

LOCAL GOVERNMENT STANDARDS PANEL

Established under section 5.122 of the *Local Government Act 1995* (WA)

Complaint Number	SP 8 of 2016 [DLGC 20160023]
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Lloyd Barton
Subject of complaint	Councillor Anthony Taylor
Local Government	Shire of Halls Creek
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Ms M Strauss (Member)
Sanction Decision	Public apology (Determined on the documents)
Date of Sanction Decision	20 March 2017

DECISION AND REASONS FOR DECISION

Published 07 April 2017

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005*, 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

Finding of Minor Breach – regulation 7(1)(b)

1. At its meeting on 21 December 2016 the Local Government Standards Panel found that Councillor Anthony Taylor (Cr Taylor), a councillor for the Shire of Halls Creek (the Shire), committed two minor breaches of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* when disclosing, on separate occasions, the contents of an anonymous letter (the Letter) to his employee and a Halls Creek Council consultant.
2. At the time of the breaches the Complainant, Mr Barton, was the Shire's Corporate Services Manager and Mr Rodger Kerr-Newell was the Shire's Chief Executive Officer (CEO). The Panel found that the Letter contained damaging information about the Complainant and the CEO.
3. At no time did Cr Taylor give the Complainant or the CEO a copy of the Letter or discuss it with them. The CEO learnt about the Letter when another Shire employee told the CEO that Cr Taylor had shown the Letter to her partner, Cr Taylor's employee. The Complainant learnt about the letter when the CEO gave him a copy.

Breach 1

4. The Panel found that in showing the letter to his employee Cr Taylor deliberately gave damaging information about the Complainant and the CEO to a person who had no right to receive it and no proper role to play in dealing with it, intending to discredit the Complainant and the CEO.

Breach 2

5. The Panel found:

- Council was due to review the CEO's performance at an ordinary council meeting on 20 August 2015 (the Meeting). The Council had engaged a consultant, Mr Mike Fitzgerald, to assist it with the CEO's annual performance review. Mr Fitzgerald was due to present his report to Council about the CEO's performance at the Meeting. During the Meeting, before the performance review item, Cr Taylor left the Council chamber temporarily because he had a financial interest in an unrelated matter.
- While Cr Taylor was outside the chamber he approached Mr Fitzgerald and told him about the Letter. Cr Taylor also told Mr Fitzgerald he hadn't shown the Letter to anyone, yet he had already shown it to his employee. Before Mr Fitzgerald entered the Council chamber for the performance review he gave Mr Fitzgerald a copy of the Letter even though Mr Fitzgerald hadn't asked for a copy and had advised Cr Taylor to seek legal advice about what to do with it.

6. In its Reasons for its findings of the two breaches the Panel said:

"51. The Letter contains several serious allegations against the Complainant and the CEO and challenges their honesty and integrity. The Panel has found that Cr Taylor disclosed the contents of the Letter to at least two people – Cr Taylor's employee and Mr Fitzgerald – and that at least one other person, the (other Shire employee who was Cr Taylor's employee's partner) was aware of the Letter.

52. Any reasonable person reading the Letter would conclude that it would severely damage the reputation and careers of the Complainant and the CEO if it were in the hands of anyone other than an appropriate authority, even if the allegations in it were later proven to be false. A reasonable person would consider it inappropriate for Cr Taylor to give a copy of it or show it to anyone other than a person with authority to deal with the Letter through a formal, fair and just process.
53. The Panel finds that Cr Taylor acted highly inappropriately when giving the Letter to the Council consultant. Mr Fitzgerald did not ask to see the Letter. Cr Taylor took it upon himself to go and get a copy of the Letter and seek out Mr Fitzgerald to give it to him, knowing that Mr Fitzgerald would later that day be presenting his report on the CEO's performance to Council. It is immaterial whether Mr Fitzgerald took the Letter into account when finalising his report or whether he referred to it when presenting his report to Council.
54. If Cr Taylor had concerns about the CEO's performance he should have raised them at the performance review. The Panel finds that Cr Taylor was not honest with Mr Fitzgerald or his fellow councillors. Cr Taylor's actions did not meet the standards of conduct required and expected of councillors.
- ...
59. The Panel finds that in showing the letter to his employee Cr Taylor deliberately gave damaging information about the Complainant and the CEO to a person who had no right to receive it and no proper role to play in dealing with it.
60. Mr Fitzgerald ... offered to arrange for a lawyer to give Cr Taylor legal advice about how to deal with it. Despite this, Cr Taylor took the extra step of seeking out Mr Fitzgerald later in the day to give him a copy of the Letter ...
61. The only inference reasonably open to the Panel is that Cr Taylor told his employee about the Letter and gave a copy to Mr Fitzgerald to discredit the Complainant and the CEO. The Panel finds that Cr Taylor used his office to cause detriment to the Complainant and the CEO."

