



Local Government Standards Panel

Complaint Number	SP 2018-121
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Peter Le
Respondent	Councillor Hugh Nguyen
Local Government	City of Wanneroo
Regulation	Regulation 7 of the <i>Local Government (Rules of Conduct)</i> <i>Regulations 2007</i>
Panel Members	Mrs Emma Power (Presiding Member) Ms Sarah Rizk (Member) Councillor Paul Kelly (Member)
Heard	9 April 2019 Determined on the documents
Finding	One breach of Regulation 7(1)(b)

FINDING AND REASONS FOR FINDING

Delivered 10 May 2019

DEFAMATION CAUTION

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Summary of the Panel's decision

1. On 9 April 2019, the Panel found that Councillor Hugh Nguyen, a councillor for the City of Wanneroo ("**the City**") did commit a minor breach pursuant to:
 - a. the Local Government Act 1995 (WA) ("**the Act**"); and
 - b. regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 ("**the Regulations**"),when Cr Nguyen sent an email dated 15 October 2018 to the Complainant and copied in various members of the public, the Mayor of the City and other elected members of the City as set out in paragraph 18 below.

The Panel's Role

2. Under section 5.110(2) of the Act the Panel is required to consider a minor breach complaint and make a finding as to whether the alleged minor breach occurred.
3. The Act provides for the circumstances in which a council member commits a minor breach.¹
4. The Panel may make a finding that a councillor has committed a minor breach of the Act and Regulations based on evidence from which it may be concluded that it is more likely that the alleged breach occurred than it did not occur.²
5. In order to find a breach, it must be established that each element of the relevant Regulation is more likely than not to have been breached or met.
6. In considering whether a minor breach is established the Panel must consider:
 - a. all evidence provided and, where there are conflicting circumstances, inferences or evidence, must come to a reasonable conclusion that any circumstance, inference or evidence relied upon is more likely than not to have occurred or be accurate³; and
 - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding⁴.
7. The Panel does not possess investigative or supervisory powers.⁵ The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials published by the relevant local authority's website.
8. It is the responsibility of both complainants and respondents to provide the Panel with all information they wish the Panel to consider when making its determination.
9. The Panel also must have regard to the general interests of local government in Western Australia⁶.
10. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

¹ Section 5.105 of the Act

² Section 5.106 of the Act

³ Bradshaw v McEwans Pty Ltd (1951) 217 ALR 1

⁴ Briginshaw v Briginshaw (1938) 60 CLR 336

⁵ Re and Local Government Standards Panel [2015] WASC 51 (at paragraph 24)

⁶ Section 8(6) of Schedule 5.1 of the Act



Regulation 7

11. Regulation 7 prohibits councillors engaging in conduct to either gain an advantage for themselves (or another party) or cause detriment to another party and specifically provides as follows:

“7. Securing personal advantage or disadvantaging others

- (1) *A person who is a council member must not make improper use of the person’s office as a council member —*
- (a) *to gain directly or indirectly an advantage for the person or any other person; or*
- (b) *to cause detriment to the local government or any other person.*
- (2) *Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.*

12. The Complainant has not alleged that any advantage was attempted to be secured by Cr Nguyen, so the Panel has only considered Regulation 7(1)(b) in this instance.

Jurisdiction and Procedural Fairness

13. On 4 December 2018 the Panel received a letter dated 26 November 2018 from Noelene Jennings, acting as complaints officer of the City (**“the Complaints Officer”**). The same enclosed a Complaint of Minor Breach Form dated 26 November 2018.
14. A further email was sent on behalf of the City to the Panel on 12 December 2018 attaching the email chain referred to in paragraph 18, which had been supplied to the City by Mr Le.
15. In the complaint form the Complainant alleges that Cr Nguyen has breached regulation 7(1)(b) of the Regulations by disadvantaging Mr Le when he sent:
- the First Nguyen Email set out in paragraph 18.b below;
 - the Second Nguyen Email set out in paragraph 18.d below; and
 - the Third Nguyen Email set out in paragraph 18.f below,
- each of which contained insults towards Mr Le (**“the Complaint”**).
16. The Panel convened on 9 April 2019 to consider the Complaint.
17. The Panel:
- accepted the advice of the Department that, based on information published on the Western Australian Electoral Commission’s website, Cr Nguyen was:
 - last elected to the Council of the City in October 2017 for a term expiring in October 2021;
 - a Councillor at the time of the alleged breach; and
 - a Councillor when the Panel met on 9 April 2019;
 - was satisfied the Complaint was made within two years after the alleged breach occurred⁷;

⁷ Section 5.107(4) and 5.109(2) of the Act



- c. was satisfied that the City's Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach⁸;
- d. was satisfied the Department had provided procedural fairness to Cr Nguyen; and
- e. found it had jurisdiction to consider the Complaint.

The Specifics of the Complaint

18. The emails the subject of the Complaint are contained in the following email chain:

- a. An email dated 15 October 2018 sent from Mr Le to Cr Nguyen (**"the Initial Email"**):

" Hugh

Tracey Roberts will be submitting our petition to Council. All petitions are addressed to the Mayor and the Mayor is the appropriate person to submit the petition.

Thanks for all your help.

We hope you will be supporting our development.

Regards

Peter Le

- b. Email dated 15 October 2018 from Cr Nguyen to Mr Le and copying in several councillors of the City and members of the Public (**"the First Nguyen Email"**):

" Peter,

Thank you for letting me know that Tracey Roberts will be tabling the petition at tomorrow night's Council meeting.

For your information, all petitions to the City of Wanneroo are addressed to the Mayor. However, any Elected Member can table a petition, including but not limited to just the Mayor.

I must say though, having done the work to help the Club with this petition, I am personally disappointed and find it somewhat unprofessional to be advised at the last minute that the Club has decided to get someone else who has not done the work to table the petition. And for your further information, I was the person who suggested to the Club the idea of getting a petition drawn up.

In any event, if the above decision is one that the Club's Executive Committee has made collectively (as opposed to one unilaterally made by a single member of the Committee), then I will respect that.

In relation to your comment that the Club hopes that I will be supporting the development, I think that is quite an inappropriate, immature and unnecessary comment to be making towards a long-term supporter of the Club. And to be honest, I do personally take offence to that comment. What makes you think I would not be supporting the development given that I had

⁸ Section 5.107 and 5.109 of the Act



helped the Club with the petition and all the support I had given the Club over the years which I am sure you are aware?

For your information, I have copied the Mayor into this email for her information and as a professional courtesy.

Kind regards,

HUGH NGUYEN B.ComLLB
Councillor for South Ward
City of Wanneroo”

- c. Email 5 November 2018 from Mr Le to the Chief Executive Officer of the City (“**the CEO**”) CEO and Acting Chief Executive Offer (“**Acting CEO**”), various councillors, government members and other various members of the public (“**First Compliant Email**”):

“ Dear CEO (and acting CEO) of the City of Wanneroo:

Please accept this as an official complaint against Councillor Hugh Nguyen.

Please see my email to Mr Nguyen on 15 October at 6.34pm and his response on the same evening at 7.13pm. There are no further emails to these chain of emails.

You will see Mr Nguyen's unprovoked attack on my character calling me “unprofessional” and “immature”.

In my view, Mr Nguyen has breached your City's Code of Conduct and the Local Government's Rules of Conduct in falling to treat others with respect and has engaged in improper and derogatory behaviour, behaviour that is unbecoming of a person that holds of the office of a Councillor and behaviour that is lacking in integrity and bringing your good Council into this disrepute. Mr Nguyen should be held to a higher standard and accountability.

Mr Nguyen lacks the decency and courtesy to treat people with respect and the universal fundamental right of people to be treated with equality and dignity.

I trust you will investigate the matter and if appropriate, refer the matter to the Local Government Standards panel.

Thank you kindly.

Best Regards I Peter Le”

- d. Email dated 5 November 2018 from Cr Nguyen to Mr Ted Nguyen (“**the Second Nguyen Email**”):

“ Dear Ted,

Thank you for your call this afternoon regarding Peter Le's email and complaint against me, which was made to the City of Wanneroo today. I accept your explanation that Peter's email and views do not represent Westnam's view/position.

Although I understand Peter is no longer a member of the Westnam Executive Committee (and possibly no longer a member of Westnam), I would still like to express my great disappointment with Peter's action as a former A/President of the Club, which I consider to be ungrateful, particularly given my recent support to the Club to try and get the multipurpose building at Shelvock Park in Koondoola built early.



As you and the Committee are well aware, unlike other "supporters" of the Club who normally only show up around election time, I have been a long term supporter of the Club and has always been willing to go out of my way to help the Club in whatever way I can.

In relation to Peter's complaint, I think we all know why I said what I said to Peter regarding his handling of the petition which I helped the Club with, but which was taken out of my hands at the last minute before the Council meeting. It was clearly a political act.

I have never really understood what Peter's problems with me were or are. Maybe it's jealousy, envy or both. It is really sad at the Vietnamese community level though. As a small community, instead of fighting and creating division between ourselves, we should be united and support one another. We should be proud and support other Vietnamese who are able to achieve great things for the community instead of acting with jealousy and envy because of their success. That is what we need to do if we are to build a stronger Vietnamese community.

Anyway, I do appreciate the leadership, decency, maturity and professionalism which you have shown by taking the initiative to contact me about this matter today. This makes you a great leader and a worthwhile President of Westnam. You are able to distinguish between what is personal interest and what is the Club's interest. You always put Westnam's interest ahead of your personal interest, and you don't use Westnam to play personal politics, which is highly important as a leader.

