

LOCAL GOVERNMENT STANDARDS PANEL

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

Complaint Number	SP 56 of 2016 DLGC 20160189
Legislation	<i>Local Government Act 1995</i> (WA)
Complainant	Councillor Neville Crilly
Subject of complaint	Councillor Toni Collins
Local Government	Shire of Boddington
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i> (WA)
Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Ms R Yates (Member)
Heard	5 April 2017 (Determined on the documents)
Outcome	Breach of regulation 7(1)(b)

FINDINGS AND REASONS FOR FINDING

Published 07 June 2017

DEFAMATION CAUTION

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1. Summary of the Panel's Decision

- 1.1 The Panel found that Councillor Toni Collins committed a breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (**Regulations**) by sending the Email described in paragraph 5.1(a) below.

2. Jurisdiction

- 2.1 On 1 December 2016 the Panel received from the Complaints Officer for the Shire of Boddington (**Shire**) a complaint of minor breach dated 1 December 2016 (**Complaint**).¹ In the Complaint, Cr Neville Crilly (**Complainant**) alleges that Cr Collins has contravened regulation 7(1)(b) of the *Regulations*.
- 2.2 The Complaint was made within two years after the alleged breach of regulation 7(1)(b) of the *Regulations* that was set out in the Complaint was alleged to have occurred.
- 2.3 Cr Collins was elected as a council member on 19 October 2013 and has remained an elected member of the Shire since that time.
- 2.4 A breach of regulation 7(1)(b) of the *Regulations* is a “minor breach”² and the Panel is required to make a finding as to whether the breach occurred or to send the Complaint to the Chief Executive Officer of the Department under section 5.111 of the *Local Government Act 1995* (WA) (**LG Act**).
- 2.5 The Panel finds that the Complaint was made and has been dealt with in accordance with the requirements of Division 9 of the *LG Act*, that the Complaint is not one that should be dealt with under section 5.111 and that the Panel has jurisdiction to determine whether the breach occurred.

3. The Panel's Role

- 3.1 The Panel observes that its members are required to have regard to the general interests of local government in Western Australia³; it is not an investigative body and determines complaints solely upon the evidence presented to it; a finding of a minor breach may affect an individual both personally and professionally and that in order for the Panel to make a finding that a minor breach has been committed, the finding is to be “based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur”⁴ (**Required Standard**).
- 3.2 When assessing whether it is satisfied to the Required Standard:
- (a) the Panel considers, amongst other things, the seriousness of the allegations made in the Complaint, the likelihood of an occurrence of the given description and the gravity of the consequences flowing from a particular finding; and

¹ Document 1 of Attachment “A”.

² *LG Act*, s 5.104 and s 5.105(1).

³ Clause 8(6) of Schedule 5.1 of the *LG Act*.

⁴ *LG Act*, s 5.106.

- (b) where direct proof is not available, the Panel considers that it must be satisfied that the circumstances appearing in evidence give rise to a reasonable and definite inference of a breach, not just to conflicting inferences of equal degrees of probability so that the choice between them is mere matter of conjecture.

4. Documents

- 4.1 The documents considered by the Panel are set out in Attachment “A” and Attachment “B”, being a “Statement of Particulars” prepared by the Department (**Documents**).

5. The Complaint

- 5.1 The Complaint alleges that:

- (a) On 1 December 2016, Cr Collins circulated an email (**Email**) to all councillors of the Shire;
- (b) The Email describes:
 - (i) The Complainant as having ‘*a poor record of financial responsibility when the reality was that those decisions were decisions of Council not of an individual*’;
 - (ii) The Complainant’s actions ‘*as a personal vendetta*’;
- (c) Cr Collins sent the Email in her capacity as a councillor of the Shire;
- (d) In sending the Email, Cr Collins acted improperly and that she did so to cause detriment in contravention of regulation 7(1)(b) of the *Regulations* to Cr Crilly, such detriment being:
 - (i) ‘*a diminishing of his reputation and/or a tendency for the other councillor to think less favourably of him*’;
 - (ii) that he feels ‘*belittled in the eyes of the other councillors which could disadvantage me in terms of seeking support from other councillors for motions that*’ he may wish to pass in the future;
 - (iii) a ‘*slight on [his] character*’.

