



Local Government Standards Panel

Complaint Number	20220089
Legislation	<i>Local Government Act 1995</i>
Complainant	Councillor Rob Fredericks
Respondent	Councillor Jane Cutler
Local Government	Town of Cambridge
Regulation	Regulation 18 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members	Ms Emma Power (Presiding Member) Cr Peter Rogers (Member) Ms Darelle Merritt (Deputy Member)
Heard	1 September 2022 Determined on the documents
Finding	1 x Breach Regulation 18

FINDING AND REASONS FOR FINDING

Delivered 16 November 2022

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.



Summary of the Panel's decision

1. On 1 September 2022, the Panel found that Councillor Jane Cutler a councillor of the Town of Cambridge (**"the Town"**) did commit a minor breach pursuant to the *Local Government Act 1995 (WA)* (**"the Act"**) and Division 4 and Regulation 18 of the *Local Government (Model Code of Conduct) Regulations 2021* (**"the Regulations"**) when she sent an email to all councillors which allegedly accused certain elected members of disclosing confidential information as further set out in paragraph 17 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 and the *Local Government (Administration) Regulations 1996* provide for the circumstances in which a council member commits a minor breach.
4. Section 5.105(1) of the Act provides that a council or committee member commits a minor breach if the council or committee member contravenes a rule of conduct. Division 4 of the Regulations sets out the rules of conduct for council members and candidates.
5. Regulation 34D of the *Local Government (Administration) Regulations 1996* also provides that the contravention of a "*local law as to conduct*" is a minor breach pursuant to the Act.
6. 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.¹
7. 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.
8. 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 accurate²; and
 - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding³.
9. The Panel does not possess investigative or supervisory powers.⁴ The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials in the public domain or published by the relevant local authority's website.
10. 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.

¹ Section 5.106 of the Act

² *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1

³ *Briginshaw v Briginshaw* (1938) 60 CLR 336

⁴ *Re and Local Government Standards Panel* [2015] WASC 51 (at paragraph 24)



11. The Panel also must have regard to the general interests of local government in Western Australia⁵.
12. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

Jurisdiction and Procedural Fairness

13. On 23 May 2022 the Panel received a complaint from Mr Karl Heiden acting as complaints officer of the Town ("**the Complaints Officer**"). The same enclosed a Complaint of Minor Breach Form dated 19 May 2022.
14. In the complaint form, the Complainant alleges that Cr Cutler has breached regulation 18 of the Regulations when she sent an email to all councillors which allegedly accused certain elected members of disclosing confidential information as referred to in paragraph 17 below ("**the Complaint**").
15. The Panel convened on 1 September 2022 to consider the Complaint.
16. The Panel:
 - a. accepted the advice of the Department of Local Government, Sport and Cultural Industries ("**the Department**") that, based on information published on the Western Australian Electoral Commission's website, Cr Cutler was:
 - i. elected to the Council of the Town in October 2021 for a term expiring in October 2025; and
 - ii. a Councillor when the Panel met on 1 September 2022;
 - b. was satisfied the Complaint was made within six months after the alleged breach occurred⁶;
 - c. was satisfied that the Town's Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach⁷;
 - d. was satisfied the Department had provided procedural fairness to Cr Cutler; and
 - e. found it had jurisdiction to consider the Complaint.

The Specifics of the Complaint

17. The Complainant provided the following comments and arguments in respect to the Complaint as summarised by the Panel:
 - a. On 10 March 2022 Cr Cutler sent an email entitled Re: Elected Member Declaration to all councillors as follows:

" Dear All

I agree with Cr. Bradley that Ben Dickenson has many contacts for his news and reporting purposes, not just local government Councillors.