As I said to you, I will continue to support Westnam irrespective of what Peter has done today, because I also always put Westnam's interests first. And as I also said to you, I support Westnam not because of political or personal benefits to be gained but because we are Vietnamese at the end of the day. For the Club's information, because of the good work I have been doing in the wider community as a Councillor, I do have strong community support and that is where my political support base is, not at Westnam. The wider community's support I have was the reason why I was re-elected as Councillor last year for another 4 years.

Finally, I am glad that you are still the Club's President. Keep up the good work Ted.

Kind regards,

*HUGH NGUYEN B.ComLLB
Councillor for South Ward
City of Wanneroo "*

- e. Email dated 5 November 2018 from Mr Le to the CEO and Acting CEO and other various members of the public (**"the Second Complaint Email"**):

" Dear CEO (and Acting CEO) of the City of Wanneroo:

Please accept this as a second complaint against Councillor Hugh Nguyen. It is highly inappropriate for Mr Nguyen to continue to engage in these emails when he is the subject of a formal complaint and a potential investigation.

Clearly, Mr Nguyen does not understand his obligations as a Councillor, the City's Code of Conduct and the Local Government's Rules of Conduct and continues to bring your Council into disrepute.

Best Regards I Peter Le "



- f. Email dated 6 November 2018 from Cr Nguyen to Mr Le (“**the Third Nguyen Email**”):

Dear Mr Le,

Thank you for copying me into your emails of yesterday wherein you made a number of allegations against myself.

As you have copied me in, as an affected party the subject of your email, and as no complaint has been formally put to me by any authority or agency including the City of Wanneroo, I do believe I have every right of defence and to continue engaging in emails which relate to and/or has the potential to adversely affect my personal interest and reputation within the community. As a Legal Practitioner, I have no doubt you would understand these basic principles of fairness.

While I am sure the City of Wanneroo will follow its own processes and deal with any genuine grievances that people may have against Councillors from time to time, I do note in the interim an important matter which I believe raises serious questions about the basis/authenticity of, and motivation behind, your complaints.

In emailing your initial complaint to the City of Wanneroo, you have intentionally (and in my view maliciously) chosen to copy in individuals who are not a party to this matter and have no connection whatsoever to your complaint, including members of the Vietnamese community [REDACTED] and [REDACTED] (ex-City of Wanneroo Councillor), members of the Australian Labor Party Ms Margaret Quirk MLA and Ms Janine Freeman MLA, City of Wanneroo Councillors [REDACTED] and [REDACTED], and a number of City of Wanneroo Administrative staff members.

Are you able to explain for everyone's understanding and benefit why you have chosen to include those people in your email to the City of Wanneroo when they have nothing to do with the matter? Or is your complaint part of an elaborate, calculated, politically and personally motivated conspiracy designed for the sole purpose of tarnishing my personal reputation and good-standing within the Vietnamese community, the wider community, the Australian Labor Party (of which I am currently a member), the City of Wanneroo Council and the City of Wanneroo Administration itself?

To be frank and with all due respect, I believe your conduct in this matter is quite despicable, unprofessional and highly inappropriate, and I do take objection to it and to the obvious ulterior motive behind the complaint. In particular, I note the inclusion of City of Wanneroo Administration staff members is highly inappropriate and unnecessary. Your conduct begs the question of whether you actually have a genuine grievance or whether your complaint was motivated purely by a personal and/or political vendetta against me, with the ultimate aim of maximising damage to my personal reputation.

As a Legal Practitioner, your conduct is in my view highly unethical and could be the subject of a Legal Practice Board complaint due to the underhanded nature of it.

I also note that in the making of your complaint, you have conveniently left out information pertaining to all of the occasions in the past where, as a member of the Westnam Executive Committee, you have sought to, without



provocation, personally undermine and/or attack me as a supporter of the Westnam Soccer Club. I think these are important background and context which you should have included to help the reader better understand both sides of the story.

As those who have made malicious and vexatious allegations against me in the past (and failed) would tell you, I am not one to be easily intimidated or bullied. I suspect you will now attempt to add this email to your collection of "complaints" to the City of Wanneroo as part of an ambush strategy to try and keep me busy. I remain ready to respond with vigour to any genuine complaint which is formally put to me.

*HUGH NGUYEN B.ComLLB
Councillor for South Ward
City of Wanneroo"*

- g. Email dated 6 November 2018 from Mr Le to the CEO and Acting CEO and other various members of the public ("**the Third Complaint Email**").

" Dear CEO (and Acting CEO) of the City of Wanneroo:

Please accept this as a third complaint against Councillor Hugh Nguyen.

It is highly inappropriate for Mr Nguyen to continue to engage in these emails when he is the subject of a formal complaint and a potential investigation.

Clearly, Mr Nguyen does not understand his obligations as a Councillor, the City's Code of Conduct and the Local Government's Rules of Conduct and continues to bring your Council into disrepute.

He has total disregard for your Council and due process. He just doesn't get it.

Best Regards I Peter Le "

19. The Complainant makes the following arguments and comments regarding the Complaint:
- a. Mr Le sent an email to Cr Nguyen on 15 October 2018 (the Initial Email) noting that the Mayor of the City would be submitting a petition in relation to a sports amenity building to be constructed for the use of the Westnam Soccer Club and thanking him for his help;
 - b. Cr Nguyen replied with an unprovoked attack on Mr Le's character calling him "unprofessional and immature" (the First Nguyen Email);
 - c. after Mr Le had submitted a complaint, Cr Nguyen sent further emails (the Second Nguyen Email and Third Nguyen Email) in which he continued his insults saying he was acting from "jealousy, envy or both";
 - d. all of Cr Nguyen's emails were copied to various members of the community and this has caused Mr Le great personal and professional embarrassment;
 - e. he is president of the Asian Australia Lawyers Association (WA Chapter), chairman of the Asian Business Alliance, Vice President of the WA Vietnam Business Council, Secretary general of the ASEAN Chamber of Commerce Inc and the Immediate Past President of the Vietnamese Community in Western Australia (that represents 40,000 Vietnamese Australians living in Western Australia) and Cr Nguyen is aware of these positions;
 - f. Cr Nguyen's email lacked respect for others;



20. Cr Nguyen's conduct breaches general principles under Regulation 3(1)(g) of the Regulations to treat others with fairness and respect and Regulation 7(1)(b);
21. Councillors should be held to a higher standard and the community expects this; and
22. Cr Nguyen's conduct should not go unsanctioned and he should be held accountable.

Respondent's Response

23. By an email dated 31 March 2019, Cr Nguyen provided a response to the Complaint.
24. Cr Nguyen denies that he has committed any minor breach.
25. Cr Nguyen made extensive submissions in relation to the Complaint including a written statement being over 15 pages in length. However, the Panel notes that a substantial portion of the same is simply irrelevant to the Complaint itself.
26. The comments and arguments made by Cr Nguyen in respect to the allegation of Minor Breach are summarised below:
 - a. Cr Nguyen is a councillor with an excellent reputation for his service, dedication and commitment to his community as evidenced by his re-election on 2017;
 - b. he considers the allegations frivolous, vexatious and trivial and part of a conspiracy to smear, bully and harass orchestrated by Mr Le and other councillors ("**BT**" and "**DZ**");
 - c. the conspiracy is motivated by a political agenda and malicious personal vendetta against him by those involved, arising from envy and jealousy and because of his perceived personal success and popularity;
 - d. the matter is not as simple and innocent as Mr Le has purported to make out and it is an attempt to mislead the Panel in to believing and accepting his version of events. Mr Le has deliberately and conveniently withheld from the Panel significant, important and relevant information which would reveal his harassing bullying, conniving and despicable conduct and behaviour towards Cr Nguyen over a long and sustained period of time;
 - e. the background of the various emails is:
 - i. Cr Nguyen is a strong active supporter of the Westnam Soccer Club ("**the Club**") which is a Vietnamese based local soccer club
 - ii. Mr Le was a member of the organising committee of the Club;
 - iii. the Club approached Cr Nguyen for advice on how to lobby the City to build a sports amenity building for use by the Club. He spent a large amount of time and effort to assist the Club and the City committed some funding for the amenities building;
 - iv. subsequently the Club wished to draft a petition to the City to assist in the consideration of further funding for a multifunctional function room by the City. Cr Nguyen assisted with the same;
 - v. the day before the meeting at which the petition was to be put to the councillors of the City, Mr Le made the unilateral decision for the Mayor to table the petition instead of Cr Nguyen;
 - vi. Cr Nguyen believes that Mr Le's actions were a deliberate and malicious act to solely undermine and embarrass him with the Club's organising committee and the members that would attend the meeting;



- vii. he responded to Mr Le's email on the basis of the above.
 - viii. The first part of the First Nguyen Email is polite and professional, however, because of the sarcastic and provocative tone of Mr Le's comment that he "*hoped I would be supporting the development at the meeting*" he considers it was reasonable for him to voice his frustration and disappointment in order to protect and defend his reputation as anyone in his situation would do;
 - ix. he considers his response and reference to Mr Le's conduct as "*inappropriate, immature and unnecessary*" as warranted, justified and not at all disproportionate to the provocative and sarcastic nature of Mr Le's remarks;
 - x. at the meeting he became aware Mr Le had arranged for BT and DZ to move and second an amendment related to the petition, effectively by-passing him altogether; and
 - xi. after the meeting the Club President invited Cr Nguyen to be part of a group photo, however, when this was provided to the local Community newspaper by Mr Le, Cr Nguyen had been cropped out;
- f. in response to the Complaint itself Cr Nguyen asserts the following:
- i. Mr Le has no genuine grievance in this matter;
 - ii. Mr Le's complaint is fundamentally flawed and riddled with hypocrisy;
 - iii. Mr Le should have expected such a reaction to the Initial Email and Mr Le has brought this on himself through his own appalling behaviour and actions in the matter;
 - iv. Cr Nguyen had every right of defence and to continue engaging in the emails which had the potential to adversely affect his personal interest and reputation in the community;
 - v. it was Mr Le and not Cr Nguyen in the First Complaint Email that started to copy in the various other parties not privy to the matter and to state that Cr Nguyen copied them in as an "outright lie";
 - vi. Mr Le cannot be allowed to falsely accuse another person of conduct which he himself has engaged in and then complain about the consequences afterwards;
 - vii. the only reason that Mr Le has listed the positions he supposedly holds with various organisations is to give the Complaint credence and to bolster his claim that Cr Nguyen's conduct in the matter somehow caused him professional embarrassment;
 - viii. Cr Nguyen did not cause Mr Le any embarrassment or damage to his reputation as alleged, if anything, Mr Le has brought this on himself by his appalling behaviour and action in the matter;
 - ix. it is unclear what detriment has been caused to Mr Le when he was the person that had instigated this matter through his ongoing campaign of appalling behaviour and conduct against me, and when it was he who had chosen to copy in parties not privy to the matter;
 - x. there was no intent on Cr Nguyen's part at any stage to secure an advantage or cause a detriment to any person as alleged. As there was no requisite intent he has not breached any of the relevant regulations;



