

# Councillor Conduct Tribunal: Summary of Decision and Reasons for Department's website

*Local Government Act 2009: Section 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: section 150AS(5)(a) and (b).

## 1. Application details:

<b>Reference No:</b>	F21/13585
<b>Subject Councillor:</b>	Councillor Kate Frances Hastie (the Councillor / the Respondent)
<b>Council:</b>	Charters Towers Regional Council (the Council)

## 2. Decision (section 150AQ):

<b>Date:</b>	21 November 2023
<b>Decision:</b>	<p>The Tribunal has determined, on the balance of probabilities, that the allegation that, on 9 October 2020, Councillor Kate Hastie of Charters Towers Regional Council engaged in misconduct pursuant to section 150L(1)(b)(ii) of the <i>Local Government Act 2009</i> (Qld), in that she misused information acquired in connection with the performance of her councillor functions for the benefit of another person <b>has been sustained</b>.</p> <p><b>Particulars</b></p> <p>Particulars of the alleged misconduct are as follows:</p> <ul style="list-style-type: none"><li>a) Councillor Kate Hastie is a councillor of Charters Towers Regional Council ('council').</li><li>b) On 8 October 2020, Councillor Hastie met with AB,<sup>1</sup> Acting Director of Infrastructure, for a portfolio meeting.</li></ul>

<sup>1</sup> The Tribunal considered it appropriate in the circumstances to anonymise this person's name to 'AB' throughout this document for privacy reasons.

	<p>c) On 9 October 2020, Councillor Hastie sent an email to her daughter YZ,<sup>2</sup> at <b>email address redacted for privacy reasons</b>, advising that AB had mentioned that council might be investigating the possibility of utilising labour hire in the future and inviting a submission to council on what services Company X<sup>3</sup> can offer. The councillor also provided contact details for two relevant council officers.</p> <p>d) Company X is a labour hire company which had recently established a presence in Charters Towers. The councillor's daughter was a recruitment specialist employed by Company X, who had re-located to Charters Towers.</p> <p>e) Councillor Hastie's knowledge that council might be investigating the possibility of utilising labour hire in the future was information acquired in connection with the performance of her functions as a councillor, as it was obtained during a portfolio meeting ("the information").</p> <p>f) By providing the information to an external party, specifically her daughter YZ at Company X, and inviting a submission to council on what services Company X can offer, Councillor Hastie misused that information for the benefit of her daughter YZ and/or Company X.</p>
<b>Reasons:</b>	<p><b><u>Introduction</u></b></p> <p>1. The allegation of misconduct in this matter arises from the Respondent emailing her daughter, who worked at a labour hire firm, with information that the Council might be investigating the possibility of utilising labour hire in the future and inviting her daughter to make a submission to the Council on what services the daughter's company could offer. The Applicant alleges this was a misuse of information acquired in connection with the performance of the Respondent's functions as a Councillor for the benefit of another person, being the Respondent's daughter.</p> <p>2. The Tribunal considered there were three key issues in the matter:</p> <p>(a) Was the information about council considering the use of a labour hire firm to fill some vacancies at council, information that had been acquired by the Respondent in, or in connection with, the performance of the Respondent's functions as a councillor?</p>

<sup>2</sup> The Tribunal considered it appropriate in the circumstances to anonymise this person's name to 'YZ' throughout this document for privacy reasons.

<sup>3</sup> The Tribunal considered it appropriate in the circumstances to anonymise this entity's name to 'Company X' throughout this document for privacy reasons.

