

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

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

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

1. Complaint:

CCT Reference	F20/1627
Subject Councillor	Councillor Paul Jacob (the councillor)
Council	Townsville City Council

2. Decision (s150AQ):

Date:	13 July 2021
Decision:	The Tribunal has determined, on the balance of probabilities, that: The allegation that on 29 April 2019, Councillor Paul Jacob, a councillor of the Townsville City Council, engaged in misconduct as defined in section 150L(c)(iv) of the <i>Local Government Act 2009</i> in that he contravened section 171(3) of the Act by releasing information to the Townsville Bulletin, namely preliminary budget information, that the councillor knew, or should reasonably have known, was confidential to local government has been sustained .
Reasons:	<ol style="list-style-type: none"> 1. The Tribunal noted that the Respondent admitted to engaging in the alleged conduct in a response to the Applicant on 20 January 2020, but that he held a “<i>mistaken but genuine belief</i>” that the provisions relating to confidential information applied to “<i>formal documentary information only</i>”. 2. However, section 171(3) of the Act only requires that the information was information that “<i>the councillor knows, or should reasonably know, is information that is confidential to the local government</i>”. The

Councillor Conduct Tribunal

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	<p>relevant state of mind to be assessed is that of the Councillor, which such an assessment to occur of the state of mind at the time of the alleged disclosure.</p> <p>3. If the Respondent was correct, any information confidential to local government could be conveyed by a Councillor to a third party without penalty, as long as the communication was in oral form.</p> <p>4. Further, the Council’s confidentiality policy contained sections which specifically describe preliminary budget information as confidential – exactly the kind of information which the Councillor disclosed.</p> <p>5. In any event, the protection of Council policy is limited. Even if the Council policy purported to explicitly define all forms of confidential information, written policy must give way to statute and this Tribunal must rely upon the statutory definition of confidential information in the Act, being something a “<i>councillor knows, or should reasonably know, is information that is confidential to the local government</i>”.</p> <p>6. In <i>Stewart</i>, this Tribunal said: <i>Council confidentiality has a grounding in good policy. Whilst the majority of Council decisions are to be made openly and transparently in furtherance of the local government principles, there are undoubtedly times during which Council must consider matters that involve confidential information... may also be some information that, whilst not subject to a closed meeting, is nonetheless confidential to Council – for example, to protect Council’s legitimate commercial or business interests, or to discuss matters subject to legal professional privilege such as contemplated or ongoing proceedings.</i></p> <p>7. Though the Respondent disclaimed some aspects of the disclosure by reference to his “<i>genuine but mistaken belief</i>” that he was not disclosing documents that were confidential, there is no escaping from the facts that he did in fact disclose information that he ought to have known was confidential to Council.</p>
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3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	13 July 2021
Order/s and/or recommendations:	<p>The Tribunal orders that within 90 days of the date that a copy of this decision and orders are given to him by the Registrar:</p> <p>a. Pursuant to s 150AR(1)(b)(i) of the Act, that former Cr Jacob make a public admission that he engaged in misconduct, at a meeting of Council that is open to the public;</p>

	<p>b. Pursuant to s 150AR(1)(b)(iv) of the Act, that former Cr Jacob pay an amount of \$250 to the local government.</p>
<p>Reasons:</p>	<ol style="list-style-type: none"> 1. The fact that the Respondent is no longer a Councillor is important, as it limits the orders open to this Tribunal. 2. The case of <i>Hain</i> decided by this Tribunal is factually very similar to this case, involving: <ol style="list-style-type: none"> a. Information was released ahead of a formal Council endorsement; b. Both Respondents were first-term Councillors, who had received at least some training in relation to their obligations under the Act; c. Both Respondents cooperated with the Applicant’s investigations; d. Both Respondents did not deny the essential circumstances of the allegations brought against them. 3. Because the release of confidential information is a particular form of misconduct, the Tribunal must conclude that “<i>the legislature considers this type of conduct is serious or potentially serious</i>”. Accordingly, a public admission of misconduct by the Respondent will be ordered. 4. Though the Respondent may have reflected upon the gravity of his conduct, it is important that this reflection occur in the public sphere, such that the public continue to have a strong faith in local government decision-making. 5. The Tribunal also considers a pecuniary order to be appropriate. For the reasons outlined above and consistent with <i>Hain</i>, the Tribunal will also order that the Respondent pay an amount of \$250 to the local government under section 150AR(1)(b)(iv).