- xi. Mr Le also alleges that Cr Nguyen's emails lacked respect for him. In Cr Nguyen's submission, respect in any relationship or professional dealing is always a "two-way street". Mr Le's appalling and disgraceful conduct and behaviour towards Cr Nguyen meant that he simply has not earned his respect. For Mr Le to expect otherwise would be hypocritical;
 - xii. Mr Le says in his complaint that Councillors should be held to a higher standard and the community expects this. However, when Councillors are subjected to the type of bullying, harassment and smearing from members of the community that Mr Le has meted out over a long and sustained period of time, then it is only fair and just that Councillors are afforded the right to at least defend themselves and express frustration and disappointment;
 - xiii. the right to defend oneself is a fundamental tenet of our society and our legal system; and
 - xiv. the complaints made by Mr Le are trivial and lacks basis. The ulterior motive behind Mr Le's Complaint is clear for all to see;
 - g. Mr Le sent the First Complaint Email to the CEO and copied various individuals including Labor MP's, the president of the Vietnamese Community in WA, BT and DZ and members of the City's administration;
 - h. Cr Nguyen believes that the above people were copied in for deliberate and malicious purposes and confirms and reinforces that the actions were a conspiracy between certain parties;
 - i. it was Mr Le who first copied in parties not privy to the matter in the First Complaint;
 - j. the fact that Mr Le copied in BT and DZ confirms and reinforces that the action is part of a conspiracy against him as they have a common goal of wanting to destroy Cr Nguyen's reputation;
 - k. the Second Nguyen Email was leaked to Mr Le;
 - l. Mr Le has a history of attempting to lodge complaints in the hope of "getting a hit"; and
 - m. the purpose of copying in all the unrelated parties to the Complaint Emails was to cause detriment to Cr Nguyen.
27. Cr Nguyen has provided a very long and detailed history of the relationship between himself and BT and DZ. To summarise, they originally had a close working relationship, however, the relationship soured, and the parties are now in opposition;
28. Cr Nguyen has provided an extensive history between himself and Mr Le which is briefly summarised as follows:
- a. Mr Le and Cr Nguyen were friends when completing a law degree together;
 - b. while Cr Nguyen's career progressed very well, Mr Le's did not and this caused Mr Le's behaviour to change towards him; and
 - c. the only logical reason for Mr Le's conduct and behaviour is resentment, jealousy and envy towards him.
29. Cr Nguyen also provided further information stating:
- a. Mr Le has a history of conspiring with others against Cr Nguyen;



- b. Mr Le and Cr Nguyen have had recent disagreements which also involved Mr Le making malicious personal attacks to damage his reputation and good-standing in the community;
30. Cr Nguyen also provided the following documentation with his response:
- a. various Facebook extracts showing praise for himself as councillor;
 - b. various emails regarding council election flyers;
 - c. the emails the subject of the Complaint set out in paragraph 18 above;
 - d. letter from the Department to Cr Nguyen dated 21 November 2018;
 - e. email from Mr Le to Cr Nguyen dated 6 February 2019 regarding a dispute between the parties in respect to representation of the Vietnamese community and an email sent by Cr Nguyen; and
 - f. extract of various emails by Cr Nguyen to various people.

Panel's Consideration

Regulation 7(1)(b)

31. To make a finding of a minor breach of regulation 7(1)(b) of the Regulations the Panel must be satisfied to the required standard that:
- a. Cr Nguyen was an elected member at the time of the alleged breach and the time of the determination;
 - b. Cr Nguyen made use of his office as Council member of the City;
 - c. when viewed objectively, such use was an improper use of Cr Nguyen's office in that it:
 - i. involved a breach of the standards of conduct that would be expected of a person in the position of councillor by reasonable persons; and
 - ii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty;
 - d. Cr Nguyen engaged in the conduct in the belief that detriment would be suffered by another person; and
 - e. the conduct in question does not fall under section 5.93 of the Act or *The Criminal Code* section 83.

Cr Nguyen was a Councillor at the relevant times

32. Cr Nguyen was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.

Cr Nguyen made use of his office as Council member of the City

33. The Email was:
- a. sent by Cr Nguyen from his councillor email account;
 - b. in response to the Initial Email that was directed to him in his capacity as an elected member; and
 - c. in relation to a petition that was to be presented at the next occurring ordinary council meeting.
34. Given the above the Panel finds, to the required standard, that Cr Nguyen was acting in his role as councillor and was making use of his office as a council member.



35. This element is met.

Cr Nguyen's use was improper

36. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or a lack of wisdom⁹.
37. Impropriety consists in a breach of the standards of conduct that would be expected of a person in the position of a councillor by reasonable persons with knowledge of the duties, powers and authority of that person's position as a councillor and the circumstances of the case¹⁰.
38. It requires unsuitable or inappropriate behaviour that a councillor knew (or ought to have known) was not authorised.
39. Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent¹¹.
40. In addition, any decision as to what is "improper" cannot be made in isolation but must be considered in the relevant context. Such context will include the specifics of the relevant event as well as the councillor's formal role and responsibilities including the councillor's fiduciary duties and any relevant code of conduct.
41. The Complaint relates to:
- a. the following specific comments in the First Nguyen Email:
"I think that is quite an inappropriate, immature and unnecessary comment"
 - b. the following specific comments in the Second Nguyen Email:
"I have never really understood what Peter's problems with me were or are. Maybe it's jealousy, envy or both."
 - c. the fact that the First Nguyen Email, the Second Nguyen Email and the Third Nguyen Email lack respect and contain insults towards Mr Le.
42. Cr Nguyen does not deny that such comments were made, but alleges they were justified in the context.
43. The Panel finds to the required standard that, based on the evidence provided, the facts of the matter are as follows:
- a. the Initial Email was sent only to Cr Nguyen;
 - b. the First Nguyen Email was sent to Mr Le and various other parties including:
 - i. various members of the Vietnamese community including persons involved with the Club;
 - ii. the Mayor of the City; and
 - iii. several employees of the City;
 - c. the Second Nguyen Email was sent to:
 - i. Mr Ted Nguyen; and
 - ii. various members of the local Vietnamese community including persons involved with the Club;

⁹ Complaint of Minor Breach No. SP 3 of 2013

¹⁰ *Yates and Local Government Standards Panel* [2012] WASAT 59

¹¹ *Chew v R* [1992] HCA 18



- d. the Third Nguyen Email was sent to Mr Le and to:
 - i. various members of the Vietnamese community including persons involved with the Club;
 - ii. the Mayor of the City; and
 - iii. several employees of the City; and
 - iv. two Ministers.
 - e. the First Complaint Email, Second Complaint Email and Third Complaint Email were each sent to:
 - i. various members of the local Vietnamese community;
 - ii. various employees of the City;
 - iii. the Councillors of the City; and
 - iv. two Ministers.
44. Given the above, the Panels finds that it was Cr Nguyen who first copied in other parties to the email exchange.
 45. Further, the fact that Mr Le later copied in further parties is immaterial to the allegation of minor breach as the First Nguyen Email was sent before this occurred.
 46. Cr Nguyen asserts that there is a substantial history of rivalry and animosity between himself and Mr Le. It is clear from Cr Nguyen's response to the Panel that this position is strongly felt by Cr Nguyen.
 47. Despite the background provided and Cr Nguyen's assertions, the Panel finds that it is more likely than not that the Initial Email was not provocative or sarcastic in nature when viewed by a reasonable person. It was simply informing Cr Nguyen as to a change of party in putting forward a petition and was reasonable in content as respect to the Mayor being an appropriate person to present the petition.
 48. The Panel further considers in this instance that, although Cr Nguyen strongly asserts that Mr Le acted in a conspiracy with others to cause harm to Cr Nguyen's reputation, this is based upon supposition and mere opinion and is not supported by the evidence supplied to the Panel.
 49. Even if there was existing animosity, or any other parties were involved, it was not appropriate for Cr Nguyen to make a public response or to use language he knew would be likely to embarrass a reasonable person.
 50. The Panel considers that the First Nguyen Email in response to the Initial Email was discourteous, disproportionate and not of a standard that the public would expect of an elected member.
 51. In respect to the Second Nguyen Email and the Third Nguyen Email the Panel notes that:
 - a. Mr Le had already made a complaint in respect to the previously sent email(s) which clearly notified to Cr Nguyen that Mr Le considered the same to be inappropriate and a breach of Cr Nguyen's obligations;
 - b. although the same was not necessarily sent to Mr Le, the emails were sent to various member of the public, many of which had a relationship to Mr Le; and
 - c. each further email contained negative language that was clearly intended reflect poorly on Mr Le.



