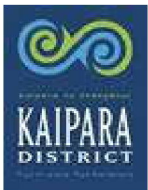
Tēnā koe

Please find forwarded LGOIMA request received in Council Inbox.

If you require any further assistance please contact the Kaipara District Council email [council@kaipara.govt.nz](mailto:council@kaipara.govt.nz), telephone 0800 727 059 from Monday to Friday 8 am to 4.30 pm or visit our website [www.kaipara.govt.nz](http://www.kaipara.govt.nz).

Kind regards

Customer Services



Shalisha Blom | Kaitiaki Kiritaki | Customer Services  
Kaipara te Oranganui | Kaipara District Council, Private Bag 1001, Dargaville 0340  
Freephone: 0800 727 059 | 09 439 7059  
[council@kaipara.govt.nz](mailto:council@kaipara.govt.nz) | [www.kaipara.govt.nz](http://www.kaipara.govt.nz)  
Dargaville Office: 42 Hokianga Road, Dargaville 0310  
Mangawhai Office: Unit 6, The Hub, 6 Molesworth Drive, Mangawhai 0505  
Opening Hours: Monday - Friday 8 am to 4.30 pm

-----Original Message-----

**From:** Clive [<mailto:> [REDACTED]]

**Sent:** Wednesday, 14 November 2018 11:35:31 AM

**To:** Council

**Subject:** LGOIMA request: Annual report 2017/2018: Graham Sibery remuneration

FOR THE CHIEF EXECUTIVE KAIPARA DISTRICT COUNCIL  
LGOIMA REQUEST

**Remuneration for Graham Sibery in the 2017/2018 annual report**

The [annual report for 2017/2018](#) at page 60 states that the outgoing chief executive (Graham Sibery) was paid \$47,769 in severance pay and \$8,539 in other benefits. It also shows that for the first two months of the 2017/2018 rating year he was paid a salary of \$241,866. That amounts to a salary of nearly \$1.5 million annually.

The figures are clearly wrong and may be the wrong way round.

Please check and correct the figures in the annual report.

**Please advise what salary was paid to Mr Sibery for the two first months of the 2017/2018 year and what severance pay and other benefits were paid to Mr Sibery on his departure.**

Thank you for your assistance.

Clive Boonham