

Councillor Conduct Tribunal: Councillor misconduct complaint – Summary of decision and reasons for department’s website

Local Government Act 2009: Sections 150AS(2)(c)

Note that the Tribunal is prohibited from giving another entity information that is part of a Public Interest Disclosure unless required or permitted under another Act; or including in this summary the name of the person who made the complaint or information that could reasonably be expected to result in identification of the person: S150AS(5)(a) and (b).

1. Complaint:

CCT Reference	F20/4772
Subject Councillor	Councillor Tracey Huges (the councillor)
Council	Redland City Council

2. Decision (s150AQ):

Date:	4 February 2022
Decision:	The Tribunal has determined, on the balance of probabilities that the allegation that on 7 December 2019 Councillor Tracey Huges, a councillor of Redland City Council, engaged in misconduct as defined in section 150L(1)(b)(ii) of the <i>Local Government Act 2009</i> , in that her conduct involved a misuse of information or material acquired in, or in connection with, the performance of the councillor’s functions, whether the misuse was of the benefit of the councillor or for the benefit, or to the detriment, of another person, has been sustained .

Particulars of the allegation provide by the IA

1. On Saturday, 7 December 2019 at 7:49am, the councillor emailed, from her private email address, an invitation to a New Year's Eve event at her private residence.
2. This email went to 297 people living in the councillor's division.
3. Attached to the invitation was an Excel spreadsheet named "New Years Invites 2019", which contained the personal information of the 297 recipients of the email, as well as many other individuals.
4. The personal information included names, residential addresses, phone numbers, email addresses and the councillor's personal notations of the interactions between the individual residents and Redland City Council.
5. The personal information contained in the Excel spreadsheet was acquired and collated by the councillor in her role as Councillor for Division 8 of Redland City Council;
6. The Councillor did not have permission from the individuals whose personal information was contained in the Excel spreadsheet before she released their personal information to third parties.
7. For at least one of the complainants in this matter the release of private details to others in the local community caused a particular detriment.
8. A second complainant later came forward also complaining of particular detriment.

The Councillor's response to the allegation

9. The Councillor at the outset conceded that she sent the spreadsheet, in error, to residents in her community and thereby released the information contained within the spreadsheet.
10. The Councillor expressly accepted that her conduct involved a misuse of information.
11. The Councillor submitted that she did not benefit from the mistake, nor did she intend to benefit or cause detriment to another person.
12. The Councillor had collated the information in the spreadsheet to ensure she was 'able to follow up and advocate on behalf of residents who had contacted her with an issue'.
13. The Councillor was able to provide by way of evidence and explanation, that the intended email attachment had a remarkably similar file name to the attachment sent in error.

Councillor Conduct Tribunal

GPO Box 15009, City East, Q 4002

	<p>14. The Councillor submitted that the second complaint was vexatious.</p>
<p>CCT Reasons decision:</p>	<p>Consideration of the evidence</p> <p>1. The Statement of Agreed Facts by both of the parties suggests the Councillor did not dispute the allegation. Notwithstanding this admission, the Tribunal has reviewed the admitted facts, and the evidence filed by the Applicant. The Tribunal finds the information was disclosed to members of the public, the information disclosed was confidential to the council, and that the Councillor should have reasonably known it was confidential.</p> <p>Meaning of Misconduct – the legislation:</p> <p>Under section 150L(1)(b) of the <i>Local Government Act 2009 (the Act)</i>, the conduct of the councillor is <i>misconduct</i> if the conduct is or involves –</p> <p><i>(ii) a misuse of information or material acquired in, or in connection with, the performance of the councillor’s functions, whether the misuse is for the benefit of the councillor or for the benefit, or to the detriment, of another person.</i></p> <p>2. The term ‘councillors functions’ is not defined in the Act. Section 12 of the Act, which sets out the ‘responsibilities’ of councillors, provided the Tribunal with guidance as to what the functions of a councillor are.</p> <p>Legislation: Section 12 of the Act - Responsibilities of councillors provides:</p> <p><i>(1) A councillor must represent the current and future interests of the residents of the local government area.</i></p> <p>-----</p> <p><i>(3) All councillors have the following responsibilities—</i></p> <p><i>(a) ensuring the local government—</i></p> <p><i>(i) discharges its responsibilities under this Act; and</i></p> <p><i>(ii) achieves its corporate plan; and</i></p> <p><i>(iii) complies with all laws that apply to local governments;</i></p>

(b) providing high quality leadership to the local government and the community;

(c) participating in council meetings, policy development, and decision-making, for the benefit of the local government area;

(d) being accountable to the community for the local government's performance

3. The Tribunal accepted that to 'follow up and advocate' on behalf of residents is a purpose aligned with the legislative responsibilities of a councillor as set out in section 12(1), 12(3)(b) and 3(d) of the Act.

4. The Tribunal further accepted that the type of information contained in the spreadsheet would not have been given to the councillor if she were not a Councillor, as much of it related to council concerns.

Misuse:

5. The term '*misuse*' is not defined in the Act.

6. The Tribunal found guidance in the ordinary meaning of misuse as '*wrong or improper use; misapplication*'.¹

7. The Applicant submitted that the Tribunal may also consider the context and use of personal information as found in other legislation such as the *Privacy Act 1988* (Cth) and the *Information Privacy Act 2009*. The applicant did not submit those Acts must be applicable to the Councillor.