52. The fact that the conduct continued and was repeated over a period does not reflect well upon Cr Nguyen and indicates that this conduct was more than poor judgment on a single occasion.
53. The Panel has also considered the City of Wanneroo's Policy Manual - Council Member Code of Conduct - 26 June 2018 – CE02-06/18 (**"the Code"**) and, in particular, the following provisions:
- a. **Clause 2.1 – General Principles**
" 2.1 *General principles*
It is a requirement of this Code that Members observe the general principles referred to in Regulation 3(1) of the Rules of Conduct Regulations.
....
Regulation 3(1) of the Rules of Conduct Regulations provides as follows:
General principles to guide the behaviour of Members include that a person in his or her capacity as a Member should –
.....
(g) treat others with respect and fairness; and..."
- b. **Clause 2.3 - Personal behaviour**
" 2.3 *Personal behaviour*
A Member must:
...
(d) make no allegations which are improper or derogatory (unless true and in the public interest) and refrain from any form of conduct, in the performance of the Member's role, which may cause any reasonable person unwarranted offence or embarrassment."
54. The Panel finds this it is more likely than not that in sending the First Nguyen Email, the Second Nguyen Email and the Third Nguyen Email, Cr Nguyen breached clause 2.1 and clause 2.3 of the Code in that he:
- a. did not treat Mr Le with respect in the language used, nor fairness in copying in various other parties to his various email responses; and
- b. made derogatory allegations, that were only based on opinion and supposition.
55. Cr Nguyen's argument that he is entitled to defend himself is not compelling. Even if Cr Nguyen was feeling persecuted by the Initial Email, which the Panel does not find was justified, this is not a valid excuse to ignore his obligations as to behaviour as an elected member under the Code.
56. The various self-justifying arguments provided by Cr Nguyen show very little awareness of:
- a. the obligations expected of him pursuant to the Regulations and the Code of Conduct; and
- b. the standard of behaviour that is expected of elected members as public representatives of the community.
57. In summary, irrespective of what Cr Nguyen considers to be the background to or motive for sending the Initial Email:



- a. the First Nguyen Email was improper in content and tone; and
 - b. the Second Nguyen Email and Third Nguyen Email were also improper in tone and content with respect to the personal comments regarding Mr Le and only exacerbated the situation further.
58. In addition to the above, although the context of any alleged breach is important, the Panel makes the comment that such context must be relevant to the actual Complaint made.
59. The Panel finds that the majority of the background provided, especially as to BT and DZ (being unrelated parties) and other alleged disputes between the parties is completely irrelevant to the Complaint and does not assist the Panel.
60. The Panel finds to the required standard that by sending the First Nguyen Email, the Second Nguyen Email and the Third Nguyen Email, Cr Nguyen acted improperly as such conduct:
- a. involved a breach of the Code of Conduct;
 - b. was not of the general standard of conduct that would be expected of a person in the position of councillor by reasonable persons; and
 - c. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty.
61. This element is met.

Cr Nguyen intended detriment to be suffered by another person

62. "Detriment" means loss, damage or injury. It is construed widely and includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage.
63. It is not necessary to find whether any detriment was actually suffered¹², but an intent to cause such detriment must be established.
64. Irrespective of:
- a. the background of the matter and the existing relationship between the parties;
 - b. the allegation that the Initial Email was sarcastic and provocative; or
 - c. the fact that Cr Nguyen may have been disappointed and frustrated that he would not be able to present the petition at the relevant Council meeting,
- the fact that the various emails from Cr Nguyen and, in particular, the First Nguyen Email, were sent to a public, varied, audience instead of privately, indicates that Cr Nguyen wished to cast Mr Le's character and behaviour in a negative light to a wide audience.
65. Cr Nguyen's inference that the persons copied into the First Nguyen Email was acceptable as they were "privy" to matter is not compelling. If Cr Nguyen was disappointed that he would not get to present the petition, then that could have been raised to the relevant Club officials, City staff members and the Mayor in a different manner which did not denigrate Mr Le personally.
66. Following the First Complaint Email, Cr Nguyen was aware that Mr Le had found the First Nguyen Email to be unacceptable. The fact that Cr Nguyen nevertheless sent the Second Nguyen Email and the Third Nguyen Email leads the Panel to reflect that

¹² *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



the only reasonable interpretation of Cr Nguyen's conduct is that he wished other persons to think of Mr Le in an adverse manner and to embarrass Mr Le.

67. The Panel considers the argument that Mr Le brought any embarrassment or damage to his reputation on himself to be spurious and unsupported by the evidence provided.
68. Given the above, the Panel finds that it is more likely than not that by writing and sending the First Nguyen Email, the Second Nguyen Email and the Third Nguyen Email, Cr Nguyen intended:
- a. to humiliate and denigrate Mr Le; and
 - b. for Mr Le to suffer a detriment.

69. This element is met.

Other Conduct under the Act or Criminal Code

70. The conduct in question does not fall under section 5.93 of the Act or *The Criminal Code* section 83.

71. This element is met.

Conclusion

72. Given the above, the Panel finds that the elements required to find a breach of regulation 7(1)(b) of the Regulations have been met and Cr Nguyen did commit a minor breach.

Panel's Findings

73. Cr Nguyen did breach Regulation 7(1)(b) of the Regulations and therefore did commit a minor breach.

Emma Power (Presiding Member)

Paul Kelly (Member)

Sarah Rizk (Deputy Member)



Local Government Standards Panel

Complaint Number	SP 2018-121
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Councillor Hugh Nguyen
Respondent	Mr Peter Le
Local Government	City of Wanneroo
Regulation	Regulation 7 of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Mr Michael Connolly (Presiding Member) Cr Paul Kelly (Member) Mrs Emma Power (Member)
Heard	9 April 2019 Determined on the documents
Penalty Considered	9 July 2019
Outcome	Public Apology

PENALTY DECISION AND REASONS FOR DECISION

Delivered 24 July 2019

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005 (WA)*, applies to the further release or publication of all or part of this document or its contents. Accordingly, appropriate caution should be exercised when considering the further dissemination and the method of retention of this document and its contents



Introduction

1. At its meeting on 9 April 2019, the Panel found that Councillor Hugh Nguyen, a Councillor for the City of Wanneroo (“**the City**”), committed one minor breach of Regulation 7 of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (“**the Regulations**”) when Cr Nguyen sent an email dated 15 October 2018 to the Complainant and copied in various members of the public, the Mayor of the City and other elected members of the City (“**the Minor Breach**”).

Jurisdiction

2. The Panel convened on 9 July 2019 to consider how it should deal with the Minor Breach.
3. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries (“**the Department**”) that on this date there was no available information to indicate that Cr Nguyen had ceased to be, or was disqualified from being, a councillor.

Possible Sanctions

4. Section 5.110(6) of the *Local Government Act 1995* (WA) (“**the Act**”) provides that the Panel is to deal with a minor breach by:
 - (a) *dismissing the complaint;*
 - (b) *ordering that —*
 - (i) *the person against whom the complaint was made be publicly censured as specified in the order;*
 - (ii) *the person against whom the complaint was made apologise publicly as specified in the order; or*
 - (iii) *the person against whom the complaint was made undertake training as specified in the order;*

or

 - (c) *ordering 2 or more of the sanctions described in paragraph (b).*

Councillor Nguyen’s Submissions

5. If the Panel finds that a councillor has committed a minor breach, it must give the councillor an opportunity to make submissions to the Panel about how it should deal with the breach under section 5.110(6).¹
6. By a letter dated 15 May 2019, Cr Nguyen was:
 - a. notified of the Panel’s finding of the Minor Breaches;
 - b. provided with a copy of the Panel’s Finding and Reasons for Finding; and
 - c. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the *Act*.
7. By email dated 4 June 2019, the Department received a response from Cr Nguyen setting out the following statements and arguments:

¹ *Local Government Act 1995* (WA), s 5.110(5).



- a. there is a potential error of fact in the Panel's reasons for finding being that he had:
 - i. copied in other parties to the first email ("Initial email") exchange with the complainant Mr Le (and the subsequent Second and Third emails; and
 - ii. *"wished to cast Mr Le's character and behaviour in a negative light to a wide audience"*.
 - b. it is his submission that it was Mr Le who had copied in unrelated third parties into the email exchange. In his submission to the Panel on 29 March 2019, he sent the incorrect version of the first email sent by the Complainant which shows this;
 - c. this mistake was made due to Cr Nguyen undergoing major surgery and taking prescribed strong pain-killing medication which caused him to experience severe side effects that adversely affected his judgement;
 - d. he requests that the Panel review and reconsider its finding in light of the information provided as a finding of minor breach based on the current finding of facts would result in a situation akin to a miscarriage of justice; and
 - e. if, however, in the event that the Panel is not minded to amend its finding, then his submission would be that the matter could be dealt with by appropriate training.
8. Cr Nguyen also provided a further copy of the emails as referred to in his response.

Panel's Consideration

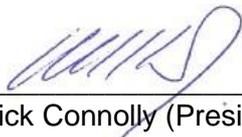
9. Section 5.110(6) is about penalty.
10. The Panel does not have the power to review any finding of a breach.
11. The Panel may dismiss a complaint under section 5.110(6)(a), not to reverse the Panel's finding of a breach but to indicate that in all the circumstances the councillor should not be penalised and the breach should not be recorded against the councillor's name.
12. The Panel notes that Cr Nguyen does not accept that he has breached the Regulations by his conduct and argues that the Complaint first copied in the various parties.
13. The Panel acknowledges that Mr Le first copied in various parties, however, the Panel also emphasises that this finding of fact is immaterial to the Panel's final finding. This original email was reasonable in content and Mr Le was entitled to copy in any party he considered needed knowledge of the matter.
14. However, Cr Nguyen sent a copy of his response (which was not appropriate in content) to *all* of those parties in the original email *and* added an additional party. Cr Nguyen could have sent his response privately and only to Mr Le, however, chose to distribute it publicly.
15. The further copies of the emails provided by Cr Nguyen support this finding.
16. The standards of behaviour expected of councillors are of a generally higher standard than a member of the public due to their public position.