⁵ Section 8(6) of Schedule 5.1 of the Act

⁶ Section 5.107(4) and 5.109(2) of the Act

⁷ Section 5.107 and 5.109 of the Act



In this case, confidential information relating to the appointment of Karl Heiden as the new CEO for the Town of Cambridge was provided to the 9 local government Councillors present at the special council meeting on Monday 21 February 2022 at 6:30 pm. Ben Dickenson contacted Mayor Shannon Wednesday 23 February 2022 at 1.30 pm seeking to confirm that Karl Heiden was the new CEO. The only reasonable explanation for the facts is that one, or more, of those 9 local government Councillors disclosed the name of the new CEO to Ben Dickenson directly or to one or more people who subsequently informed Ben Dickenson a clear breach of confidentiality. Every Councillor should be seriously concerned about the breach of confidentiality and the reputation risk to the Town.

6 of the 9 local government Councillors at the meeting have already confirmed that they did not breach confidentiality and improperly share the name of the new CEO.

As Councillors, we all have a duty to be transparent, open and honest with our fellow councillors.

A simple yes I no answer to the following questions would be sufficient, in the absence of a response, an answer in the affirmative would be a reasonable assumption.

Cr. Bradley, did you disclose confidential information relating to the appointment of Karl Heiden as the new CEO for the Town of Cambridge to anyone other than local government Councillors present at the special council meeting on Monday 21 February 2022 at 6:30 pm?

Cr. Mack, did you disclose confidential information relating to the appointment of Karl Heiden as the new CEO for the Town of Cambridge to anyone other than local government Councillors present at the special council meeting on Monday 21 February 2022 at 6:30 pm?

Cr. Fredericks, did you disclose confidential information relating to the appointment of Karl Heiden as the new CEO for the Town of Cambridge to anyone other than local government Councillors present at the special council meeting on Monday 21 February 2022 at 6:30 pm?

Furthermore, Cr. Bradley, whether or not you think you "do threats" is irrelevant. The fact is that when I read your first text - I felt threatened, when I read your second text I felt threatened and bullied.

Sharing the name of the new CEO before the official announcement with anyone, especially the media, is inexcusable, wholly unacceptable and is a flagrant breach of your Elected Member Declaration, the Town's Code of Conduct and the Town's Values. Furthermore, it shows total disrespect for our staff, who have the right to be informed about the new CEO by an official announcement (NOT The Post newspaper) and our community.

The Post was calling Mayor Shannon before the final contract had been agreed and signed. Therefore, before the new CEO had formally resigned from his current position and advised his team, the Minister and his other Stakeholders.

It is only through the tireless efforts of Peter Casey from Mills Recruitment, Daniel White, Mayor Shannon, Deputy Mayor Barlow, and the new CEO's flexibility that we managed to get everything formalised in less than 24



hours. Tracey Jackson then dropped everything to get the official announcements made before The Post went to publication.

It is deeply troubling that one of us has failed "to fulfil the duties of their offices for the people in the district" by undermining the new CEO in this manner.

Do not point fingers; blame our staff or others not on this email. One of you is responsible. Take this opportunity to remind yourself of your Elected Member Declaration and your legal duties, behave like an honourable man, and resign, immediately.

This is the ONLY way that our new CEO will get a fair go.

Cr Jane Cutler

Councillor "

(“the Email”)

- b. The Complainant is an equal to Councillor Jane Cutler and she has no right to demand an answer for those questions. She cannot draw any adverse inference from a failure to answer.
- c. Cr Cutler states in effect that failure to answer her question means that the Complainant is guilty before any Panel or independent decision maker has made a decision and even before any complaint had been made.
- d. Cr Cutler has provided no evidence whatsoever that the Complainant has done anything wrong.
- e. Cr Cutler made this worse by publishing her views to all other elected members.
- f. Cr Cutler has made an adverse reflection on the Complainant’s character, commitment and integrity.

The Respondent’s Response

18. By an email dated 26 July 2022, Cr Cutler provided a response to the Complaint.
19. Cr Cutler denies that she has committed any minor breach.
20. Cr Cutler provided the following comments and arguments regarding the Complaint as summarised by the Panel:
 - a. Clause 11 of the Regulations requires complaints be lodged within 1 month of the conduct occurring. That did not occur in this case.