8. The Tribunal was assisted by the *Information Privacy Act 2009* which contains eleven 'information Privacy Principles', one of which sets limits on the use of personal information.² This principle provided that an agency having control of a document containing personal information that was obtained for a particular purpose must not use the information for another purpose (subject to some exceptions).

9. The Tribunal referred to the principles that underpin the *Local Government Act* to provide context to the misconduct allegation. Section 4 of the Act provides **local government principles** that a councillor must act in accordance with:

¹ *Macquarie's dictionary* (online 1 March 2022) 'misuse' (def 1).

² *Information Privacy Act 2009* (Qld) s26, sch 3.

Section 4³ Local government principles underpin this Act

(2) The local government principles are—

(a) transparent and effective processes, and decision-making in the public interest; and

(b) sustainable development and management of assets and infrastructure, and delivery of effective services; and

(c) democratic representation, social inclusion and meaningful community engagement; and

(d) good governance of, and by, local government; and

(e) ethical and legal behaviour of councillors, local government employees and councillor advisors.

10. The Tribunal accepted that the Councillor had collated personal information about individuals for a particular purpose.

11. The Councillor's ethical and legal behaviour by disclosing or using personal information of ratepayers for another purpose, without the prior authorisation of the individual ratepayers, was determined to be a misuse of information.

Benefit or detriment:

12. It was clear from the evidence and submissions of the Councillor that neither the Councillor, nor any other person, received a benefit from the misuse of the information.

13. On the evidence provided to the Tribunal, it was determined that one of the complainants had particular fears over the release of their address details and the Tribunal notes that the release of this information may have created adverse circumstances for this person.

14. The Tribunal was satisfied from the evidence provided by the Applicant that Complainant 1 did suffer a detriment from the Councillor's release of their personal information.

15. The Councillor submitted that the second complainant had suffered minimal or no detriment and that this complaint was made due to personal and political previous communications between them.

16. Given the finding that Complainant 1 suffered detriment, and in consideration of *Flori v Winter* [2019] QCA 281 - in that the object

³ Local Government Act 2009

	<p>of reporting is to have misconduct revealed and remedied - the Tribunal did not find it necessary to determine if Complainant 2 was vexatious.</p> <p>17. The Tribunal's jurisdiction is primarily protective, not punitive. The Tribunal held it was sufficient that one person was found to have suffered detriment. The Tribunal formed the view that there was potential for many others to have also suffered detriment.</p> <p>18. The Tribunal accepted submissions from both parties that the Councillor's misconduct was borne of genuine mistake rather than deliberate intent.</p> <p>19. 'Intent' by the Councillor to cause a detriment to another person was irrelevant to the Tribunal's considerations in so far as determining if misconduct had occurred, as section 150L(1)(b)(ii) does not require intent.</p> <p>20. The Councillor intended to attach 'a document' to her email. The Tribunal accepted the evidence the Councillor had named two files with closely related descriptions ('<i>New Years Invites 2019.xls</i>' & '<i>New Year Invite 2019.docx</i>').</p> <p>21. The Councillor's lack of intention was accepted by the Tribunal to be a mitigating circumstance.</p> <p>22. However, the Tribunal formed the view that the Councillor lacked diligence and attention to detail with such sensitive information.</p>
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3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	7 March 2022
Order/s and/or recommendations:	<p>Having found that the Councillor engaged in misconduct, pursuant to section 150AR(1) of the Act, the Tribunal orders that:</p> <p>Within 60 days of the date that a copy of this Decision and Orders are given to her by the Registrar:</p> <ol style="list-style-type: none"> a. Councillor Huges attend training to address the Councillor's conduct (at her expense), where such training must include proper consideration of the Councillor Code of Conduct and Dealing with Council Records appropriately (pursuant to s150AR(1)(b)(iii) of the Act); and

	<p>b. Councillor Huges reimburse the local government \$300 of the costs arising from her misconduct (pursuant to s 150AR(1)(b)(v) of the Act).</p>
<p>CCT Reasons for orders:</p>	<ol style="list-style-type: none"> 1. Councillors are required to apply the Local Government Principles to their actions and decisions to ensure that the purpose of the Act is upheld, public confidence in local government is maintained, and ratepayers continue to be represented in local government by person of high integrity and probity. 2. The Tribunals jurisdiction is primarily protective although it can extend to considerations of deterrence and be compensatory⁴. 3. In making the orders the Tribunal considered that the Councillor had no previous disciplinary history, noting that she was first elected as a Councillor in 2016. 4. The Councillor’s misconduct was borne of genuine mistake rather than deliberate intent 5. The Councillor demonstrated insight and publicly expressed remorse for her conduct. 6. Councillors are required under their obligations to be aware that their position provides them with access to sensitive and/or private information, and that there are consequences for not handling that information with sufficient care or diligence. Further training is ordered to maintain high standards of conduct by Councillors, which in turn ensures public confidence in the institution of Local Government.

⁴ *Office of Local Government v Campbell* [2016] NSWCATOD 8 at [14(2)]