17. In these circumstances, the Panel considers that the appropriate penalty is that Cr Nguyen make a public apology.
18. The Panel does not consider training as requested to be an appropriate penalty.
19. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing. It is a suitable and appropriate penalty when a councillor's conduct:
 - a. adversely affects particular individuals²; and/or
 - b. does not meet the standards other councillors seek to uphold.

Panel's decision

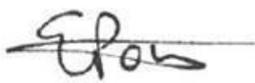
20. The Panel orders pursuant to section 5.110(6)(b)(ii) of the Act that, in relation to the minor breach of regulation 7 of the Regulations, Cr Nguyen make a public apology in terms of the attached Order.



Mick Connolly (Presiding Member)



Paul Kelly (Member)



Emma Power (Member)

² *Treby and Local Government Standards Panel* [2010] WASAT 81 [127] (Pritchard J).



ORDER

Delivered 24 July 2019

DEFAMATION CAUTION

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Hugh Nguyen, a Councillor for the City of Wanneroo publicly apologise to Mr Peter Le, as specified in paragraph 2 and 3 below.
2. On the ordinary council meeting first occurring after the expiration of 28 days from the date of service of this Order on him, Councillor Nguyen shall:
 - a. attend the relevant ordinary council meeting;
 - b. ask the presiding person for his or her permission to address the meeting to make a public apology to the public;
 - c. make the apology immediately after Public Question Time or during the Announcements part of the meeting, or at any other time when the meeting is open to the public, as the presiding person thinks fit; and
 - d. address the Council and public as follows, without saying any introductory words before the address, and without making any comments or statement after the address:

i.

"I advise this meeting that:

- ii. A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) when I wrote a discourteous and inappropriate email to Mr Peter Le and copied in various other parties on 15 October 2018.
- iii. The Panel found that I acted improperly and breached Regulation 7 of the said Conduct Rules in that my comments:
 - a. were in breach of the City's Council Member's Code of Conduct; and
 - b. were not of the standard of conduct that would be expected of a person in the position of councillor.
- i. I accept that I should not have made the improper and discourteous comments regarding Mr Peter Le.
- ii. I now apologise to Mr Peter Le."



3. If Cr Nguyen fails or is unable to comply with the requirements of paragraph 2 above, then within the next 28 days following the ordinary council meeting referred to in paragraph 2 above, he shall cause the following notice of public apology to be published in no less than 10 point print, as a one-column or two-column display advertisement in the first 10 pages of the Wanneroo Community Times newspaper:

PUBLIC APOLOGY BY COUNCILLOR HUGH NGUYEN

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) when I wrote a discourteous and inappropriate email to Mr Peter Le and copied in various other parties on 15 October 2018.

The Panel found that I acted improperly and breached Regulation 7 of the said Conduct Rules in that my comments were:

- i. in breach of the City's Council Member's Code of Conduct; and
- ii. not of the standard of conduct that would be expected of a person in the position of councillor.

I accept that I should not have made the improper and discourteous comments regarding Mr Peter Le.

I now apologise to Mr Peter Le.



NOTICE TO THE PARTIES TO THE COMPLAINT

RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (the Panel) advises:

- (1) Under section 5.125 of the *Local Government Act 1995* the person making a **complaint** and the person complained about each have the right to apply to the **State Administrative Tribunal (the SAT)** for a review of the Panel's decision in this matter. In this context, the term "decision" means a decision to dismiss the complaint or to make an order.
- (2) By rule 9(a) of the *State Administrative Tribunal Rules 2004*, subject to those rules an application to the SAT under its review jurisdiction must be made within 28 days of the day on which the Panel (as the decision-maker) gives a notice [see the Note below] under the *State Administrative Tribunal Act 2004 (SAT Act)*, section 20(1).
- (3) **The Panel's Breach Findings and these Findings and Reasons for Finding – Sanctions**, constitute the Panel's notice (i.e. the decision-maker's notice) given under the *SAT Act*, section 20(1).

Note:

- (1) This document may be given to a person in any of the ways provided for by sections 75 and 76 of the *Interpretation Act 1984*. [see s. 9.50 of the *Local Government Act 1995*]
- (2) Subsections 75(1) and (2) of the *Interpretation Act 1984* read:
 - (1) *Where a written law authorises or requires a document to be served by post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, **service shall be deemed** to be effected by properly addressing and posting (by pre-paid post) the document as a letter to the last known address of the person to be served, and, **unless the contrary is proved, to have been effected at the time when the letter would have been delivered in the ordinary course of post.*** [Bold emphases added]
 - (2) *Where a written law authorises or requires a document to be served by registered post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, then, if the document is eligible and acceptable for transmission as certified mail, the service of the document may be effected either by registered post or by certified mail."*
- (3) Section 76 of the *Interpretation Act 1984* reads:

"Where a written law authorises or requires a document to be served, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, without directing it to be served in a particular manner, service of that document may be effected on the person to be served —

 - (a) *by delivering the document to him personally; or*
 - (b) *by post in accordance with section 75(1); or*
 - (c) *by leaving it for him at his usual or last known place of abode, or if he is a principal of a business, at his usual or last known place of business; or*
 - (d) *in the case of a corporation or of an association of persons (whether incorporated or not), by delivering or leaving the document or posting it as a letter, addressed in each case to the corporation or association, at its principal place of business or principal office in the State."*

JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

ACT : LOCAL GOVERNMENT ACT 1995 (WA)

CITATION : NGUYEN and LOCAL GOVERNMENT
STANDARDS PANEL [2020] WASAT 1

MEMBER : DR B DE VILLIERS, MEMBER

HEARD : 3 DECEMBER 2019

DELIVERED : 2 JANUARY 2020

FILE NO/S : CC 1266 of 2019

BETWEEN : HUGH NGUYEN
Applicant

AND

LOCAL GOVERNMENT STANDARDS PANEL
Respondent

ATTORNEY GENERAL OF WESTERN
AUSTRALIA
Intervener

Catchwords:

Local government - Review of decision of Local Government Standards Panel -
Minor breaches - Improper use of office - Intent to cause detriment - Use of
official email account - Detriment suffered - Turns on own facts

Legislation:

Local Government (Rules of Conduct) Regulations 2007 (WA), reg 7(1)(b)

Local Government Act 1995 (WA), s 5.110(6), s 5.125
State Administrative Tribunal Act 2004 (WA), s 29(3)(a), s 31

Result:

Review dismissed
Decision affirmed

Representation:

Counsel:

Applicant : In Person
Respondent : Mr T Ledger
Intervener : Mr T Ledger

Solicitors:

Applicant : N/A
Respondent : State Solicitor's Office
Intervener : State Solicitor's Office

Case(s) referred to in decision(s):

R v Australian Broadcasting Tribunal; Ex parte Hardiman [1980] HCA 13;
(1980) 144 CLR 13
Ryan and Local Government Standards Panel [2009] WASAT 154
Treby and Local Government Standards Panel [No 2] [2010] WASAT 81
Yates and Local Government Standards Panel [2012] WASAT 59

REASONS FOR DECISION OF THE TRIBUNAL:

Background

- 1 This proceeding concerns a review of a decision by the Local Government Standards Panel (Panel). The Panel found on 10 May 2019 that Councillor Hugh Nguyen (applicant) had committed a minor breach of reg 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (LG Regulations) and the City of Wanneroo Policy Manual - Council Member Code of Conduct (Council Member Code of Conduct) dated 26 June 2018. The Panel imposed a penalty that the applicant apologise to the complainant (Mr Peter Le) during a meeting of the City of Wanneroo Council (Council) or in the alternative, publish an apology in a newspaper.
- 2 The applicant seeks a review of the decision and the penalty imposed by the Panel. The essence of the proceeding does not concern a finding of fact but rather an assessment of the conduct of the applicant in order to determine if his email correspondence (the Nguyen emails) sent via his official Council email account in response to two emails of complaint (complaint emails) made by the complainant, was improper and intended to cause detriment to the complainant.
- 3 It is agreed that the applicant responded to the complaint emails via his official Council email account; that the applicant replied to persons to whom the complaint emails had been copied; and that the applicant added additional names to the respective Nguyen emails he sent. The assessment for the Tribunal to make is whether the conduct of the applicant constituted a minor breach as envisaged by the *Local Government Act 1995* (WA) (LG Act). It is agreed that the complaints are to be treated as a single complaint rather than a separate complaint for each of the Nguyen emails in question.
- 4 The Panel was not an active party to the proceeding since it had completed its function as a complaint body; *R v Australian Broadcasting Tribunal; Ex parte Hardiman* [1980] HCA 13; (1980) 144 CLR 13. The Attorney General of Western Australia sought to intervene and leave was granted. The intervener assisted the Tribunal and did not act on behalf of the Panel; *Treby and Local Government Standards Panel [No 2]* [2010] WASAT 81.

Issue

5 At the commencement of the proceeding before the Tribunal the parties agreed on the following issues in an effort to reduce the scope of questions to be determined by the Tribunal:

6 Did the First Nguyen email dated 15 October 2018, the Second Nguyen email dated 5 November 2018 and the Third Nguyen email dated 6 November 2018 intend to cause detriment to the complainant and did the sending of the Nguyen emails constitute an improper use of the office of the applicant?

