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

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

1. Complaint:

CCT Reference	F19/6635
Subject Councillor	Councillor ………………………… (the councillor)
Council	Cassowary Coast Regional Council

2. Decision (s150AQ):

Date:	29 November 2019
Decision:	1.The Tribunal determined, on the balance of probabilities, that the allegation *that on 26 July 2018 , Councillor ……………………., a councillor of the Cassowary Coast Regional Council engaged in misconduct as defined in section 176(3)(b)(ii) of the Local Government Act 2009 in that the conduct involved a breach of the trust placed in him as a councillor,* **has not been sustained.**
	2.The Tribunal determined that Councillor ………..has not engaged in misconduct under section 176(3)(b)(ii) and s150AQ(1)(a) of the Act.
	Particulars of the alleged conduct which could amount to misconduct are:
	a. On July 26 2018 Councillor ………… attended a session about a new Council Customer Request Dashboard (the CR Dashboard). The purpose of the CR Dashboard is to inform councilors of the status of a customer request and provide associated internal correspondence. At the training session, councilllors were advised about the confidentiality of the information in the CR Dashboad and that the database was not to be shared with the broader community.
	b. Following the training session, councillors were given access to

	the CR Dashboard on 26 July 2018.
	c. On 26 July 2018 Councillor ………….. attempted to access the CR Dashboard with the intention of giving access to a third party, namely his solicitor.
	d. Councillor ……………'s attempt to provide a third party with access to the CR Dashboard could amount to misconduct on the basis that the councillor exceeded the scope of his authority to use the database. This was not consistent with local government principle section 4(2)(e) being "ethical and legal behavior of councillors and local government employees'"
Reasons:	1. The parties could not reach an agreement on the facts of this matter and the respondent councillor contested the allegation.
	2. The Tribunal reviewed the evidence and the submissions provided by the Applicant and the Respondent and determined that in all the circumstances of this matter a 'fair minded observer' would not consider that the councillor had formed an intention to release the CR Dashboard to a third party. The Tribunal found that the councilor did not knowingly attempt to access the CR Dashboard for the purpose of providing confidential data to a third party, namely his solicitor.
	3. The Tribunal found the councillor did intend to access specific information, namely a "graph" relating to the performance of councillors, and to provide this information to his solicitor. The Tribunal found the "graph" to be the information the councillor wanted to access. The "graph" formed part of a Power Point presentation delivered by the Manager of Information Services on 25 July 2018.
	4. The Tribunal found there was confusion by the councillor in relation to the terminology he used to identify and describe the "graph", however the Tribunal determined that this information was not deemed confidential by the council and that it did not form part of the confidential information contained within the CR Dashboard.
	5. The Tribunal is satisfied that on the balance of probabilities there has been no breach of the Act, and thus no breach of the trust placed in the councillor that could constitute misconduct, as defined in the former s176(3)(b)(ii) of the Act[1].

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[1] It is noted that this provision is no longer in force, but is applied by section 322 of the Act in the circumstances of this matter occurring in 2018 prior to the current amendments to the Act.

3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	N/A
Order/s and/or recommendations:	The allegation of misconduct has not been sustained and consequently the Tribunal has not made orders or recommendations.
Reasons:	Not Applicable