Regulation 18(1)(a)

- b. Regulation 18(1)(a) requires that the Complaint provide sufficiently specific evidence that:
 - i. Cr Cutler improperly used her office; and
 - ii. as a result of that, Cr Cutler (or another party) directly or indirectly gained an advantage.
- c. Complaint fails to provide any compelling evidence that



- i. Cr Cutler used her office improperly; and
- ii. Cr Cutler or any third party, gained an advantage by sending the 10 March 2022 email.
- d. Cr Cutler submits that as the terms of reference for the CEO Recruitment Panel were mandatory and provided that:

“ The local government must ensure that information provided to, or obtained by, the local government in the course of a recruitment and selection process for the position of CEO is not disclosed, or made use of, except for the purpose of, or in connection with, that recruitment and selection process.”
- e. Cr Cutler was under an obligation to take any breaches of confidentiality extremely seriously.
- f. The Email attempted to do that.
- g. In hindsight Cr Cutler realise that the Email could have been written in a more investigative, and less personal, manner.
- h. However, at the time, Cr Cutler was extremely concerned as to the damage the breach of confidential information had, or could, cause to the candidate and to the reputation of the Council.
- i. Therefore, the purpose of the Email was a proper use of Cr Cutler’s office, while she concedes the wording could have been better. That does not however raise her conduct to the standard of an improper use of her office. Therefore, it fails at the first step.
- j. Further, the Complainant has not provided evidence to allow the Panel to make a finding to the standard that it is more likely than not that either Cr Cutler, or another party, gained an advantage in any way.

Regulation 18(1)(b)

- k. Cr Cutler repeats her submission above that there is no evidence that she improperly used her office, and in fact to the contrary, that she was seeking to carry out her duties as a councillor regarding the breach of confidential information.
- l. There is no allegation that, or any evidence that, the local government suffered any detriment.
- m. Therefore, Cr Cutler assume the detriment claimed is as against the Complainant himself.
- n. While the Complainant may feel that that Cr. Cutler has made an adverse reflection on his character, commitment and integrity that is not enough.
- o. The Complainant must provide evidence of a sufficiently particular nature to enable a finding that it is more likely than not that that in fact that occurred i.e. for example that third parties’ views of his character, commitment and integrity were adversely affected.
- p. The Complainant failed to do so. Therefore, Cr Cutler submits there can be no finding against her on that aspect.

Conclusion



- q. The Complaint entirely fails to provide the required evidence to enable a finding of breach of Regulation 18. Therefore, Cr Cutler submits that the Panel find should refuse to deal with it pursuant to section 5.11(3A) of the Act as being frivolous and / or without substance.

Time of Complaint

21. As a preliminary matter, Cr Cutler refers to regulation 11 of the Regulations and the timeframe of 1 month referred to therein.
22. Regulation 11 only relates to a Division 3 complaint, which is a complaint made to the local government itself.
23. This is a complaint made to the Panel under section 5.107 of the Act.
24. Pursuant to s 5.107(4) a complaint can be made under this section within 6 months after the alleged breach occurred.
25. Therefore, the Complaint has been made within the relevant statutory time.

Regulation 18

26. Regulation 18 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:

“ 18. Securing personal advantage or disadvantaging others

(1) A council member must not make improper use of their office —

(a) to gain, directly or indirectly, an advantage for the council member or any other person; or

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

(2) Subclause (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.”

27. To make a finding of a minor breach of regulation 18 of the Regulations the Panel must be satisfied to the required standard that:
- a. Cr Cutler was an elected member or a candidate at the time of the alleged breach and the time of the determination;
- b. Cr Cutler made use of her office as Council member or candidate of the Town;
- c. when viewed objectively, such use was an improper use of Cr Cutler’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; and
- d. Cr Cutler engaged in the conduct in the belief that detriment would be suffered by another person.



28. As the Complainant has not alleged any advantage was intended to be gained, the Panel has only considered regulation 18(1)(b) in this case.

