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Request Number : 1322414
Doc No: D24/355990

John Smith (subNAC)
Pascoe Vale South

Dear John Smith

Freedom of Information Request

1. I refer to previous correspondence in relation to an intended request for access under the *Freedom of Information Act 1982 (Vic)* (“**FOI Act**”).
2. In summary, this letter:
 - (a) sets out a history of the attempts by Merri-bek City Council (“**Council**”) to provide reasonable assistance for an intending applicant to make a request for access under the FOI Act;
 - (b) sets out the need for identification information to be provided in relation to the intending applicant before a valid request is considered as having been made under the FOI Act;
 - (c) sets out numerous matters in relation to what the Council now understands to be requested under the FOI Act which require clarification or confirmation before the request could be considered valid under the FOI Act.
 - (d) sets out that unless the matters of identification of an applicant and issues about clarity of request are addressed within 14 days of this letter, the Council not be able to assist, the request will be treated as having lapsed, and this matter will be brought to an end.

Relevant background

3. On 18 November 2023 the Council received an email with a subject heading “Freedom of Information request – Local Councils rationale on supporting Palestine”. It was from SubNAC and sought access in the following terms:

I am submitting a comprehensive request under the Freedom of Information Act 1982 for the disclosure of information concerning the Merri-bek City Council’s discussions and actions on several key matters. Specifically, I am seeking access to:

Merri-bek Language Link

Italiano	Italian	9280 1911	Türkçe	Turkish	9280 1914	普通话	Chinese (Simplified)	9280 0750
Ελληνικά	Greek	9280 1912	Tiếng Việt	Vietnamese	9280 1915	National Relay Service:		
عربي	Arabic	9280 1913	पंजाबी	Nepali	9280 0751	13 36 77 or relayservice.com.au		

1. All correspondence, including emails, letters, and memoranda, exchanged between executives and councillors discussing the Gaza crisis.
2. Records of meetings, minutes, or reports related to discussions and decisions made by the council regarding the Gaza crisis.
3. All instances of antisemitic comments made by staff, executives, councillors, and residents, with details of the comments and actions taken by the council in response.
4. Correspondence, including extracts from secure chat applications such as WhatsApp, between councillors, the CEO, and executives concerning the Gaza crisis.
5. All correspondence, including emails, letters, and memoranda, discussing the decision to raise the Palestinian flag.
6. Records of meetings, minutes, or reports related to the decision-making process and discussions leading to the raising of the Palestinian flag.
7. Any communication between executives, councillors, and staff regarding the logistics, public response, and any associated costs of raising the Palestinian flag.
8. Documents outlining the council's official stance, policies, or guidelines related to the display of flags, specifically the Palestinian flag.
9. All correspondence, including emails, letters, and memoranda, discussing the council's support for Hamas.
10. Records of meetings, minutes, or reports related to discussions and decisions made by the council regarding support for Hamas.
11. Any documentation outlining the council's stance or policies on supporting organisations, specifically Hamas.
12. Information related to the awareness and consideration of potential breaches of the Criminal Code Act 1995 and Division 102 in the council's support for Hamas.
13. All financial records related to security measures for the protection of staff and councillors who voted against the raising of the Palestinian flag.
14. Financials and time allocations related to the council's support for Hamas, including expenses covered by ratepayers.
15. Records of discussions or decisions made concerning Jewish residents and businesses in the municipality, including any financial implications.

I understand that certain information may be sensitive or confidential, and I request that any redactions be clearly justified in accordance with the relevant provisions of the Freedom of Information Act. If possible, please provide the information in electronic format.

I appreciate your attention to this matter and look forward to a timely response within the statutory timeframe stipulated by the Freedom of Information Act. Should there be any fees associated with processing this request, please inform me in advance.

4. On 13 December 2023 the Council responded to subNAC:

Thank you for submitting your Freedom of Information (FOI) request. Unfortunately, you have not provided us with enough information to validate and process your request. Would you please email us via foi@merri-bek.vic.gov.au and provide us with your name and contact details, or your name and the name and address of the company or incorporated association you represent (if applicable).

5. On 29 December 2023 the Council received a response from subNAC which included the following:

In light of your request for additional information to validate and process our FOI request, we want to assure you of our full cooperation within the bounds of relevant legislation. While maintaining our preference for anonymity, we are prepared to provide any necessary details that align with the requirements of applicable legislation.

In addition to the Freedom of Information Act 1982 (Cth), we would like to draw attention to the Privacy Act 1988 (Cth), which outlines principles concerning the collection and handling of personal information. We believe that our request aligns with the principles of privacy and data protection outlined in this legislation.

Furthermore, we appreciate your understanding of the importance of maintaining confidentiality, and we trust that collaboration will ensure the processing of our FOI request is in compliance with any relevant federal or local laws and guidelines.

If there are specific legal requirements or questions that need clarification, please feel free to communicate them.

6. That response from subNAC:

- (a) referred to “we” and “our” and “our FOI request” suggesting a collective or joint request rather than referring to an individual;
- (b) referred to Commonwealth freedom of information and privacy legislation, which has no application to the Council.

7. After receiving a follow up response from subNAC on 5 January 2024, the Council reiterated to subNAC:

As previously advised, Council does not have enough information to validate and process your request. In accordance with Section 17 of the FOI Act 1982 (VIC), you must pay an application fee of \$31.80 to validate your request. Alternatively, you can provide proof of concession for an application fee waiver.