Materials

7 The Panel filed its s 24 Bundle and the intervener provided its statement of issues, facts and contentions dated 27 September 2019. The applicant filed his reply dated 4 November 2019 to the statement of issues, facts and contentions of the intervener. The intervener also provided, at the request of the Tribunal, a summary in table form of the persons who received the Nguyen Emails from the applicant in his response to the complaint emails. The Intervener also provided to the Tribunal, albeit after the hearing, the standard Guidelines that should be followed when a complaint is received.

Essential agreed facts

8 The essential facts as set out in paras 4-18 of the intervener's statement of issues, facts and contentions dated 27 September 2019 are not in dispute. For the sake of brevity those can be summarised as follows:

- 1) The applicant is an elected councillor of the City of Wanneroo (City);
- 2) The applicant and the complainant share an interest in and support for the Westnam United Soccer Club (Westnam United SC);
- 3) The applicant has supported the efforts of the Westnam United SC to improve its amenities and to obtain support from the City for such a venture;
- 4) A petition was to be tabled at a Council meeting to enlist support for improved amenities for Westnam United SC;

- 5) The applicant expected that he would be the councillor responsible for tabling the petition;
- 6) The applicant was informed via an initial email from the complainant (the initial Le email) dated 15 October 2018, that the Mayor of the City would table the petition at the Council meeting. The initial Le email was also copied to various other persons.
- 7) The applicant sent the First Nguyen email in response to the initial Le email and copied it to the same persons who had been copied into the initial Le email. The name and email address of the Mayor of the City (Mayor), Tracey Rodgers was also added as a recipient to the First Nguyen email.
- 8) On 5 November 2018, the complainant lodged a complaint (First Complaint email) to the Chief Executive Office of the City (CEO) against the applicant. The First Complaint email was copied to several persons.
- 9) The applicant replied to the First Complaint email via the Second Nguyen email dated 5 November 2018. The Second Nguyen email was copied to persons who had not received a copy of the First Complaint email.
- 10) On 5 November 2018, the complainant sent a Second Complaint email to the CEO. The Second Complaint email was copied to several persons.
- 11) The applicant sent the Third Nguyen email dated 6 November 2018 and included the names of persons who had not received a copy of the Second Complaint email.
- 12) The complainant sent the Third Complaint email on 6 November 2018.
- 13) The respondent found on 9 April 2019 that the applicant had committed one breach of reg 7(1)(b) of the LG Regulations. On 24 July 2018 the respondent imposed a penalty on the applicant requiring him to make a public apology to the complainant.

Statutory framework

9 The applicant is seeking a review of the Panel's decision pursuant to s 29(3)(a) and s 31 of the *State Administrative Tribunal Act 2004* (WA). Under s 5.125 of the LG Act the person who made the complaint as well as the person about whom the complaint was made, can seek a review of the Panel's decision.

10 The hearing is a hearing de novo. This means the information that was available to the Panel as well as any additional information that has since become available, may be taken into account. Although there is no onus of proof on the intervener, the Tribunal must as far as factual disputes are concerned be satisfied that a certain factual finding can be made on the basis of the civil test meaning that it is more likely than not that a certain fact exists. If there are competing versions of an event, the Tribunal must be satisfied that one is more likely to be the correct version. The intervener is not under any burden but assists the Tribunal in its determination of facts upon which the ultimate decision can be based.

11 Neither the Council nor the complainant was a party to this proceeding.

The LG Act

12 Section 5.110(6) of the LG Act provides that the Tribunal is to deal with a minor breach by dismissing the complaint or ordering that the person is publically censured, or the person apologises publically, and/or the person undertakes training.

13 Regulation 7(1)(b) of the LG Regulations provides as follows:

(1) A person who is a council member must not make improper use of the person's office as a council member –

...

(b) to cause detriment to the local government or any other person.

Council Member Code of Conduct

14 Clause 2.1 of the Council Member Code of Conduct states:

It is a requirement of this Code that Members observe the general principles referred to in Regulation 3(1) of the Rules of Conduct Regulations.

General principles to guide the behaviour of Members include that a person in his or her capacity as a Member should -

...

(g) treat others with respect and fairness[.]

15 Clause 2.3(d) of the Council Member Code of Conduct provides that:

A Member must:

(d) make no allegations which are improper or derogatory (unless true and in the public interest) and refrain from any form of conduct, in the performance of the Member's role, which may cause any reasonable person unwarranted offence or embarrassment.

Contentions

16 The submissions of the parties can be summarised as follows.

The intervener

17 The intervener contended that:

- 1) the first, second and third email of the Nguyen emails constituted an improper use of the office of the applicant since the Nguyen emails objectively breached the standards expected of a councillor;
- 2) the intention of the inner mind of the applicant when the Nguyen emails were sent is not relevant. The conduct of the applicant must be assessed in the context of events surrounding the Nguyen emails and the role of a councillor.
- 3) the Nguyen emails constituted a breach because:
 - a) they were copied to persons who had no direct interest in the dispute;
 - b) they used inflammatory language and showed lack of respect to the complainant;
 - c) the contents of the Nguyen emails were not justified in light of the surrounding circumstances;

- d) they were likely to cause embarrassment to the complainant; and
 - e) viewed in their totality the Nguyen emails constituted an improper use of the applicant's office.
- 4) the Nguyen emails were intended to cause detriment to the complainant by casting his character and motivation actions in a negative light and circulating the opinion of the applicant to a wider audience.

The applicant

18 The applicant contended that:

- 1) in the Nguyen emails he merely replied to the same persons to whom the complainant had directed emails or to persons who had a direct interest in the matter. That was not an unreasonable thing to do since those persons had been drawn into the dispute by the complainant and the applicant had to defend his reputation;
- 2) he accepted that he added names to the Nguyen emails but said those persons had to be made aware that he rejected the nature of the complaints;
- 3) the context within which he responded to the initial Le email is relevant in order to assess the flavour of communications that form the basis of this proceeding:
 - a) there is a long history and evidence of animosity and jealousy towards the applicant on the part of the complainant;
 - b) the complainant had been conspiring with other councillors to undermine the work of the applicant;
 - c) the complainant had sought to embarrass the applicant by asking the Mayor to table the petition;

- d) the complainant was sarcastic and disingenuous by asking that the applicant continue his support for the Westnam United SC while in fact the applicant had played a leading role in the endeavour; and
- e) the complaint emails sent by the complainant were clearly aimed to cause damage to the reputation and good name of the applicant.

Therefore the applicant did not use his office for an improper manner and did not intend to cause detriment to the complainant.

Consideration

19 The Tribunal shall deal with the complaint, evidence and submissions under several headings.

Whether names were 'added' into the Nguyen emails in response to the complaint emails

20 Some discourse arose during the hearing as to whether the applicant had 'added' names into the Nguyen emails in which he responded to the complaint emails.

21 It was accepted that in regard to the initial Le email, the applicant replied to all of those who had been copied into the initial Le email and that he also 'added' in the name of Mayor Roberts to the First Nguyen email.

22 It is further accepted by the applicant that when he responded to the complaint emails in the Second and Third Nguyen emails, he did not merely reply to all recipients of the complaint emails, but added some names and removed some of the names of the original recipients of the complaint emails. In doing so he made a conscious decision as to who should receive his responses to the respective complaint emails.

23 The applicant sought to explain that he did not 'copy' in those additional persons but merely added their names into the recipient list of the Second and Third Nguyen emails. It is not clear to the Tribunal why he sought to draw a distinction between copying names into an email recipient list and adding names into the recipient list. In practice it is a matter of semantics but the effect is the same namely, that persons who had not received the original complaint mails received the

responses he made to the complaint emails. Regardless, it establishes the fact that the applicant added a name or names to the list of recipients of each of Nguyen emails he sent in response to the First and Second complaint emails. The denial of the applicant that he had 'copied' in the additional persons but rather that he merely 'added' additional names into the Nguyen email responses to the complaint emails, reflects a reluctance to demonstrate insight or remorse into the nature of his conduct.

Whether Nguyen emails considered as one or more complaints

24 Three complaint emails were sent to the City in regards to the conduct of the applicant. The respondent took into consideration the initial Le email as well as the three complaint emails and the three Nguyen emails. Ultimately the respondent made a finding in regards to all of the email correspondence, but in the penalty, proposed words to the effect that only referred to the First Nguyen email dated 15 October 2018.

25 The Tribunal asked the parties whether in their view, each complaint should be treated as a separate complaint or whether the Nguyen emails should be treated as a single possible transgression. The Tribunal considered all of the Nguyen emails the subject of the proceeding and is of the view that those should be treated holistically as a single incident rather than as three separate complaints. The Second Complaint email and the Third Complaint email arose, in effect, from the First Complaint email; the complaint emails arose in a short space of time; and the complaint emails are based on the same facts.

The First Nguyen email dated 15 October 2018 - response to the initial Le email dated 15 October 2018: improper use of the office

26 The Tribunal will first make known its finding and then give the reasons for the finding.

27 The applicant's use of the official Council email account to respond to the initial Le email was an improper use of the office of the applicant. The Tribunal finds so for the following reasons:

- i) The initial Le email, properly read, informed the applicant that the Mayor would be tabling a petition to the Council and that it was hoped that the applicant would support 'our development'. The First Nguyen email response by the applicant to this email was

disproportionate, unfounded, unprofessional and not becoming of an elected councillor.