Code of Conduct

29. The Town has a *Code of Conduct for Council Members, Committee Members and Candidates* adopted 27 April 2021 (“**the Code of Conduct**”) which governs the conduct of elected members.
30. A breach of the Code of Conduct may indicate that an elected member has acted improperly in breach of Regulation 18.
31. The relevant provisions of the Code of Conduct Code are as follows:

“ **4. Personal integrity**

- (1) *A council member, committee member or candidate should —*
- (a) *act with reasonable care and diligence; and*
 - (b) *act with honesty and integrity; and*
 - (c) *act lawfully; and*
 - (d) *identify and appropriately manage any conflict of interest; and*
 - (e) *avoid damage to the reputation of the local government.*
- ...”

“**5. Relationship with others**

- (1) *A council member, committee member or candidate should —*
- (a) *treat others with respect, courtesy and fairness; and*
 - (b) *respect and value diversity in the community.*
- (2) *A council member or committee member should maintain and contribute to a harmonious, safe and productive work environment.”*

“**9. Relationship with others**

- A council member, committee member or candidate —*
- (a) *must not bully or harass another person in any way; and*
 - (b) *must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and*
 - (c) *must not use offensive or derogatory language when referring to another person; and*
 - (d) *must not disparage the character of another council member, committee member or candidate or a local government employee in connection with the performance of their official duties; and*
 - (e) *must not impute dishonest or unethical motives to another council member, committee member or candidate or a local government employee in connection with the performance of their official duties.”*

PANEL'S CONSIDERATION

Regulation 18(1)(b) - Allegation 1

Cr Cutler was an Elected Member or a Candidate at the relevant times

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

33. This element is met.

Cr Cutler made use of her office as Council Member of the Town

34. The relevant conduct concerns an email that was:

- a. sent by Cr Cutler from her elected member email and signed of in her capacity as an elected member; and
- b. was commenting on a matter relating to a Town matter (i.e. the appointment of a CEO).

35. Due to the above, the Panel finds that it is more likely than not that Cr Cutler was acting in her capacity as an elected member and made use of her office as an elected member when undertaking the relevant conduct.

36. This element is met.

Cr Cutler's use was improper

37. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or lack of wisdom. It requires an abuse of power or the use of the councillor's position in a manner that such councillor knew (or ought to have known) was not authorised.

38. Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent.

39. Any decision as to what is "improper" cannot be made in isolation but must be considered in the relevant context including the specifics of the relevant event as well as councillor's formal role and responsibilities.

40. In the case of impropriety arising from an abuse of power, a councillor's alleged knowledge or means of knowledge of the circumstances in which the power is exercised and his or her purpose or intention in exercising the power will be important factors in determining whether the power has been abused⁸.

41. Cr Cutler concedes that the Email could have been written in a more investigative and less personal manner.

42. The Panel considers that the Email amounts to a personal and public accusation of wrongdoing by Cr Fredericks, Cr Mack and Cr Bradley.

43. Although the accusation is posed as a question, the Email clearly indicates that Cr Cutler strongly believed that either one, or all three, of those parties were guilty of a breach of confidentiality and that Cr Cutler was not prepared to accept that any other party may have been responsible for the breach.

⁸ Treby and Local Government Standards Panel [2010] WASAT 81 (at 31); Chew v The Queen (1992) 173 CLR 626 (at 640 - 641 [Dawson JJ]); R v Byrnes (1995) 183 CLR 501 – (at 514 - 515 [Brennan, Deane, Toohey and Gaudron JJ] and at 521 [McHugh J]).