Would you please email us at foi@merri-bek.vic.gov.au with your name and contact details, or with your name, and the name and address of the company/incorporated

organisation you represent (if applicable), so that an invoice can be raised for your application fee.

That is, the Council clarified that the Victorian FOI Act was in play and notified the need for an application fee and again requested identifying information, to facilitate payment of the application fee.

8. On 10 January 2024 the Council received from subNAC:

Thank you for your swift response. In order to expedite payment, we propose utilising a money order without the inclusion of personal identifiers. Kindly provide the necessary details, including a reference number for tracking purposes.

In consideration of privacy, it's worth noting Section 11C of the Freedom of Information Act 1982 (Cth), which underscores the significance of ensuring applicant anonymity. We appreciate your commitment to complying with relevant legislation and anticipate a smooth processing of our request.

It again wrongly refers to a provision in the Commonwealth legislation, despite the Council's previous email clarifying that the Victorian FOI Act applied and, in any event, referred to a provision which is not about anonymity of applicants.

9. On 26 January 2024 the Council received from subNAC further contact seeking "an internal review" of the Council's handling of the FOI request and raising concerns about delay in circumstances where no valid request had yet been received.

10. On 31 January 2024 the Council responded by reiterating that the Council does not have enough information to validate and process the request, pointing out that the Council is an agency under the Victorian FOI Act, not the Commonwealth legislation, and reiterating it requires more information to determine eligibility to make a request for access under s 13 of the FOI Act before issuing an invoice for the application fee. It described the meaning of "person" and "individual" under the *Interpretation of Legislation Act 1984 (Vic)* and requested for the third time more identifying information:

A natural person is commonly taken to refer to an individual human being. You have provided insufficient information to demonstrate you are applying as a person or a body politic or corporate, as defined in Section 38 of the Interpretation of Legislation Act 1984, for the purpose of Section 13 of the FOI Act and are therefore ineligible to make a request. I am inviting you to provide further information and/or documentation in support of you as a person, body politic or corporate.

Would you please email us via foi@merri-bek.vic.gov.au and provide us with your name and contact details, or your name and the name and address of the company or incorporated organisation that you represent (if applicable).

The Council also provided links to information available on its website in relation to the Council's position on the war in Gaza.

11. On 28 February 2024, subNAC responded by apologising for confusion as to jurisdiction, thanked the Council for the links to information, and purported to provide “the necessary information for validation” as follows:

Name: John Smith

Contact details: Pascoe vale south

12. On 21 March 2024 the Council sent an invoice to subNAC in the name of J Smith, confirmed that contact details are incomplete, and foreshadowed that the “request will also need to be clarified under Section 17 of the FOI Act before it can be processed.
13. On 6 April 2024 the application fee required by the FOI Act was paid by recipient ‘Public’, with the surname given of ‘Anon’. Payment was acknowledged by the Council on 11 April 2024, and it was confirmed that the Council will be in touch about the request.
14. On 29 April 2024 the Council sent a letter under s 17 of the FOI Act seeking clarification of the request before it could be considered valid. That letter:
- (a) pointed out that a specific date range was needed and asked whether the range of 7 October 2023 (when the current Gaza conflict started) to 18 November 2023 (when the request was submitted) was a satisfactory date range.
 - (b) asked for clarification of what was meant by the word “executive” in item 1 of the request and asked for confirmation that it meant the CEO and directors of the 4 branches of the Council available on a web page to which a link was provided.
 - (c) asked for clarification of item 12, which sought access to information and not a document and sought confirmation as to whether that information was being sought outside the FOI Act.
 - (d) pointed out that, on the understanding that the term “support” meant any financial, material, practical or promotional assistance that uses the resources of the Council or its officers, the Council had no documents for items 9-11 and 14 of the request.
 - (e) pointed out in relation to item 8 of the request where the Council’s civic flag policy could be found on its website and requested confirmation that satisfied item 8.
 - (f) provided outside the FOI Act, in relation to item 15 of the request, a link to its website in relation to the Council’s position on business with companies who manufacture, distribute or benefit from weapons of war and sought confirmation that satisfied item 15.
 - (g) confirmed that information was already proactively disclosed in relation to items 2, 5 and 8 of the request and sought confirmation those items were resolved.
 - (h) asked for the stated matters to be addressed or consultation undertaken in relation to them by 20 May 2024.
15. After hours, at 7.24pm, on 20 May 2024 subNAC responded by providing “the necessary clarifications to ensure my request is processed efficiently and comprehensively” as follows:

Clarifications and Additional Details:

1. Specific Date Range:

To provide a clear timeframe for my request, I specify the period from 7 October 2023 to the present date. This extended period should cover all relevant communications and actions.

2. Definition of 'Executive':

My reference to 'executive' includes Cathy Henderson (CEO of Merri-bek Council) and the Directors of the four branches who report directly to the CEO. The directors are:

- Chief Executive Officer (CEO): Cathy Henderson
- Director of Business Transformation: Sue Vujcevic
- Director of City Infrastructure: Anita Curnow
- Director of Community: Eamonn Fennessy
- Director of Place and Environment (Acting): Phillip Priest

3. Systems and Platforms:

The search for relevant documents should include all digital and electronic systems utilised by the Council. These systems include but are not limited to:

- Content Manager (formerly TRIM)
- Microsoft Exchange
- Microsoft Teams
- OneDrive
- Network Shares
- CRM Systems (such as Pathway)
- Communication platforms (WhatsApp, iMessage, SMS)
- Any calls or call recordings

Please ensure that all devices (mobiles, computers, etc.) that have logged into any Council accounts (such as Microsoft 365) are included. If these devices have accessed or stored Council information, they fall within the scope of this request.