- ii) If the applicant took issue with the statement that the Mayor would table the petition, the appropriate action would have been to take the matter up with the Mayor. The applicant demonstrated his lack of appreciation of the internal functioning of the Council by directing his email to the complainant and several other persons. The applicant conceded during the hearing that the process of tabling petitions is a matter for the Council and that the public cannot determine who tables a petition. It is usually the elected councillor who promoted a matter who would table a petition, but it may also be the Mayor. Objectively and reasonably there was nothing untoward in the initial Le email.
- iii) The description by the applicant of the initial Le email as being inappropriate, immature, conniving (statement of evidence para 29) and unnecessary can in itself be described with those same words. If the applicant felt that a response to Mr Le was necessary, the wording chosen ought to have been professional, appropriate and mature. The applicant's own words fell well short of the test employed by the applicant.
- iv) The proposition that the initial Le email was 'sarcastic and provocative' is not supported by the facts before the Tribunal. The applicant may, in his personal capacity, be aware of some animosity from Mr Le, but there is nothing in the initial Le email that an objective and reasonable person would construe as inappropriate, sarcastic or an attempt to cause harm to the reputation of the applicant. The opinion of the applicant that Mr Le was 'hell bent' to get to the applicant is not supported by the materials before the Tribunal.
- v) There is no reasonable justification for the applicant to have included other persons into the email thread of the First Nguyen email. The strong impression of the Tribunal is that the applicant so wanted to claim credit for the support of Westnam United SC that he failed to demonstrate insight into the procedure by which public

submissions are to be dealt with in the Council. He could have, but did not, discuss the tabling of the petition with the Mayor of the City but in the heat of the moment responded in an inappropriate manner. Even if he took issue with the initial Le email, the wording he chose and the sending of that wording to other persons in an email from the official Council email account were an improper use of the office.

Second Nguyen email dated 5 November - response to the First Complaint email dated 5 November 2018: improper use of the office

28 The applicant's use of the official Council email account to respond to the First Complaint email was an improper use of the office of the applicant. The Tribunal finds so for the following reasons:

- i) The First Complaint email was directed at the CEO of the City and not to the applicant. The applicant ought to have known that it is improper to use the official Council email account to respond directly to a person lodging a complaint to the CEO about the conduct of the applicant or to write to any other person about the complaint.
- ii) The applicant ought to have known that a complaint received ought to be investigated by the CEO and/or Mayor of the City and/or the Panel and that he would be given an opportunity to give his perspective. The applicant demonstrated a serious lack of knowledge or appreciation about how to respond to complaints by engaging the complainant directly.
- iii) The decision of the applicant to respond to the First Complaint email in the Second Nguyen email and to include several persons in that emailed response in an effort to clear his name, not only reflected negatively on the Council office to which he has been elected, but also failed to address the merits of the complaint and took aim at the complainant by the personal nature of the applicant's comments in describing him as 'jealous or envious or both'. This was unbecoming and unprofessional conduct for an elected Council representative and potentially brought the entire Council into disrepute. The applicant failed to accept,

even during the hearing, that the standard imposed on a councillor is higher than the standard expected of a disgruntled member of the public.

- iv) The use of the official Council email account to respond to the First Complaint email was improper. Even if the applicant appreciated the support he received from Mr Ted Nguyen (a committee member of the Westnam United SC), the applicant should have asked Mr Nguyen to convey such appreciation he had for the applicant directly to the office of the CEO. The applicant ought not to have used his official Council email account to launch an attack on the character of a member of the public who lodged a complaint with the CEO. This is disrespectful and presumptuous.

Third Nguyen email dated 6 November 2018 - response to the Second Complaint email dated 5 November 2018: improper use of the office

29 The applicant's use of the official Council email account to respond to the Second Complaint email was an improper use of the office of the applicant. The Tribunal finds so for the following reasons:

- i) The Second Complaint email was directed to the CEO and not to the applicant. The applicant ought to have known that it is improper to use the official Council email account to respond directly to a person lodging a complaint to the CEO about the conduct of a councillor.
- ii) The applicant ought to have known that a complaint received ought to be investigated by the CEO and/or Mayor and/or the Panel and that he would be given an opportunity to give his perspective. The applicant demonstrated a serious lack of knowledge about how to respond to complaints by engaging the complainant directly.
- iii) The decision of the applicant to respond to the Second Complaint in the Third Nguyen email and to include several persons in that email response in an effort to clear his name, not only reflected negatively on the Council office to which he has been elected but also

failed to address the merit of the complaint and took aim at the complainant by the personal nature of his comments in describing the complainant as ungrateful, political, jealous or envious or both. This is unbecoming and unprofessional for an elected Council representative.

- iv) The wording used by the applicant in the Third Nguyen email to describe the complaint as being 'quite despicable, unprofessional and highly inappropriate' is in itself improper and unacceptable. A member of the public who lodges a complaint must be treated with respect and not accused of a personal or political vendetta by the person who is the subject of the complaint. The use of the office of a councillor for such a barrage is entirely inappropriate; it risked bringing the entire Council into disrepute; and the Tribunal is surprised that the applicant who has a long record as elected representative and who is a legal practitioner, would engage in such inappropriate correspondence.
- v) It appears as if the applicant, in responding via each of the Nguyen emails, became emotionally more agitated and in effect lost his ability to reflect logically on the wisdom of his responses. As a result he took each of the complaint emails personally; he did not allow the complaint to be properly investigated; and he chose to use his official Council email account to respond immediately to the complainant.
- vi) The wording used by the applicant in the Third Nguyen email dated 6 November 2018 to describe the complaint made in the Second Complaint email as 'part of an elaborate, calculated, politically and personally motivated conspiracy', is void of reality. It must be taken into account that the thread of emails began with the initial Le email which merely informed the applicant that the petition would be tabled by the Mayor and that the applicant's support for the venture is sought. Within a short space of time, by 6 November 2018, the wording of the Nguyen emails had degenerated into abuse and name calling by

the applicant in a manner entirely unfitting to the Council office to which he has been elected and was not in proportion to the content of the emails sent by the complainant.

- vii) The suggestion by the applicant that the complainant, who according to the applicant, is a legal practitioner who may be the subject of a complaint to the Legal Practice Board due to his 'underhanded' activities, is not only inappropriate, but is potentially defamatory. When read with the statement of evidence submitted by the applicant in this proceeding it is clear that the applicant had completely overreacted; that he has lost his sense of proportion; and that he had become so personally involved that he failed to distinguish his persona and ego from the status of the office in which he serves.

30 In summary, the applicant's use of his official Council email account was improper since he breached the standards expected of a person in the position of a councillor by reasonable persons with knowledge of the duties, powers and authority of that person's position as councillor and the circumstances of the case. The content of the Nguyen emails was discourteous, disproportionate, unjustified and improper.

31 The conduct of the applicant breached the Council Member Code of Conduct in that it did not show respect to the complainant; was not the standard expected of a person in his position; and was so wrongful and inappropriate that an imposition of a penalty for a minor breach is justified. The explanations offered by the applicant are self-serving; lack insight; are based on speculation and assertions; and have been bolstered by the applicant defending his ego at high cost to the very reputation he sought to protect.

Detriment intended to be suffered by another person pursuant to reg 7(1)(b) of the LG Regulations

32 The applicant stated that he never intended to cause detriment to the complainant but that he merely wanted to respond and defend his honour and good reputation. Detriment is not to be limited to actual loss or injury suffered. Detriment includes non-financial loss, humiliation, embarrassment, and harassment; see *Yates and Local Government Standards Panel* [2012] WASAT 59 at [71]; and

Ryan and Local Government Standards Panel [2009] WASAT 154. In order for a finding to be made the conduct must either have been intended for a person to suffer detriment or for the person making the statement to be reckless indifferent that detriment was probable or like as a consequence of the conduct.

33 The Tribunal finds that in each of the Nguyen emails sent by the applicant in response to the complaint emails, the element of detriment has been established. The Tribunal finds so for the following reasons:

- i) The applicant included in the Nguyen emails, persons other than the complainant. In doing so the personal and potentially defamatory nature of the applicant's communications were made known to a larger audience. Properly considered the applicant could have responded in a courteous and professional manner.
- ii) The applicant used in his email responses language that was entirely disproportionate to the nature or specifics of the complaint and in doing so he either intended to cause detriment to the complainant or he was recklessly indifferent that detriment was probable or likely as a consequence of the email responses.
- iii) The applicant in effect threatened the complainant that a complaint may be lodged with the Legal Practice Board. In his statement of evidence the applicant said that a formal complaint will be lodged against the complainant for his 'disgraceful, unethical, despicable' conduct (para 25).
- iv) The applicant not only responded to persons who were included in the complaint emails, but also added additional names in what the Tribunal finds was an attempt to discredit, embarrass and cause detriment to the complainant.
- v) The applicant made derogatory comments about the personal life of the complainant in his email responses and continued to make further potentially defamatory remarks in his evidence to the Panel and to the Tribunal.

34 In summary, the Tribunal finds that it is more likely than not that the applicant had in his email responses intended to humiliate and denigrate the complainant and for the complainant to suffered detriment as a result of those email communications.

Training manual or Guidelines about complaints

35 The Tribunal requested the intervener to provide to the Tribunal any training manual and guidelines that may be available to assist councillors in Western Australia in dealing with complaints. The intervener was not able to locate any such material prior to the hearing and the applicant also said that as far as he is aware, the City does not have a training manual to guide councillors on the process of responding to complaints of the nature considered in this proceeding. The applicant also said that he is not aware of guidelines in this regard.

36 This is surprising since it would be expected that councillors should be made aware of the process by which a complaint can be lodged and how such a complaint should be responded to. It is extraordinary for the person who is the subject of the complaint, as happened in this case, to respond directly to a member of the public who made the complaint and in the process, also send that email response to other non-related persons.