6. The Response

- 6.1 On 22 February 2017, the Department provided Cr Collins with a copy of the Complaint and gave her an opportunity to provide comments and any information she desired in relation to the matter.⁵
- 6.2 By email dated 27 February 2017, Cr Collins provided her response to the Panel.⁶
- 6.3 In her response to the Complaint, Cr Collins:
- (a) admits having sent the Email to councillors of the Shire;
 - (b) denies having committed the breach set out in the Complaint;

⁵ Document 2 of Attachment “A”.

⁶ Document 3 of Attachment “A”.

- (c) says that:
 - (i) most of the councillors were already aware of the decisions referred to in the Email;
 - (ii) *'robust discussions about many issues related to Council decision are regularly dealt with through many channels including emails. It is my view that, provided these emails do not use offensive language, or are not released to others outside of the Council, and are in no way personal, that they contribute to the discussion and decision making process'*;
 - (iii) in relation to the *'personal vendetta'*, she did not *'think that anything I said in this email was more than Councillor [sic] already knew'*.

7. Findings of fact

7.1 Having reviewed the Documents, the Panel is satisfied, to the Required Standard, that:

- (a) Cr Collins sent the Email on 1 December 2016;
- (b) Cr Collins was a council member at the time of sending the Email;
- (c) The Email was sent to the Complainant, with a carbon copy sent to five other individuals, all being council members of the Shire;
- (d) The subject of the Email was *'Your personal vendetta'*;
- (e) The Email included statements that:
 - (i) In reference to the Complainant's actions in calling a meeting, he had a *'personal vendetta against Cr Hoek and the BCRC'*, being the Boddington Community Resource Centre (**BCRC**);
 - (ii) Questioned the Complainant's *'track record'* of *'financial management'*, including that he had:
 - (A) voted with other councillors *'to take the surrounds of the old school of the BCRC'*;
 - (B) *'an empty house'* and rented *'another property at the ratepayers [sic] expense'*;
 - (C) drawn *'down on the Rec centre loan 15 months prior to the rec centre being built at a minimum cost to Council of \$24,500'*;
 - (D) undersold a *'council asset ... \$60,000 below valuation'*;
 - (E) paid *'\$150,000 in consultancy fees because we did not have the right people in the job'*;
 - (iii) With the above *'track record'* Cr Collins *'would not want [the Complainant] in charge of the BCRC's finances'*.

8. Alleged contravention of regulation 7(1)(b)

8.1 Where, as here, the alleged conduct is not conduct that contravenes s 5.93 of the *LG Act* or s 83 of *The Criminal Code*, the following elements must be established, to the Required Standard, before a contravention of regulation 7(1)(b) of the *Regulations* is established:

- (a) first, it must be established that the person the subject of the Complaint engaged in the alleged conduct;
- (b) secondly, it must be established that the person the subject of the Complaint was a council member both at the time of the conduct and the time when the Panel makes its determination;
- (c) thirdly, it must be established that by engaging in the conduct, the person the subject of the complaint made use of his or her office as a council member (in the sense that he or she acted in their capacity as a councillor, rather than in some other capacity);
- (d) fourthly, that when viewed objectively⁷, such use was an improper use of the person's office as council member in that it:
 - (i) involved 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 the councillor and the circumstances of the case (by for example, an abuse of power or the doing of an act which the councillor knows or ought to have known that he or she had no authority to do);⁸ and
 - (ii) was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty;⁹ and
- (e) fifthly, that the person engaged in the conduct in the belief that detriment would be suffered by the local government or another person.

8.2 It is common ground between the Complainant and Cr Collins that:

- (a) on 1 December 2016 Cr Collins was a council member;
- (b) Cr Collins sent the Email; and
- (c) Cr Collins did so in her capacity as a council member.

The Panel is, therefore, satisfied to the Required Standard that the first, second and third elements have been established.