4. Councillors:

The search should include records involving all current councillors. The Merri-bek City Council consists of:

- North-East Ward:
 - Annalivia Carli Hannan
 - Adam Pulford
 - Sue Bolton
 - Helen Pavlidis-Mihalakos
- North-West Ward:
 - Oscar Yildiz
 - Helen Davidson
 - Angelica Panopoulos
 - Monica Harte
- South Ward:
 - Lambros Tapinos

- Mark Riley
- James Conlan

5. Scope of the Request:

Please ensure that all emails sent directly to councillors, as well as any personal emails or documents created or saved on Council devices, are included. This encompasses all communications related to the specified topics, regardless of the platform used.

6. Specific Items of Interest:

Please ensure that searches cover:

- Correspondence and decisions regarding the Gaza crisis.
- Discussions and decisions related to the raising of the Palestinian flag.
- Any support for Hamas, including potential breaches of the Criminal Code Act 1995 and Division 102.
- Security measures for the protection of staff and councillors who opposed the flag-raising.
- Discussions and decisions concerning Jewish residents and businesses.
- Instances of antisemitic comments made by staff, executives, councillors, and residents, with details of the comments and actions taken by the council in response.
- Financial records related to security measures for the protection of staff and councillors who voted against the raising of the Palestinian flag.
- Financials and time allocations related to the council's support for Hamas, including expenses covered by ratepayers.

7. Public Disclosure and Support for Palestine:

Given the publicly disclosed support for Palestine and its potential funding and backing by Iran, I request all relevant communications and documents. This is essential for understanding how these align with Council's policies and actions.

Request for Evidence of Searches:

To ensure transparency, I request evidence of the searches conducted and the criteria used for each system mentioned above. This includes logs or reports generated from the searches to verify the thoroughness and scope of the inquiry.

I trust these clarifications address the issues raised and facilitate a comprehensive search and processing of my FOI request. I look forward to your timely response within the statutory timeframe stipulated by the Freedom of Information Act.

Yours sincerely,

John Smith

16. On 19 June 2024, the Council sent a further letter seeking that additional points be addressed by subNAC before the request could be considered valid. That letter:
- (a) confirmed the date range from 7 October 2023 to “the present date”.
 - (b) confirmed the definition of “Executive” and added that the names of additional persons will be added for the time there were Acting Directors.
 - (c) pointed out that the previous query in relation to item 12 and whether information was sought outside the FOI Act had not been addressed and that if documents were sought, seeking further information to enable any documents sought to be identified.
 - (d) pointed out that the previous request to confirm that items 2,6, 8 and 15 had been resolved had not been addressed and that if they had not been, to provide further information to identify the documents sought.
 - (e) in light of point 7 of the response of 20 May 2024, asking for confirmation that this was an additional, new point which did not previously exist in the earlier request and, if so, to provide further information to identify the documents sought.
 - (f) providing until 10 July 2024 for subNAC to address the above matters.

17. On 20 June 2024, subNAC sent a response in the following terms amending and expanding the request (deleting any commentary that does not bear on the scope of the request):

1. *Specific Date Range*

To provide a clear timeframe for my request, I specify the period from 7 October 2023 to the present date. This period should cover all relevant communications and actions up to the day after my request is deemed valid.

2. *Definition of ‘Executive’*

My reference to ‘executive’ includes:

- *Cathy Henderson, CEO of Merri-bek Council*
- *Sue Vujcevic, Director of Business Transformation*
- *Anita Curnow, Director of City Infrastructure*
- *Eamonn Fennessy, Director of Community*
- *Phillip Priest, Acting Director of Place and Environment from 6 May to 31 May 2024*
- *Victoria Hart, Acting Director of Place and Environment from 3 June to 24 June 2024*
- *Joseph Tabacco, Director of Place and Environment up to 3 May 2024*
- *Yvonne Callanan, Manager Governance and Strategy*
- *Yvonne Attard, Legal Services Officer*

3. *Systems and Platforms*

The search for relevant documents should include all digital and electronic systems utilised by the Council.

These systems include but are not limited to:

- *Content Manager (formerly TRIM)*
- *Microsoft Exchange*

- Microsoft Teams
- OneDrive
- Network Shares
- CRM Systems (such as Pathway)
- Communication platforms (WhatsApp, iMessage, SMS)
- SharePoint
- CXone (for call recordings)
- Any other calls or call recordings

Please ensure that all devices (mobiles, computers, etc.) that have logged into any Council accounts (such as Microsoft 365) are included. If these devices have accessed or stored Council information, they fall within the scope of this request. If there are other systems in use, please include them in the search and inform me of their inclusion.

4. Councillors

The search should include records involving all current councillors. The Merri-bek City Council consists of:

- North-East Ward:
 - Annalivia Carli Hannan
 - Adam Pulford
 - Sue Bolton
 - Helen Pavlidis-Mihalakos
- North-West Ward:
 - Oscar Yildiz
 - Helen Davidson
 - Angelica Panopoulos
 - Monica Harte
- South Ward:
 - Lambros Tapinos
 - Mark Riley
 - James Conlan

5. Scope of the Request

Please ensure that all emails sent directly to councillors, as well as any personal emails or documents created or saved on Council devices, are included. This encompasses all communications related to the specified topics, regardless of the platform used.