	<p>(b) Was the Respondent's conduct in relaying this information to her daughter in an email on 9 October at 11:22am a 'misuse' of this information?</p> <p>(c) Was the misuse of that information for the benefit of the Respondent's daughter and/or Company X?</p> <p>3. The Applicant's case was basically that in emailing her daughter with the information about a potential opportunity for a labour hire firm at the Council, the Respondent misused that information for the benefit of her daughter/Company X, which amounted to misconduct. The Respondent's case was basically that while the information had been acquired as a result of the Respondent's role as a Councillor, there was no misconduct because there was no 'misuse' of the information by the Respondent, that AB had agreed for the Respondent to impart the information to her daughter, and that there was no 'benefit' to the Respondent's daughter/Company X.</p> <p><b><u>Was the information about council considering the use of a labour hire firm to fill some vacancies at council, information that had been acquired by the Respondent in, or in connection with, the performance of the Respondent's functions as a councillor?</u></b></p> <p>4. This issue was uncontroversial, and the Tribunal had no problem in finding that on the balance of probabilities, the relevant information was acquired by the Respondent in, or in connection with, the performance of the Respondent's functions as a Councillor because the Respondent clearly obtained the information at a meeting with AB regarding Council business.</p> <p><b><u>Was the Respondent's conduct in relaying this information to her daughter in an email on 9 October at 11:22am a 'misuse' of this information?</u></b></p> <p>5. In the Tribunal's view, this was the key issue in the matter.</p> <p>6. The Tribunal formed the view that the ordinary meaning of 'misuse' could be used e.g. 'to use something in an unsuitable way or in a way that was not intended'.<sup>4</sup> The Tribunal was also assisted by the previous Tribunal decision of <i>Independent Assessor v Huges</i>, CCT reference F20/4772, 4 February 2022 to assist with the interpretation of 'misuse'. The Tribunal panel in <i>Huges</i> 'found guidance in the ordinary meaning of misuse as 'wrong</p>
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<sup>4</sup> This definition was taken from the *Cambridge Dictionary* accessible at <https://dictionary.cambridge.org/>.

	<p><i>or improper use; misapplication</i>’ [which was a definition taken from the online Macquarie Dictionary].<sup>5</sup></p> <p>7. Before considering whether there was misuse of the information by the Respondent on 9 October 2020, the Tribunal examined a relevant email chain between the Respondent and the CEO in June 2020, a few months prior to the Respondent’s alleged misconduct on 9 October 2020. The Tribunal’s reading of the Respondent’s evidence was that the email chain with the CEO was sparked by a conversation the Respondent had with the owner of Company X, sometime before 19 June 2020.</p> <p>8. In that email chain, the Respondent suggested Company X, a local recruitment firm, to the CEO. The Respondent noted her conflict of interest due to her daughter but was seeking if it was okay for Company X to forward their company profile to the Council. Critically, the CEO noted the Respondent’s conflict of interest and wrote ‘[I] remind you that as a Councillor, information received on our operations is confidential in nature.’ While the CEO was ‘happy to receive a capability statement from Company X and [...] pass this onto the recruitment team’, the CEO wrote ‘[a]t the end of the day the onboarding of staff is an operational matter and not for consideration of elected members.’ The Respondent replied that she ‘fully understand[s] the confidentiality as a councillor, particularly because of the strict confidentiality guidelines that need to be adhered to in [her] role as a planner.’</p> <p>9. In the Tribunal’s view, the email chain indicated that the Respondent had turned her mind to getting her daughter/Company X in touch with the Council some three and a half months prior to emailing her daughter on 9 October 2020. In the Tribunal’s view, objectively this was a bad look and showed a degree of premeditation leading up to the alleged misconduct on 9 October 2020. Further, the CEO in his email to the Respondent at 4:32pm on 23 June 2020 reminded the Respondent ‘that as a Councillor, information received on our operations is confidential in nature’ and that ‘the onboarding of staff is an operational matter and not for consideration of elected members.’ The Tribunal considered this was a firm and clear warning to the Respondent by the CEO.</p> <p>10. Another relevant event regarding potential ‘misuse’ of the information was the Respondent’s meeting with AB on 8 October 2020. The Tribunal considered that an important aspect of whether there was any ‘misuse’ of the information in the Respondent’s email to her daughter was whether during the</p>
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<sup>5</sup> *Independent Assessor v Huges*, CCT reference F20/4772, 4 February 2022 decision summary on the Department’s website, [6] under the heading **Misuse** on page 4.