37 While the person the subject of a complaint should be given the opportunity to respond to a complaint, it is not proper for that person to engage the complainant directly as happened in this case. Proper corporate governance would, as a general principle, require that when a complaint is received, an acknowledgement of receipt is sent; an internal process commences whereby the councillor the subject of the complaint is invited to respond to the complaint; and a final decision ultimately sent to the complainant by a person other than the councillor against whom the complaint was made. If the councillor is vindicated then a dismissal of the complaint should suffice and not entail the barrage of emails and counter-allegations as had occurred in this matter. The absence of internal guidelines is surprising but such absence does not mean the conduct of the applicant in this matter can be excused. A councillor with proper understanding of the role and functions of a councillor would be aware or ought to be aware that a complaint directed to the Mayor and CEO should be addressed by those functionaries and not by the person the subject of the complaint.

38 It was highly improper for the applicant to respond to a complaint that was directed at the CEO and Mayor and which had been only

copied to him. He ought to have allowed the complaint process to run its course and for the complaint to be properly investigated. The fact that the applicant responded in the manner in which he did, shows a lack of understanding of the conduct expected of a councillor. It is proper that the applicant should be directed to attend a training course to gain insight into the functions and responsibilities of a councillor.

39 The Tribunal recommends to the Council that it adopts a procedure to make it clear to councillors, staff and members of the public how complaints against a councillor are to be dealt with. Following the hearing, the intervener provided to the Tribunal, the Guidelines and draft letters to facilitate an investigation into a complaint which have been developed by the Department of Local Government (Department). It therefore seems as if a process to deal with complaints has been established by the Department but that this process has either not been adhered to by the City or that councillors have not been made aware of it. The availability of the Guidelines does not impact on the outcome of this proceeding.

Insight and remorse of the applicant

40 The Tribunal carefully considered the oral and written response of the applicant to the complaint, both in regard to the email correspondence, the submissions made to the Panel and the oral evidence given to the Tribunal.

41 The Tribunal was struck by the lack of insight and remorse of the applicant to comprehend the improper manner in which he had responded as an elected councillor to the complaint emails. This observation by the Tribunal is based on the following:

- The manner in which the applicant interpreted the initial Le email was influenced by a belief of a purported conspiracy against him by the complainant and other persons, including other councillors. Due to this belief, the applicant attributed a meaning to words that was not reasonable to the reasonable person reading the email. The response of the applicant in the First Nguyen email was unwarranted, misdirected and unsubstantiated and potentially affected the reputation and good standing of the entire Council.
- The Second and Third Nguyen emails issued via the official office Council email account of the applicant

displayed a high level of vitriol, egoism and arrogance that was unbecoming of a public officer and also showed a lack of insight into how to deal with members of the public, especially those who make complaints. The applicant used his official Council email account in an attempt to settle a personal score and in the process conducted himself in a manner that was unbecoming of an elected councillor. He then went on and in the evidence before the Tribunal made comments about the complainant and other persons that may be considered to be defamatory in nature and which lacked relevance in the proceeding.

- The applicant has shown a lack of understanding of the need to keep separate the functions of his role as an elected councillor and his personal disagreements with other persons. In doing so he not only used his standing as an elected councillor in an attempt to settle a personal dispute, but also demonstrated a propensity to focus on his own status and position in society in a manner than can best be described as egoistic. The Tribunal was surprised that even with the benefit of hindsight the applicant failed to see that he overreacted and that he should have discussed the initial Le email and subsequent complaint emails with the Mayor or CEO instead of engaging with the complainant directly.
- The applicant failed to have insight that the standard expected of an elected councillor when dealing with the public, is higher than the standard expected of the public dealing with a councillor. When in public office one can expect unmeritorious complaints of various nature and criticism that may be unfair. When responding to those an elected person must be measured, thick-skinned, try to de-escalate a situation and deal with a matter on its merit and not on the basis of emotions or anger. The applicant appeared to be overly sensitive and the manner in which he construed the initial Le email and then responded to the subsequent complaint emails was entirely unmeritorious and ultimately caused him to be the subject of a disciplinary proceeding. Although the

applicant says he was principally motivated to protect his integrity, he has now caused harm to the very integrity he sought to defend.

- In his evidence to the Panel and before the Tribunal, the applicant spoke in a derogatory manner about some fellow councillors in that they wanted to 'derail' and 'highjack' his initiatives and that they were regularly 'ambushing' him. He described their conduct as a 'disgrace'. He suggested that fellow councillors were part of a conspiracy against him and that the complainant was 'aided and abetted' by Councillors Treby and Zappa who are seeking to smear, bully and harass him. The applicant described Councillor Treby as a 'manipulative, conniving and scheming individual' (para 38). He says Councillors Treby and Zappa 'envy' his popularity (para 38). Although there is no complaint against the applicant for the comments he made about fellow councillors, those comments are indicative of his state of mind which, when he received the initial Le email, caused a complete overreaction and an abuse of his elected office in responding. Some of the comments he made to the respondent and Tribunal may in fact give rise to further complaints and even legal action against the applicant.

42 The strong impression of the Tribunal is that the applicant lacks insight into the impropriety of his conduct and failed to show remorse for the nature and content of the Nguyen emails regardless of the substantial time that has expired since those incidents.

43 In summary, the Tribunal finds that the elements required to find a breach of reg 7(1)(b) of the LG Regulations have been met and that the applicant committed a minor breach by sending the First Nguyen email dated 15 October 2018, the Second Nguyen email dated 5 November 2018 and the Third Nguyen email dated 6 November 2018. The finding of the respondent should therefore be affirmed.

Penalty

44 The applicant has indicated that if a penalty is imposed it should be in the nature of training. The Tribunal invited the applicant and the intervener to submit a proposal as to how an order requiring training

could be structured. The intervener submitted that an apology as ordered by the respondent should be affirmed.

45 The Tribunal finds that a two-fold penalty must be imposed on the applicant, namely additional training as well as a public apology to the complainant.

46 Training is required since the applicant clearly does not have a proper understanding of the role of a public representative when interacting with members of the public who may be critical of his performance. He further does not exhibit an understanding of the manner in which a reasonable investigative process operates, namely that the person the subject of the complaint does not engage with the complainant if the complaint was directed to the Mayor or CEO. Some training in regards to conflict management and the importance of orderly corporate governance of a local council would benefit the applicant.

47 The public apology is justified due to the unmeritorious comments made to the complainant, the fact that those were circulated to a wider audience through an official Council email account and the detriment that had been intended.

Orders

1. The application to review the decision of the Local Government Standards Panel is dismissed.
2. The decision is varied in accordance to the terms below.
3. The applicant shall by not later than 1 April 2020 at his own cost undertake:
 - (a) The training course for Elected Members called Stage 2 'Dealing with Conflict'; or
 - (b) A training course with substantially similar learning outcomes provided by a registered training organisation.
4. The applicant shall by not later than 1 April 2020 publicly apologise to Mr Peter Le, as specified in paragraphs (a) and (b) below:

- (a) On the ordinary council meeting occurring on or before 1 April 2020, the applicant shall attend the relevant ordinary council meeting; and
- (i) ask the presiding person for his or her permission to address the meeting to make a public apology to the public;
 - (ii) make the apology immediately after Public Question Time or during the Announcements part of the meeting, or at any other time when the meeting is open to the public, as the presiding person thinks fit; and
 - (iii) address the Council and public as per Attachment A of this order, without saying any introductory words before the address, and without making any comments or statement after the address as per Attachment A.

ATTACHMENT A

I advise this meeting that:

- (i) Three complaints were made to the Local Government Standards Panel, in which it was alleged that I contravened the *Local Government (Rules of Conduct) Regulations 2007* (WA) when I wrote a discourteous and inappropriate email to Mr Peter Le and copied in various other parties on 15 October 2018; 5 November 2018; and 6 November 2018.
- (ii) The Panel found that I acted improperly and breached Regulation 7 of the said Conduct Rules in that my comments were in breach of the City's Council Member's Code of Conduct; and were not of the standard of conduct that would be expected of a person in the position of councillor.
- (iii) I sought a review by the State Administrative

Tribunal of the decision and penalty of the Panel. The review was dismissed and the finding of the Panel was affirmed. I was ordered to attend an applicable training course in conflict management and to publically apologise to Mr Le.

- (iv) I accept that I should not have made the improper and discourteous comments regarding Mr Peter Le; that I should not have used my office for purposes of the comments; and that I should not have sent the comments to persons other than Mr Le. I now apologise to Mr Peter Le'.

- (b) If the applicant fails or is unable to comply with the requirements of paragraph 4(a) of the order above, then on or before 1 April 2020 the applicant shall cause the following notice of public apology (Attachment B) to be published in no less than 10 point print, as a one-column or two-column display advertisement in the first 10 pages of the *Wanneroo Community Times* newspaper as per Attachment B.

ATTACHMENT B

PUBLIC APOLOGY BY COUNCILLOR HUGH NGUYEN

- (i) Three complaints were made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) when I wrote a discourteous and inappropriate email to Mr Peter Le and copied in various other parties on 15 October 2018; 5 November 2018; and 6 November 2018.
- (ii) The Panel found that I acted improperly and breached Regulation 7 of the said Conduct Rules in that my comments were in breach of the City's Council Member's Code of Conduct; and were not of the standard of conduct that would be expected of a person in the position of councillor.

- (iii) I sought a review by the State Administrative Tribunal of the decision and penalty of the Panel. The review was dismissed and the finding of the Panel was affirmed. I was ordered to attend an applicable training course in conflict management and to publically apologise to Mr Le.
- (iv) I accept that I should not have made the improper and discourteous comments regarding Mr Peter Le; that I should not have used my office for purposes of the comments; and that I should not have sent the comments to persons other than Mr Le. I now apologise to Mr Peter Le.'

I certify that the preceding paragraph(s) comprise the reasons for decision of the State Administrative Tribunal.

DR B DEVILLIERS, MEMBER

2 JANUARY 2020