6. Specific Items of Interest

Please ensure that searches cover:

- Correspondence and decisions regarding the Gaza crisis.
- Discussions and decisions related to the raising of the Palestinian flag.

- Any support for Hamas, including potential breaches of the Criminal Code Act 1995 and Division 102.
- Security measures for the protection of staff and councillors who opposed the flag-raising.
- Discussions and decisions concerning Jewish residents and businesses.
- Instances of antisemitic comments made by staff, executives, councillors, and residents, with details of the comments and actions taken by the council in response.
- Financial records related to security measures for the protection of staff and councillors who voted against the raising of the Palestinian flag.
- Financials and time allocations related to the council's support for Hamas, including expenses covered by ratepayers.

7. Public Disclosure and Support for Palestine

Given the publicly disclosed support for Palestine and its potential funding and backing by Iran, I request all relevant communications and documents. This is essential for understanding how these align with Council's policies and actions.

8. Request for Evidence of Searches

To ensure transparency, I request evidence of the searches conducted and the criteria used for each system mentioned above. This includes logs or reports generated from the searches to verify the thoroughness and scope of the inquiry.

Specific Clarifications Required

1. Further Information for Point 12:

- I am specifically seeking documents related to the council's awareness and consideration of potential breaches of the Criminal Code Act 1995 and Division 102 regarding the council's support for Hamas. This includes any internal memos, reports, legal advice, or correspondence discussing potential legal implications or breaches of these provisions.

2. Resolution of Points 2, 6, 8, and 15:

- Regarding the information already provided for points 2, 6, 8, and 15 of my original request, I confirm:
- Point 2 (Council decisions concerning Jewish residents and businesses): The information provided does not fully satisfy my request. I seek additional documents or records of discussions that include financial implications and specific actions taken by the council concerning Jewish residents and businesses.
- Point 6 (Council reports and minutes regarding Gaza and the Palestinian flag): The information provided resolves this part of my request.

- Point 8 (Civic Flag Policy): The additional information provided resolves this part of my request.

- Point 15 (Council decisions concerning Jewish residents and businesses): As noted above, the information provided does not fully resolve this part of my request.

3. Security Measures for Protection:

- The mention of “security measures for the protection of staff and councillors who opposed the flag raising” is not a new point but rather a clarification and expansion of point 13 from my original request. This point specifically seeks all financial records and measures implemented for the protection of those who opposed the flag-raising.

4. Public Disclosure and Support for Palestine:

- The request for all relevant communications and documents related to the publicly disclosed support for Palestine and its potential funding and backing by Iran is indeed a new point. This new point seeks to understand how these actions align with Council’s policies and actions, including any correspondence, reports, or internal discussions.

Request for Edited Copies

In accordance with section 25 of the FOI Act, I confirm that I wish to receive edited copies of documents that contain exempt material, with the exempt portions removed.

Deadline for Compliance

I expect a full response to this FOI request, including the provision of all requested documents, by no later than 21 days from the date of this letter. Failure to comply within this timeframe will result in immediate escalation to the appropriate legal authorities.

I trust these clarifications address the issues raised and facilitate a comprehensive search and processing of my FOI request. I look forward to your timely response within the statutory timeframe stipulated by the Freedom of Information Act.

Thank you for your assistance.

Yours sincerely,
John Smith

18. On 4 July 2024 the Council sent an email seeking confirmation that its understanding of the terms of the request as follows was correct and, if not, to please clarify:

Timeframe:

7 October 2023 to 20 June 2024

Officer search:

Cathy Henderson, CEO of Merri-bek Council

Sue Vujcevic, Director of Business Transformation

Anita Curnow, Director of City Infrastructure

Eamonn Fennessy, Director of Community Phillip Priest,

Acting Director of Place and Environment from 6 May to 31 May 2024

Victoria Hart, Acting Director of Place and Environment from 3 June to 24 June 2024

Joseph Tabacco, Director of Place and Environment up to 3 May 2024

Yvonne Callanan, Manager Governance and Strategy

Yvonne Attard, Legal Services Officer

Councillor Search:

North-East Ward:

Annalivia Carli Hannan

Adam Pulford

Sue Bolton

Helen Pavlidis-Mihalakos

North-West Ward:

Oscar Yildiz

Helen Davidson

Angelica Panopoulos

Monica Harte

South Ward:

Lambros Tapinos

Mark Riley

James Conlan

Platforms:

Content Manager (formerly TRIM)

Microsoft Exchange

Microsoft Teams

OneDrive

Network Shares

CRM Systems (such as Pathway)

Communication platforms (WhatsApp, iMessage, SMS)

SharePoint

CXone (for call recordings)

Any other calls or call recordings

Point Request

- 1 All correspondence, including emails, letters, and memoranda, exchanged between executives and councillors discussing the Gaza crisis
- 2 Records of meetings, minutes, or reports related to discussions and decisions made by the council regarding the Gaza crisis. I seek additional documents or