44. The Email goes so far as to call for the resignation of the relevant Councillors, which seems to be a vast overreaction to the situation.
45. This stance by Cr Cutler appears to be held on the basis that the remaining councillors of the Town had denied they breached confidentiality, and the Complainant (and other accused councillors) refused to confirm the same. This is not necessarily reliable evidence.
46. The Panel finds that the Email was in breach of the following clauses of the Code of Conduct:
 - a. Clause 4(1)(a) to *“act with reasonable care and diligence”*:
 - i. the accusation in the Email was not based on anything other than speculation. Cr Cutler had no concrete evidence that any of the accused parties were responsible for the breach.
 - ii. Therefore Cr Cutler did not act with reasonable care and diligence in investigating the matter prior to making public accusations.
 - b. Clause 5(1)(a) to *“treat others with respect, courtesy and fairness”*:
 - i. The tone and accusations in the Email are clearly not respectful or courteous.
 - ii. The Email was sent to all other Councillors, not only those elected members Cr Cutler suspected as being responsible for the breach. This was not a fair approach to those Councillors.
 - c. Clause 9(d) to *“not disparage the character of another council member in connection with the performance of their official duties”*:
 - i. The Email distinctly disparages the character of Cr Fredericks, Cr Mack and Cr Bradley as being untrustworthy and dishonest.
47. Cr Cutler has asserted her conduct was not improper as she was under an obligation to take any breaches of confidentiality extremely seriously.
48. The Panel disagrees with this characterisation of the Email. Although Cr Cutler may have been concerned with the confidentiality breach, Cr Cutler could have dealt with the issue in a manner which:
 - a. contacted the parties she felt may have breached confidentiality individually and privately, not publicly;
 - b. used courteous and polite language; and
 - c. did not outright accuse any other elected member of a breach of confidentiality (and also breach of the Code of Conduct and Regulations).
49. Given the above, the Panel finds that it is more likely than not that the Comment was improper as:
 - a. the conduct was in breach of the Code of Conduct;
 - b. the conduct was of such a nature that a reasonable individual would consider the same to be inappropriate or not in keeping with the conduct that would be expected of a councillor; and
 - c. the conduct is deserving of a penalty.
50. This element is met.



Regulation 18(1)(b) – Cr Cutler intended to cause a disadvantage

51. “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.
52. It is not necessary to find whether any detriment was actually suffered⁹, but an intent to cause such detriment must be established.
53. Cr Cutler asserts that the Complainant must provide objective evidence that a detriment occurred. This is not correct. The Panel must find that it is more likely than not that there was an intent to cause a detriment.
54. In this case, although the reason for sending the Email may have been partially from concern as to the breach of confidentiality, the Panel considers that:
 - a. the fact that the Email was sent to all councillors, when Cr Cutler clearly only suspected three councillors; and
 - b. the aggressive and accusatory tone of the Email,indicate that Cr Cutler intended to embarrass and accuse Cr Fredericks, Cr Mack and Cr Bradley and to make the other elected members of the Town think less of them.
55. The Panel therefore finds it was more likely than not that the predominate purpose for sending the Email was to cause a detriment to Cr Fredericks, Cr Mack and Cr Bradley.
56. This element is met.

Conclusion

57. Given the above, the elements required to find a breach of regulation 18 of the Regulations have been met.

⁹ *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



Panel's Findings

58. Cr Cutler did commit a breach of Regulation 18(1)(b) of the Regulations and therefore did commit a minor breach.

A handwritten signature in black ink, appearing to read 'E Power'.

Emma Power (Presiding Member)

A handwritten signature in black ink, appearing to read 'P Rogers'.

Peter Rogers (Member)

A handwritten signature in black ink, appearing to read 'D Merritt'.

Darelle Merritt (Deputy Member)



Local Government Standards Panel

Complaint Number	20220089
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Mr Rob Fredricks
Respondent	Councillor Jane Cutler
Local Government	Town of Cambridge
Regulation	<i>Regulation 18 of the Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members for Penalty Consideration	Ms Emma Power (Presiding Member) Ms Suleila Felton (Member) Cr Peter Rogers (Member)
Heard	1 September 2022 Determined on the documents
Penalty Considered	11 April 2023
Outcome	Public Apology

DECISION AND REASONS FOR DECISION

Delivered 27 April 2023

DEFAMATION CAUTION

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Introduction

1. At its meeting on 1 September 2022, the Panel found that Councillor Jane Cutler, a councillor for the Town of Cambridge (**“the Town”**), committed a minor breach under the *Local Government Act 1995 (WA)* (**“the Act”**) and regulation 18 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* (**“the Regulations”**) when she sent an email to all councillors which allegedly accused certain elected members of disclosing confidential information (**“the Minor Breach”**).

Jurisdiction and Law

2. The Panel convened on 11 April 2023 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 Cutler had ceased to be, or was disqualified from being, a councillor.
4. 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
5. By a letter dated 16 November 2022, Cr Cutler was:
 - a. notified of the Panel’s finding of the Minor Breach;
 - 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*.