8.3 The Panel is satisfied to the Required Standard that the fourth element has been established, in that:

- (a) the Email made an express allegation that the Complainant's actions were a '*personal vendetta*' against another councillor and the BCRC;

⁷ That is, when viewed by a reasonable person (i.e. a hypothetical person with an ordinary degree of reason, prudence, care, self-control, foresight and intelligence, who knows the relevant facts).

⁸ *Treby and Local Government Standards Panel* [2010] WASAT 81 (11 June 2010), [26] – [33]

⁹ *Hipkins and Local Government Standards Panel* [2014] WASAT 48 (22 April 2014), [9].

- (b) an allegation that a councillor is acting for a personal vendetta is a sensitive allegation, which suggests that a councillor is not fulfilling his duty to exercise his or her powers or functions only for the purpose of furthering the interests of the local government as a whole;
- (c) such an allegation, if supported by evidence, should be raised through appropriate channels, that may, depending on the circumstances, include the Shire President, but not by unsupported allegations circulated in an email to all fellow councillors;
- (d) the Email makes an implied allegation that the Complainant has a poor record of financial responsibility and criticises views expressed by the Complainant as a council member after council has made its decision on those matters;
- (e) the appropriate time for a councillor to criticise the views of a fellow councillor, is in the council chamber at the time the particular decision is the subject of debate (not in an email to fellow councillors after the decision is made) and through the use of courteous language.

8.4 The Panel is satisfied to the Required Standard that the fifth element has been established, in that the Panel is satisfied that Cr Collins sent the Email to directly or indirectly cause detriment to the Complainant in that:

- (a) ‘detriment’ for the purpose of regulation 7(1)(b) includes “*a tendency for others to think less favourably of a person, humiliation, denigration*”;¹⁰
- (b) the allegations in the Email that the Complainant acted for a ‘*personal vendetta*’ and a poor record of financial responsibility called into question the motivations and ability of the Complainant to fulfil the role and duties of a councillor, and were plainly capable of causing detriment in the manner described in paragraph (a) above;
- (c) it is not necessary for there to be evidence before the Panel that actual detriment was suffered by the Complainant;¹¹
- (d) on the evidence before the Panel, the only reasonable and definite inference that can be drawn is that Cr Collins sent the Email with the intended result that detriment would be suffered by the Complainant.

¹⁰ *Ryan and Local Government Standards Panel* [2009] WASAT 154 (13 August 2009), [32] (Chaney J).

¹¹ *Treby and Local Government Standards Panel* [2010] WASAT 81 (11 June 2010), [96] (Pritchard J).

- 8.5 **The Panel therefore finds that Cr Collins committed a breach of regulation 7(1)(b) of the *Regulations*.**



Brad Jolly (Presiding Member)



Paul Kelly (Member)



Rachel Yates (Deputy Member)

Date of Reasons - 7 June 2017

Attachment "A"

Doc ID	Description
Document 1	Copy of complaint of Minor Breach dated 1 December 2016 made by Cr Crilly.
Document 2	Copy of request for comments letter from the Department to Cr Collins dated 22 February 2017
Document 3	Copy of email from Cr Collins to the Department dated 27 February 2017 attaching her response

Attachment B

STATEMENT OF PARTICULARS

- The complaint was received by the Presiding Member of the Standards Panel on 1 December 2016
- The Complaints Officer complied with his obligations under section 5.107(3) and the complaint was made in writing in the form approved by the Minister pursuant to section 5.107(2).
- The complaint was sent to the Complaints Officer within two years after the breaches alleged in it occurred, as required by section 5.107(4).
- Regulation 7 is a rule of conduct for the purposes of section 5.104(1). Accordingly, a contravention of Regulation 7(1)(b) is a minor breach under section 5.105(1)(a).
- Cr Collins was elected to Council on 19 October 2013.
- At the time of the alleged contravention of the Regulations, Cr Collins was an elected member of the Shire of Boddington and continues to be so.
- On 22 February 2017 the Department advised Cr Collins of the complaint and provided her with an opportunity to provide her comments and any information she desires in relation to the allegation contained within.
- On 27 February 2017, Cr Collins provided a response to the allegations.