- records of discussions that include financial implications and specific actions taken by the council concerning Jewish residents and businesses.
- 3 All instances of antisemitic comments made by staff, executives, councillors, and residents, with details of the comments and actions taken by the council in response
 - 4 Correspondence, including extracts from secure chat applications such as WhatsApp, between councillors, the CEO, and executives concerning the Gaza crisis.
 - 5 All correspondence, including emails, letters, and memoranda, discussing the decision to raise the Palestinian flag
 - 6 Records of meetings, minutes, or reports related to the decision-making process and discussions leading to the raising of the Palestinian flag (resolved outside of the act)
 - 7 Any communication between executives, councillors, and staff regarding the logistics, public response, and any associated costs of raising the Palestinian flag
 - 8 Documents outlining the council's official stance, policies, or guidelines related to the display of flags, specifically the Palestinian flag (resolved outside of the act)
 - 9 All correspondence, including emails, letters, and memoranda, discussing the council's support for Hamas.
 - 10 Records of meetings, minutes, or reports related to discussions and decisions made by the council regarding support for Hamas.
 - 11 Any documentation outlining the council's stance or policies on supporting organisations, specifically Hamas
 - 12 I am specifically seeking documents related to the council's awareness and consideration of potential breaches of the Criminal Code Act 1995 and Division 102 regarding the council's support for Hamas. This includes any internal memos, reports, legal advice, or correspondence discussing potential legal implications or breaches of these provisions
 - 13 All financial records related to security measures for the protection of staff and councillors who voted against the raising of the Palestinian flag.
 - 14 Financials and time allocations related to the council's support for Hamas, including expenses covered by ratepayers
 - 15 Records of discussions or decisions made concerning Jewish residents and businesses in the municipality, including any financial implications. I seek additional documents or records of discussions that include financial implications and specific actions taken by the council concerning Jewish residents and businesses.
 - 16 All relevant communications and documents related to the publicly disclosed support for Palestine and its potential funding and backing by Iran

19. On 7 July 2024 subNAC sent yet a further response providing “necessary confirmations and additional clarifications” in the following terms (again deleting any commentary that does not bear on the scope of the request):

1. Timeframe:

- Council’s Understanding: 7 October 2023 to 20 June 2024.
 - Clarification: The requested timeframe should extend from 7 October 2023 to the present date or until the date when the documents are provided. Fixing the end date at 20 June 2024 is not acceptable as it may exclude relevant documents generated after this date.

2. Officer Search:

The list of officers provided matches my request:

- Cathy Henderson, CEO of Merri-bek Council
- Sue Vujcevic, Director of Business Transformation
- Anita Curnow, Director of City Infrastructure
- Eamonn Fennessy, Director of Community
- Phillip Priest, Acting Director of Place and Environment from 6 May to 31 May 2024
- Victoria Hart, Acting Director of Place and Environment from 3 June to 24 June 2024
- Joseph Tabacco, Director of Place and Environment up to 3 May 2024
- Yvonne Callanan, Manager Governance and Strategy
- Yvonne Attard, Legal Services Officer

3. Councillor Search:

The list of councillors provided matches my request:

- North-East Ward:
 - Annalivia Carli Hannan
 - Adam Pulford
 - Sue Bolton
 - Helen Pavlidis-Mihalakos
- North-West Ward:
 - Oscar Yildiz
 - Helen Davidson
 - Angelica Panopoulos
 - Monica Harte
- South Ward:
 - Lambros Tapinos
 - Mark Riley
 - James Conlan

4. Platforms:

The platforms listed match my request, including all digital and electronic systems utilised by the Council:

- Content Manager (formerly TRIM)
- Microsoft Exchange
- Microsoft Teams
- OneDrive
- Network Shares

- CRM Systems (such as Pathway)
- Communication platforms (WhatsApp, iMessage, SMS)
- SharePoint
- CXone (for call recordings)
- Any other calls or call recordings
- Microsoft 365
- Any document management systems active, including those with third-party providers like Grace
- Backups of information not in the live environment
- Data from personal devices that have been used to access council accounts or information

5. Point Request:

Your understanding of the specific points is largely correct with the following clarifications:

- Point 1: All correspondence, including emails, letters, and memoranda, exchanged between executives and councillors discussing the Gaza crisis.
- Point 2: In addition to records of meetings, minutes, or reports related to discussions and decisions made by the council regarding the Gaza crisis, please include documents or records of discussions that include financial implications and specific actions taken by the council concerning Jewish residents and businesses.
- Point 3: All instances of antisemitic comments made by staff, executives, councillors, and residents, with details of the comments and actions taken by the council in response.
- Point 4: Correspondence, including extracts from secure chat applications such as WhatsApp, between councillors, the CEO, and executives concerning the Gaza crisis.
- Point 5: All correspondence, including emails, letters, and memoranda, discussing the decision to raise the Palestinian flag.
- Point 6: Ensure that all records of meetings, minutes, or reports related to the decision-making process and discussions leading to the raising of the Palestinian flag are provided. If this point is fully resolved outside the act, please confirm no further documents are needed.
- Point 7: Any communication between executives, councillors, and staff regarding the logistics, public response, and any associated costs of raising the Palestinian flag.
- Point 8: Ensure all documents outlining the council's official stance, policies, or guidelines related to the display of flags, specifically the Palestinian flag, are

provided. If this point is fully resolved outside the act, please confirm no further documents are needed.