Possible Sanctions

6. 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) *ordering that no sanction be imposed; or*
 - (b) *ordering that —*
 - (i) *the person against whom the complaint was made be publicly censured as specified in the order;*
or
 - (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
 - (iv) *the person against whom the complaint was made pay to the local government specified in the order an amount equal to the amount*

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



of remuneration and allowances payable by the local government in relation to the complaint under Schedule 5.1 clause 9;

or

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

Cr Cutler's Submissions

7. By an email dated 8 March 2023, the Department received a response from Cr Cutler.
8. Cr Cutler's legal representative provided the following comments and arguments as to the penalty, as summarised by the Panel:
 - a. It is submitted that no sanction should be imposed in this instance, for the following reasons:
 - i. Cr Cutler has no prior history of any breaches of the Regulations. This is her first and only breach;
 - ii. On 17 June 2022, Cr Cutler sent an email to the Mayor and Councillors of the Town retracting her email of 10 March 2022. Mr Fredericks was not a Councillor at that time (he resigned in April 2022) and accordingly Cr Cutler arranged for her email to be forwarded to Mr Fredericks' personal email address.
 - iii. The email of 10 March 2022 was not circulated to the public or the Town's administration. It was only sent to the then Mayor and Councillors. In other words, other than Cr Cutler and Mr Fredericks, only seven other people received the email.
 - iv. When she sent her email of 10 March 2022, Cr Cutler had a genuine belief (whether right or wrong) that Mr Fredericks may have breached his obligations of confidentiality, and that she had an obligation to address that for reasons including to protect the reputation of the Town. Cr Cutler has conceded that the email could have been, and should have been, written in a different manner.
 - v. Sending the email was a one-off event and is not indicative of a course of conduct or pattern or behaviour.
 - vi. Cr Cutler has acknowledged her wrongdoing and has already taken steps to remedy it. She has shown remorse and contrition for sending the email in question.
 - b. The other sanctions the Panel could impose are not appropriate in the circumstances.
 - c. A public censure or a public apology are significant sanctions and involve a high degree of public admonition. Those sanctions would be manifestly disproportionate to the conduct in question.
 - d. Cr Cutler ought not be punished in public for sending one internal email to a very small number of her colleagues. Further, a public censure or public apology are not necessary as a deterrent because there is no pattern of behaviour and because Cr Cutler has already acknowledged and remedied her wrongdoing.



- e. Training is also not an appropriate sanction because there is no relevant training that Cr Cutler could undertake. The crux of the complaint and the Panel's finding is the wording of one email. Cr Cutler has conceded that the wording of her email was inappropriate. She doesn't require training to understand that.
- f. The imposition of a monetary is likewise not appropriate for all the reasons articulated above. The breach occurred as a result of an isolated incident which has already been remedied by Cr Cutler.

Panel's Consideration

9. Section 5.110(6) is solely about the penalty. The Panel does not have the power to review any finding of a breach.
10. The Panel may order under section 5.110(6)(a), that no sanction be imposed, not to reverse the Panel's finding of a breach, but to indicate that in all the circumstances the relevant councillor should not be penalised further.
11. Guidance as to the factors which the Panel may consider in determining an appropriate penalty include, but are not limited to, the following:
 - a. the nature and seriousness of the breaches;
 - b. the councillor's motivation for the contravention;
 - c. whether or not the councillor has shown any insight and remorse into his/her conduct;
 - d. whether the councillor has breached the Act knowingly or carelessly;
 - e. the councillor's disciplinary history;
 - f. likelihood or not of the councillor committing further breaches of the Act;
 - g. personal circumstances at the time of conduct, and of imposing the sanction;
 - h. need to protect the public through general deterrence and maintain public confidence in local government; and
 - i. any other matters which may be regarded as aggravating conduct or mitigating its seriousness².
12. The Panel has considered the response from Cr Cutler and makes the following comments.
13. Although Cr Cutler notes that she is remorseful, the Panel notes that the email was retracted, but that no apology was made in respect to the accusations.
14. Given this, the Panel accepts that Cr Cutler is aware that she should not have undertaken the relevant conduct a simple retraction does not adequately demonstrate remorse or contrition.
15. The Panel does not agree with Cr Cutler's characterisation that an apology would be manifestly disproportionate to the conduct in question.
16. Although the email in question had a limited audience, it was still:

² *Chief Executive Officer, Department of Local Government and Communities and Scaffidi [2017] WASAT 67 (S)*



- a. sent to the City's email accounts of the Council;
 - b. provided to the entire Council, not just the councillors accused of the wrongful conduct;
 - c. not marked or indicated to be private or confidential; and
 - d. in a format would be searchable under freedom of information.
17. The email had a real potential to cause damage to the reputation of the parties involved and would certainly cause embarrassment.
18. The Panel considers that in sending the email Cr Cutler had clear intention to accuse certain Council Members of wrongdoing in front of the remainder of the Council, and it is appropriate that Cr Cutler makes a public apology.
19. The Panel further notes that even where a breach is a "one off" occasion, this can still give rise to a sanction being given as appropriate.
20. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing³. It is a suitable and appropriate penalty when a councillor's conduct:
- a. adversely affects particular individuals⁴; and/or
 - b. does not meet the standards other councillors seek to uphold.
21. In the relevant circumstances, the Panel considers that making a public apology is an adequate sanction and that it is not necessary to make an order in accordance with Schedule 5.1 clause 9 of the Act that Cr Cutler recoup to the Town the costs of the Department incurred with respect to the Complaint.

Panel's decision

22. The Panel orders pursuant to section 5.110(6)(b)(ii) of the Act that, in relation to the one Minor Breach of regulation 18 of the Regulations, Cr Cutler make a public apology in terms of the attached Order.

Signing

Emma Power (Presiding Member)

Suleila Felton (Deputy Member)

Peter Rogers (Deputy Member)

³ *Treby and Local Government Standards Panel [2010] WASAT 81 (Pritchard J).*

⁴ *Treby and Local Government Standards Panel [2010] WASAT 81 [127] (Pritchard J).*



ORDER

Delivered 27 April 2023

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

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Cr Cutler, a councillor for the Town of Cambridge **publicly apologise** as specified in paragraph 3; OR
2. Failing compliance with paragraph 3 within the specified timeframe, then paragraph 4 shall apply.

Public Apology

3. On the ordinary council meeting of the Town of Cambridge first occurring after the expiration of **28 days** from the date of service of this Order on her, Cr Cutler shall:
 - i. attend the relevant ordinary council meeting;
 - ii. ask the presiding person for his or her permission to address the meeting to make a public apology to the public;
 - iii. 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
 - iv. 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 advise this meeting that:

- i. A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened Regulation 18 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* when I sent an email to my fellow councillors in respect to an alleged breach of confidentiality.
- ii. The Panel found that I breached Regulation 18 by my conduct.
- iii. I acknowledge that I should have endeavoured to maintain a higher standard of conduct in communicating with my fellow councillors and I now apologise to my fellow councillors."



4. If Cr Cutler fails to, or is unable to, comply with the requirements of paragraph 3 above in the required time frame THEN, within the next **28 days** following the ordinary council meeting referred to in paragraph 3 above the Chief Executive Officer of the Town of Cambridge shall arrange for the notice of public apology to be published:
 - a. on the Facebook Page of the Town of Cambridge shall in no less than 10-point font size; and
 - b. in an appropriate place on the website of the Town of Cambridge shall in no less than 10-point font size; and
 - c. in the next occurring issue of any Town of Cambridge shall public newsletter (if any) whether in electronic or print copy) in no less than 10-point font size.

PUBLIC APOLOGY BY COUNCILLOR JANE CUTLER

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened Regulation 18 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* when I sent an email to my fellow councillors in respect to an alleged breach of confidentiality.

The Panel found that I breached Regulation 18 by my conduct.

I acknowledge that I should have endeavoured to maintain a higher standard of conduct in communicating with my fellow councillors and I now apologise to my fellow councillors.



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."*