	<p>Respondent's meeting with AB, did AB give express permission to the Respondent to convey the relevant information to her daughter?</p> <p>11. There was conflicting evidence about this. AB's evidence was that when the Respondent 'asked me about passing on the information about council considering the use of labour hire on to her daughter and seeing if she could send some information through to the CEO or the People and Performance Section [...] I recall responding with the words to the effect of "I'll leave that to you".' The Respondent's evidence was that AB 'said "yes". [AB] did not say "I'll leave that to you".'</p> <p>12. The Tribunal considered that AB had no reason to misstate AB's evidence of the conversation. Where AB and the Respondent differ in their evidence as to what was said, the Tribunal has preferred the evidence of AB. Therefore, the Tribunal finds that on the balance of probabilities, the evidence indicates that AB did not expressly permit the Respondent to pass on the relevant information to her daughter.</p> <p>13. The actual 'misuse' of the information is alleged to have occurred, when after her meeting with AB on 8 October 2020, the Respondent emailed her daughter at 11:22am on 9 October 2020 (CCed to two Council employees, including AB) relevantly as follows:</p> <p style="padding-left: 40px;">I had my portfolio meeting yesterday with [AB], Acting Director of Infrastructure yesterday and [AB] mentioned that Council might be investigating the possibility of utilising labour hire in the future. I said that I would let you know as you are now a locally based labour hire company and so if you can forward a submission to Council on what services [Company X] can offer.</p> <p>14. The Tribunal noted that in the Respondent's email to her daughter, the Respondent stated that AB 'mentioned that Council <b>might</b> be investigating the <b>possibility</b> of utilising labour hire in the future' [emphasis added]. In the Tribunal's view, the emphasised words, being the Respondent's own words, on an objective reading indicate that this was something uncertain, unofficial, and possibly even confidential.</p> <p>15. At 3:32pm on 9 October 2020, the Respondent's daughter emailed the Council.</p> <p>16. The Tribunal found that on the balance of probabilities, the Respondent emailing the relevant information to her daughter in the way she did was 'misuse' of the information because it was a 'wrong or improper use; misapplication' of the information and the Respondent used the information 'in an unsuitable way or in a way that was not intended'.</p>
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	<p><b><u>Was the misuse of that information for the benefit of the Respondent's daughter and/or Company X?</u></b></p> <p>17. As 'benefit' is not defined in section 150L(1)(b)(ii) of the Act, the Tribunal formed the view that the ordinary meaning of the term can be used to interpret it.</p> <p>18. The Tribunal was assisted by the following definition of 'benefit': 'benefit <i>noun</i> (ADVANTAGE) [...] a helpful or good effect, or something intended to help'.<sup>6</sup></p> <p>19. Regarding this issue, the Tribunal was directed to the Council's <i>S0010 Procurement Policy and Procurement Procedure</i> both effective from 16 July 2020 and in force at the time of the Respondent's alleged conduct. The Tribunal noted that section 11 of the Council's <i>Procurement Procedure</i> was particularly relevant because it stated 'Local based or Regional Suppliers should be considered first when seeking quotes and assessed with regard to the sound contracting principles in Section 5 of this procedure.'</p> <p>20. The parties' both accepted that Company X was the only local labour hire company in the region and as a result of section 11 of the <i>Procurement Procedure</i>, would have been considered first by the Council for labour hire services. While the Tribunal noted the Respondent's submission that the Council 'would have become aware' of Company X 'in any event', the evidence indicated that at the time of the Respondent's conduct, the Council was not aware of Company X but more importantly, the Tribunal considered this to be irrelevant because it is the Respondent's conduct that is in issue in this matter. On balance, the Tribunal's view was that the Respondent's conduct conveyed a clear benefit in the ordinary meaning of the word to her daughter/Company X in the form of a potential business opportunity.</p> <p><b><u>Conclusion</u></b></p> <p>21. Ultimately considering all the evidence and material received in the matter, the Tribunal has determined that on the balance of probabilities, the allegation has been sustained.</p>
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### 3. Orders and/or recommendations (section 150AR - disciplinary action):

<b>Date of orders:</b>	21 November 2023
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<sup>6</sup> This definition was taken from the *Cambridge Dictionary* accessible at <https://dictionary.cambridge.org/>.