- Point 9: All correspondence, including emails, letters, and memoranda, discussing the council's support for Hamas.
- Point 10: Records of meetings, minutes, or reports related to discussions and decisions made by the council regarding support for Hamas.
- Point 11: Any documentation outlining the council's stance or policies on supporting organisations, specifically Hamas.
- Point 12: Documents related to the council's awareness and consideration of potential breaches of the Criminal Code Act 1995 and Division 102 regarding the council's support for Hamas. This includes any internal memos, reports, legal advice, or correspondence discussing potential legal implications or breaches of these provisions.
- Point 13: All financial records related to security measures for the protection of staff and councillors who voted against the raising of the Palestinian flag.
- Point 14: Financials and time allocations related to the council's support for Hamas, including expenses covered by ratepayers.
- Point 15: Records of discussions or decisions made concerning Jewish residents and businesses in the municipality, including any financial implications. Please ensure additional documents or records of discussions that include financial implications and specific actions taken by the council concerning Jewish residents and businesses are provided.
- Point 16: All relevant communications and documents related to the publicly disclosed support for Palestine and its potential funding and backing by Iran.

...

Request for Edited Copies:

In accordance with section 25 of the FOI Act, I confirm that I wish to receive edited copies of documents that contain exempt material, with the exempt portions removed.

...

Deadline for Compliance:

I expect a full response to this FOI request, including the provision of all requested documents, by no later than 21 days from the date of this letter. Failure to comply within this timeframe will result in immediate escalation to the appropriate legal authorities.

I trust these clarifications address the issues raised and facilitate a comprehensive search and processing of my FOI request. I look forward to your timely response within the statutory timeframe stipulated by the Freedom of Information Act.

Thank you for your assistance.

Yours sincerely,
John Smith

Current wording of request

20. The clarification of the timeframe covered by the request in the communication of 7 July 2024 is stated as being from 7 October 2023 “to the present date or until the date when documents are provided”.
21. A request for access may be made to an agency, such as the Council, for documents in its possession as at the date of the request. An applicant cannot seek access to documents which are not in existence as at the date of the request.
22. Accordingly, the timeframe covered by the request will be taken to be 7 October 2023 to 7 July 2024.
23. Subject to matters contained later in this notice, the Council will treat the request for access to be in the following terms:
 1. *All correspondence, including emails, letters and memoranda, exchanged between executives and councillors discussing the Gaza crisis.*
 2. (a) *Records of meetings, minutes, or reports related to discussions and decisions made by the Council regarding the Gaza crisis.*
(b) *Documents that include financial implications and specific actions taken by the Council concerning Jewish residents and businesses.*
 3. *All instances of antisemitic comments made by staff, executives, councillors, and residents, with details of the comments and action taken by the Council in response.*
 4. *Correspondence, including extracts from secure chat applications such as WhatsApp, between councillors, the CEO and executives concerning the Gaza crisis.*
 5. *All correspondence, including emails, letters, and memoranda, discussing the decision to raise the Palestinian flag.*
 6. *All records of meetings, minutes or reports related to decision making process and discussions leading to the raising of the Palestinian flag.*
 7. *Any communication between executives, councillors and staff regarding the logistics, public response, and any associated costs of raising the Palestinian flag.*
 8. *All documents outlining the Council’s official stance, policies, or guidelines related to the display of flags, specifically the Palestinian flag.*

9. All correspondence, including emails, letters, and memoranda, discussing the Council's support for Hamas.
10. Records of meetings, minutes, or reports related to discussions and decisions made by the council regarding support for Hamas.
11. Any documentation outlining the council's stance or policies on supporting organisations, specifically Hamas.
12. Documents related to the council's awareness and consideration of potential breaches of the Criminal Code Act 1995 and Division 102 regarding the council's support for Hamas. This includes any internal memos, reports, legal advice, or correspondence discussing potential legal implications or breaches of these provisions.
13. All financial records related to security measures for the protection of staff and councillors who voted against the raising of the Palestinian flag.
14. Financials and time allocations related to the council's support for Hamas, including expenses covered by ratepayers.
15. (a) Records of discussions or decisions made, including any financial implications, concerning Jewish residents and businesses in the municipality.
(b) Documents that include financial implications and specific actions taken by the Council concerning Jewish residents and businesses.
16. All relevant communications and documents related to the publicly disclosed support for Palestine and its potential funding and backing by Iran.

Where:

"executives" is a reference to:

- Cathy Henderson, CEO of Merri-bek Council
- Sue Vujcevic, Director of Business Transformation
- Anita Curnow, Director of City Infrastructure
- Eamonn Fennessy, Director of Community
- Phillip Priest, Acting Director of Place and Environment from 6 May to 31 May 2024
- Victoria Hart, Acting Director of Place and Environment from 3 June to 24 June 2024
- Joseph Tabacco, Director of Place and Environment up to 3 May 2024
- Yvonne Callanan, Manager Governance and Strategy
- Yvonne Attard, Legal Services Officer

"councillors" is a reference to:

- Annalivia Carli Hannan
- Adam Pulford
- Sue Bolton
- Helen Pavlidis-Mihalakos
- Oscar Yildiz
- Helen Davidson
- Angelica Panopoulos

- Monica Harte
- Lambros Tapinos
- Mark Riley
- James Conlan

And you expect the Council to search the platforms including all digital and electronic systems utilised by the Council:

- Content Manager (formerly TRIM)
- Microsoft Exchange
- Microsoft Teams
- OneDrive
- Network Shares
- CRM Systems (such as Pathway)
- Communication platforms (WhatsApp, iMessage, SMS)
- SharePoint
- CXone (for call recordings)
- Any other calls or call recordings
- Microsoft 365
- Any document management systems active, including those with third-party providers like Grace
- Backups of information not in the live environment
- Data from personal devices that have been used to access council accounts or information