Possible sanctions

7. Under section 5.110(6) of the *Local Government Act 1995* (WA) (the Act) the Panel may:
- (a) dismiss the complaint;
 - (b) order that the councillor —
 - (i) be publicly censured as specified in the order;
 - (ii) apologise publicly as specified in the order; or
 - (iii) undertake training as specified in the order;
- or
- (c) order 2 or more of the sanctions described in paragraph (b).

Councillor's submission

8. If the Panel finds that a councillor has committed a minor breach, the Panel must give the councillor an opportunity to make submissions to the Panel about how the breach should be dealt with.¹
9. By letter dated 24 January 2017, the Department of Local Government and Communities (the Department) notified Cr Taylor of the Panel's findings, sent him a copy of its Reasons for Findings and invited him to make a written submission about how the Panel should deal with the breach. A Delivery Confirmation Receipt confirms the letter was signed for and collected on 8 February 2017.
10. The Department advised the Panel that as at 10 March 2017 Cr Taylor had not replied to its letter. On that date a Department officer telephoned Cr Taylor to find out whether he intended to respond. Although Cr Taylor said he would respond by 16 March 2017 the Department did not receive a response until Cr Taylor sent an email dated 17 March 2017, in which he said:

"I refer to the above matter and finding and reasons for finding published on 23 January 2017.

I take this opportunity to make the following submissions about how the minor breach should be dealt with by the panel:

1. I have been a Councillor of the Shire of Halls Creek for 3 years.
2. I have lived in the Shire of Halls Creek for 24 years and I have always been a contributing member of the community. In my position as the owner of Tony's Plumbing I employ a number of local residents and provide plumbing services throughout the Shire and its remote areas and communities.
3. I hold my position as a Councillor in the upmost regard. I have always been committed to my role to achieve effective local government and improving the quality of life of members of the Halls Creek Shire and community. As a representative of the local community it is a position of privilege and I am required to act with integrity and treat others with respect and fairness.
4. In my time as a Councillor I have never previously been found to have committed any breach. I believe myself to be a person of good character and demeanour.
5. While I acknowledge that I did not elect to respond the Complaint against me, it was never my intention to cause any harm to either the Council, the Chief Executive Officer or the complainant Mr Lloyd Barton. I received the letter in the post anonymously and, as I did not know what to do with it given the serious nature of its contents, I discussed it and provided it to Mr Fitzgerald in the role he was performing given he was an independent person. I now acknowledge that this was not the correct procedure to deal with the situation.
6. I acknowledge that it is inappropriate to give a copy of such letter in question or show it to anyone other than a person with authority to deal with the Letter through a formal, fair and just process.

¹ Section 5.110(5) of the Act.

7. It was never my intention to distribute the letter or defame and harm the reputation of any person.

8. I was not trying to influence Mr Fitzgerald in relation to the outcome of the CEO's performance review.

9. I have learnt from this situation I acknowledge my error and I can certainly say that I will not make such a mistake in the future.

10. In the circumstances, it is appropriate for the Panel to either:

a. Dismiss the complaint; or

b. Should the Panel not be satisfied that dismissing the complaint adequately deals with the minor breach, make an order that I apologise publicly.

I take this opportunity to thank the Panel for considering my submissions.

Sincerely,

Councillor Anthony Taylor

Shire of Halls Creek"

Panel's consideration

11. Cr Taylor says he did not know what to do with the Letter, did not try to influence Mr Fitzgerald and did not intend to harm the CEO or the Complainant. However, the Panel found Cr Taylor intended to damage the CEO and the Complainant. Its role on 21 December 2016 was to decide on penalty, not to revisit the issue of whether Cr Taylor intended to cause any harm.

12. The Panel notes that:

- Cr Taylor has not previously been found to have committed a minor breach.
- Cr Taylor acknowledges that as a councillor he must act with integrity and treat others with respect and fairness;
- he acknowledges he did not deal with the Letter appropriately;
- he admits he shouldn't have shown the Letter to anyone other than a person with authority to deal with it through a formal, fair and just process; and
- he says he has learnt from his mistake and will not make such a mistake again.

13. Cr Taylor has effectively apologised to the Panel although does not say whether he has apologised to the Complainant or the CEO.

14. Although Cr Taylor's late response may cause the Panel to query Cr Taylor's sincerity in admitting his mistake, Cr Taylor has shown respect for the Panel's decision.