<p><b>Orders and/or recommendations:</b></p>	<p>Pursuant to section 150AR(1)(b) of the Act, the Tribunal orders that within 90 days of the date of this decision (21 November 2023) Councillor Kate Frances Hastie:</p> <ol style="list-style-type: none"> <li>1. Make a public admission at a general meeting of the Council that she has engaged in misconduct (section 150AR(1)(b)(i)); and</li> <li>2. Attend training to address her conduct at her expense – the training must include a proper consideration of managing conflicts of interest and a proper consideration of the Respondent’s obligations as a Councillor under the <i>Code of Conduct for Councillors in Queensland</i> and the <i>Local Government Act 2009</i> (Qld) (section 150AR(1)(b)(iii)).</li> </ol>
<p><b>Reasons:</b></p>	<ol style="list-style-type: none"> <li>1. Having sustained the allegation of misconduct against the Respondent, the Tribunal then considered the appropriate orders/recommendations to be made under section 150AR of the Act.</li> <li>2. Regarding factors in mitigation, the Tribunal considered that at the time of the conduct, the Respondent was in her first term as a Councillor, having only been in the role a few months since the local government elections in March 2020. Also, the Councillor had no previous disciplinary history.</li> <li>3. Regarding factors in aggravation, the Tribunal was of the view that the Respondent underwent significant Councillor training in 2020, some of which took place as late as September 2020. Also, the Respondent received a relevant warning from the CEO a few months prior to her conduct the subject of the allegation. Further, the Tribunal noted the Councillor has expressed no insight or remorse into her conduct and maintained that she did not engage in misconduct.</li> <li>4. Regarding appropriate disciplinary action, the Tribunal was particularly assisted by the previous Tribunal decision of <i>Independent Assessor v Huges</i>, CCT reference F20/4772, 4 February 2022. <i>Huges</i> also concerned a single allegation of misconduct made pursuant to section 150L(1)(b)(ii) of the Act, just as in the present case. This Tribunal panel noted that <i>Huges</i> concerned a more serious ‘misuse of information’. The Tribunal panel in that matter ordered that Councillor Huges attend training as well as reimburse the local government \$300 of the costs arising from the misconduct.</li> <li>5. Returning to the present matter, the Tribunal was particularly concerned that unlike Councillor Hughes, the Respondent in the present matter has expressed no insight or remorse into her conduct and continued to maintain she did nothing wrong.</li> </ol>

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GPO Box 15009, City East, Q 4002

The Respondent does not seem to understand how she benefited her daughter/Company X by sending through the relevant information to her daughter. While the Tribunal accepted the Respondent's evidence that she was genuinely trying to assist the Council, the Respondent does not appreciate how her conduct could be perceived as benefiting her daughter, that the Respondent's conduct created a situation that was 'a bad look', and that as a Councillor, the Respondent has obligations regarding information she receives in the course of her role as a Councillor.

6. Bearing in mind that the purpose of disciplinary proceedings is to protect rather than punish,<sup>7</sup> the Tribunal was of the view that the key manner in which to deal with the Respondent's misconduct is to order the Respondent to do more specific and targeted training regarding managing conflicts of interest and the Respondent's obligations as a Councillor under the *Code of Conduct for Councillors in Queensland* and the Act.
7. The Tribunal formed the view that an order that the Respondent make a public admission that she engaged in misconduct was also warranted in the circumstances. The Tribunal also strongly considered ordering the Respondent to pay a small amount to the local government. Ultimately, the Tribunal decided that to do so would be tokenistic in light of the order that the Respondent attend training at her own expense and that the matter could be appropriately resolved in the manner ordered by the Tribunal. Further, the Tribunal decided that to order the Respondent to pay a small amount to the local government was not necessary because the Tribunal accepted the Respondent's evidence that she genuinely thought that her conduct was benefitting the Council.

**Considerations pursuant to the *Human Rights Act 2019 (Qld)***

8. The Tribunal also considered the Respondent's human rights under the *Human Rights Act 2019 (Qld)*. The Tribunal was satisfied that any human rights engaged and limited by the decision were justified. This was because ultimately, the Tribunal is satisfied that the disciplinary action it has taken in this matter is reasonable, just, lawful, proportionate and not arbitrary. The disciplinary action ordered by the Tribunal in this matter holds the Respondent to account while maintaining public confidence in and ensuring the integrity of the system of local government in Queensland. In the Tribunal's view, the balance struck is fair and the consequences for the Respondent are not disproportionate to the nature and gravity of the misconduct.

<sup>7</sup> *Walter v Council of Queensland Law Society Incorporated* (1988) 77 ALR 228.