And you wish to receive access to documents with any exempt matter deleted in accordance with s 25 of the FOI Act. (“Request”)

Validity – identification of applicant

24. The right of access to documents created by s 13 of the FOI Act is subject to the FOI Act. Under s 17 of the FOI Act request for access must be made “in accordance with this Act.” That includes that a person who wishes to obtain access must comply with s 17 of the FOI Act.
25. A “person” is defined in s 38 of the *Interpretation of Legislation Act 1984 (Vic)* as including a body politic or corporate as well as an individual. An “individual” is defined in that section to mean a natural person.
26. In communications from the Council, subNAC was requested to provide information sufficient information to enable the Council to determine whether the request under the FOI Act was being made by a natural person, a corporate body, or a body politic. Requests were made for identifying information in the Council’s communications of:
 - 13 December 2023;
 - 5 January 2024;
 - 31 January 2024;
 - 21 March 2024.

27. The responses from subNac were:
- While maintaining our preference for anonymity, we are prepared to provide any necessary details that align with the requirements of applicable legislation: 29 December 2023 (referring to Commonwealth laws);
 - Seeking to make payment of the application fee “without the inclusion of personal identifiers” and asserting the (incorrect) Commonwealth legislation supported anonymity: 10 January 2024;
 - Purporting to provide the “the necessary information for validation” by stating the Name: John Smith and contact details as Pascoe vale south: 28 February 2024. It is noted that in dealings with the Office of the Information Commissioner and the complaint made by subNAC, correspondence has been signed off by “A Citizen”;¹
 - Failing or refusing to provide any further information identifying the applicant despite the Council’s indications of inadequacy of information, the last of which was on 21 March 2024.
28. It is not practicable for a request for access to be made under the FOI Act unless and until an agency is provided with sufficient information to identify an applicant. That information is reasonably necessary, and consistent with government agency practice in dealing with FOI requests, for the following reasons to enable an agency to be satisfied that the right of access has been properly enlivened under the FOI Act, and to be able to properly satisfy its legal obligations under the FOI Act in relation to a request:
- (a) to ascertain whether there is a person seeking to make a request;
 - (b) to ascertain whether the person is a natural person or not and, if so, whether the request is being made individually, on behalf of another person, by more than one person (as suggested by references in subNAC communications referring to “we” and “our FOI request”), or on behalf of a corporate or other body;
 - (c) to determine whether access charges and if so which are payable if documents contain “information relating to the personal affairs of the applicant” (s 22(1)(h)(iii), FOI Act) or whether the applicant is a member of the Victorian Parliament (s 22(1)(h)(ii), FOI Act), or the applicant’s intended use is of general public interest or benefit (s 22(1)(h)(i), FOI Act);
 - (d) when considering whether documents are exempt, the Council is required to decide matters on the basis of disclosure to a particular applicant, and not to the world at large – requiring identification of the particular applicant to enable that to occur;
 - (e) when consulting with third parties, as required under various potential exemptions, being able to obtain fully informed responses from those third parties who are entitled to know who the applicant is when their views are sought about exemption.
29. In short, anonymity in the making of a request for access under the FOI Act is not practicable without sufficient identifying information being provided.
30. Accordingly, and subject to the remainder of this notice, the Council requires the following information before it is able to treat the Request as valid:
- (a) if the applicant is a natural person/individual:

¹ As is customary, the Office of the Victorian Information Commission has provided to the Council a copy of the complaint made to it.

- (i) name
 - (ii) postal address and/or email address
 - (iii) unedited photo identification (eg driver's license, passport, etc)
 - (iv) if the request is being made by more than one person jointly, the same information for each intending applicant
 - (v) if the request is being made on behalf of another person, signed written authority of that person;
- (b) if the applicant is a corporate or other body:
- (i) name and type of body
 - (ii) address (including registered office)
 - (iii) capacity in which the individual representing that body is making the request (eg director, secretary, etc)
 - (iv) Unedited photo identification (eg driver's license, passport, etc)
 - (v) if the request is being made by more than one person jointly, the same information for each intending applicant
 - (vi) if the request is being made on behalf of another person, signed written authority of that person.

Validity – unclear request

31. Another requirement of s 17 of the FOI Act is that an FOI request must provide such information concerning the documents sought as is reasonably necessary to enable a responsible officer of the agency to identify those documents. An applicant must strive to define with as much precision as possible the documents sought in terms that will enable an appropriate officer of the agency to constructively search for all those documents. The documents sought must be described in a way which would enable the agency to identify all the documents sought within a reasonable time and with the exercise of reasonable effort.
32. If a request is ambiguous, unclear or otherwise ill defined, it does not comply with the FOI Act and need not be processed. It should not be for officers of an agency to assume what documents are actually sought or to tease out what an applicant might be getting at.
33. Further, the FOI Act is about access to **documents** and not *information* as such and a request for information might not be validly made.
34. The Request is presently ambiguous and unclear, and does not provide sufficient information to enable the Council to identify the documents you seek within a reasonable time and with reasonable effort. As a result, the Council seeks clarification of some aspects of the Request and provides the following information to assist you in doing so:
 - (a) In relation to **Item 1** of the Request you seek correspondence “exchanged between executives and councillors...”. Could you please confirm that you seek all correspondence “exchanged between one or more of the executives, and one or more of the councillors” and that not all correspondence must go to all executives and all councillors identified. If that is not what is intended, please clarify what is meant.
 - (b) In relation to **Item 2(a)** of the Request, could you please confirm that the documents you seek should not only record discussions about the “Gaza crisis” but also include decisions made by the Council about the “Gaza crisis”. If that is not what is intended, please clarify what is meant.