15. It is not appropriate to dismiss the complaint because this would trivialise Cr Taylor's conduct. His actions were deliberate. He showed the Letter to people who had connections with the Complainant and the CEO, potentially damaging their reputation and standing in the eyes of Cr Taylor's employee, that employee's partner (who was employed by the Shire), councillors and the wider community. Cr Taylor knew Mr Fitzgerald was in a position to influence Council's assessment of the CEO's integrity and performance. The Letter could have damaged the careers of the Complainant and the CEO if Mr Fitzgerald had shown the Letter to councillors or told them about its contents.
16. Training is not appropriate because Cr Taylor has recognised his actions were not in keeping with the standards of conduct expected of a councillor.
17. Cr Taylor had plenty of time to think about what to do with the damaging information and get advice. He did not act inadvertently or impulsively. The Panel notes in particular that even though Mr Fitzgerald showed no interest in seeing the Letter, and offered to arrange legal advice for Cr Taylor, Cr Taylor went back to Mr Fitzgerald a very short time later to give him a copy of it.
18. Cr Taylor's conduct was extremely serious. However, on balance, the Panel considers a public censure would be too severe. The Panel decides that a public apology is the appropriate penalty.

Panel's decision

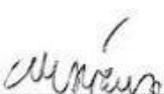
19. The Panel's decision on how the minor breach is to be dealt with under section 5.110(6) of the Act is that Cr Taylor be ordered to publicly apologise to the Complainant and the CEO under section 5.110(6)(b)(ii) of the Act as specified in Attachment A to this Decision and Reasons for Decision.


Brad Jolly (Presiding Member)


Paul Kelly (Member)

Date of Reasons for Decision

06 April 2017


Merranie Strauss (Member)

NOTICE TO THE PARTIES TO THE COMPLAINT

RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (**Panel**) hereby gives notice that:

- (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."*

Attachment A

LOCAL GOVERNMENT STANDARDS PANEL

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Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Ms M Strauss (Member)
Sanction Decision	Public apology (Determined on the documents)
Date of Sanction Decision	20 March 2017

ORDER FOR PUBLIC APOLOGY

Published 07 April 2017

DEFAMATION CAUTION

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Mr Anthony Taylor, Councillor of the Shire of Halls Creek, apologise publicly to Mr Lloyd Barton, the Shire's Corporate Services Manager, Mr Rodger Kerr-Newell, the Shire's Chief Executive Officer and his fellow councillors as specified in paragraph 2 or paragraph 3 below, as the case requires.
2. At the first Shire of Halls Creek Ordinary Council Meeting Cr Taylor attends after the expiration of 28 days from the date of service of this Order on him, Cr Taylor shall:
 - (a) ask the presiding Council member for his or her permission to address the meeting to make a public apology to Mr Barton, Mr Rodger Kerr-Newell and other councillors;
 - (b) 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 member thinks fit;
 - (c) address the Council as follows, without saying any introductory words before the address, and without making any comments or statement after the address:

"I advise this meeting that:

 - (i) A complaint was made to the Local Government Standards Panel in which it was alleged that in August 2015 I breached a rule of conduct in the *Local Government (Rules of Conduct) Regulations 2007* by inappropriately disclosing information about the Shire's Corporate Services Manager, Mr Lloyd Barton and the Shire's Chief Executive Officer, Mr Rodger Kerr-Newell.
 - (ii) The Local Government Standards Panel found that I breached regulation 7(1)(b) of those Regulations twice by inappropriately disclosing the information to a member of the community and a Council consultant, thereby causing detriment to Mr Barton and Mr Kerr-Newell.
 - (iii) I accept that I should not have disclosed the information to these people and I apologise to Mr Barton, Mr Kerr-Newell and my fellow Councillors for having done so."
3. If Cr Taylor fails or is unable to comply with the requirements of 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 Kimberley Echo newspaper.



Government of Western Australia
Local Government Standards Panel

PUBLIC APOLOGY

A complaint was made to the Local Government Standards Panel, in which it was alleged that in August 2015 I breached a rule of conduct in the *Local Government (Rules of Conduct) Regulations 2007* by inappropriately disclosing information about the Shire's Corporate Services Manager, Mr Lloyd Barton and the Shire's Chief Executive Officer, Mr Rodger Kerr-Newell.

The Panel found that I breached regulation 7(1)(b) of those Regulations twice by inappropriately disclosing the information to a member of the community and a Council consultant, thereby causing detriment to Mr Barton and Mr Kerr-Newell.

I accept that I should not have disclosed the information to these people and I apologise to Mr Barton, Mr Kerr-Newell and my fellow Councillors for having done so.

Councillor Tony Taylor