- (c) In relation to **Item 2(b)** of the Request, could you please confirm that the documents sought must also be “regarding the Gaza crisis”. At present, the documents sought could be about financial implications and specific actions taken by the Council concerning Jewish residents and businesses but without any connection to the Gaza crisis.
- (d) In relation to **Item 2(b)** of the Request, could you please confirm that the reference to Jewish residents and businesses is about those in the municipality. At present there is no geographical limitation.
- (e) Subject to the clarification in the previous paragraphs, in relation to **Item 2(b)** could you please confirm that the documents you seek should not only include financial implications, but should also include specific actions taken by the Council. If that is not what is intended, please clarify what is meant.
- (f) In relation to **Item 3**, the Request is presently for information as such and not documents. Could you please confirm that what is sought are all documents recording any antisemitic comments made by staff, executives, councillors, or residents, and action taken by the Council in response.
- (g) Subject to the clarification in the previous paragraph, in relation to **Item 3** could you please confirm that the documents you seek should not only record the antisemitic comments, but should also record the action taken by the Council in relation to those comments. If that is not what is intended, please clarify what is meant.
- (h) In relation to **Item 4** of the Request, and given that the CEO is included in the definition of “executives”, could you please confirm that you seek all correspondence between one or more of the executives, and one or more of the councillors and that not all correspondence must be between all executives and all councillors. If that is not what is intended, please clarify what is meant.
- (i) In relation to **Item 6** of the Request, it presently seeks all correspondence “related to decision making process **and** discussions”. Could you please clarify whether the correspondence must deal with **both** decision making process **and** discussions or whether you intended that to be a reference to decision making **or** discussions.
- (j) In relation to **Item 7** of the Request, could you please confirm that you seek all communications (not just any communications).
- (k) In relation to **Item 7** of the Request could you please confirm that you seek communications between:
- one or more of the executives;
 - one or more of the councillors; and/or
 - one or more members of staff of the Council.
- (l) In relation to **Item 7** of the Request, it presently seeks communications “regarding the logistics, public response, **and** any associated costs”. Could you please clarify whether the communications must deal with all three subject matters, or whether you intended

that to be a reference to any one or more of those subject matters in relation to raising the Palestinian flag.

- (m) In relation to **Item 10** of the Request, could you please confirm whether you seek documents which record discussions **and** decisions made by the council, or whether that was intended to be discussions **or** decisions made by the Council.
- (n) In relation to **Item 11**, the Request presently seeks documents about “supporting organisations”. It then goes on to refer to, “specifically Hamas”. As it presently literally reads, it would capture all organisations which the Council might support, no matter what the cause. Did you intend that to be limited only to documents about supporting Hamas or something broader and, if so, what.
- (o) **Item 14** of the Request presently seeks “Financials”. Bearing in mind Item 13 refers to “all financial records”, could you please describe what is meant by “Financials” in Item 14 and how that relates to “expenses covered by ratepayers” referred to later in Item 14.
- (p) **Item 14** of the Request also presently seeks “time allocations” which appears to be a request for information and not a document. Could you please describe what document or documents are sought and in respect of what. For example, in relation to allocation of what or whose time, and how does that relate to “expenses covered by ratepayers” referred to later in Item 14.
- (q) In relation to **Item 14** of the Request, what is meant by “expenses covered by ratepayers” in the context of the remainder of that Item?
- (r) In relation to **Items 15(a) and (b)**, and bearing in mind the terms of Items 2(a) and (b) being in relation to the Gaza crisis, could you please explain or clarify in respect of what the Council is understood or expected to have discussed, made decisions or taken action concerning Jewish residents and businesses in the municipality.
- (s) In relation to **Item 16** of the Request, could you please clarify what you consider to be “relevant” communications and documents about the subject matter described in that Item. What the Council considers relevant and what you consider as relevant and relevant to what could differ.

The way forward

35. For the reasons set out above:

- (a) the Request is not valid; and
- (b) a search for documents cannot reasonably be commenced until it is clear what documents are sought.

36. I invite you to consult with the Council with a view to addressing the identification of the applicant and either amending or clarifying the Request so that it is in a form which complies with s 17 of the FOI Act and provides the information necessary to enable the Council to identify the documents sought. If you wish to consult, please feel free to email me at foi@merri-bek.vic.gov.au

37. Alternatively, you may wish to submit an amended request to address the two validity issues raised above in relation to identification of an applicant and clarification of the Request (the latter of which could potentially involve or by removing parts of the Request).
38. Please note that until the Request is made in a manner required by s 17 of the FOI Act it cannot be processed and the 30 day time period within which a decision must be made on the Request has not commenced to run.
39. It is noted that the Council has engaged with you over a lengthy period of time with a view to addressing the identity issue and previously identified issues about clarity, to no avail. In all the circumstances, please note that if those matters are not addressed adequately or at all **within 14 days of today**, the Council will refuse to comply with the request by treating the request as having lapsed.
40. The Council looks forward to hearing from you or receiving an amended request.

Yours sincerely



Troy Delia
FOI Officer
18 September 2024