



Local Government Standards Panel

Complaint Number	SP 59 of 2016 [DLGSC 20160192]
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Jonathan Throssell
Subject of complaint	Councillor Doug Jeans
Local Government	Shire of Mundaring
Regulation	Regulation 7(1)(a) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Ms M Strauss (Presiding Member) Councillor P Kelly (Member) Mrs S Siekierka (Deputy Member)
Heard	14 August 2017 Determined on the documents
Outcome	Public censure

DECISION AND REASONS FOR DECISION

Published **4 September 2017**

DEFAMATION CAUTION

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Introduction

1. On 31 May 2017 the Local Government Standards Panel found that Councillor Doug Jeans of the Shire of Mundaring, committed a minor breach under the *Local Government Act 1995* (WA) (the Act) and regulation 7(1)(a) of the *Local Government (Rules of Conduct) Regulations 2007* (the Regulations) on 2 December 2016 when accompanying, observing and supporting a Shire resident (the Resident) as she took photographs of documents the Shire had decided not to release to her under the *Freedom of Information Act 1992* (WA) (the Restricted Documents).
2. On 12 June 2017 the Panel published its Finding and Reasons for Finding (Reasons) that Cr Jeans had breached regulation 7(1)(a). The Panel found that¹:
 - A Shire employee left Cr Jeans and the Resident in a room with the Restricted Documents.
 - Before she left the room the Shire employee gave the Resident a copy of the Shire's notice of its decision under the *Freedom of Information Act* with certain documents attached, which the Resident could take home, and laid out the Restricted Documents on the table in front of the Resident and Cr Jeans.
 - Cr Jeans sat next to the Resident in the room for over 20 minutes while she took numerous photographs of the Restricted Documents on her mobile phone. During this time Cr Jeans provided support to the Resident, interacted with her, actively observed her conduct and looked at the images the Resident had taken with her phone.
3. The Panel found that Cr Jeans knew what decision the Shire had made under the *Freedom of Information Act*² before the Shire employee left the room and that there was no evidence that Cr Jeans attempted to stop the Resident from taking photographs of the Restricted Documents³.
4. The Panel said:

“it was within the role of Cr Jeans as an elected member to provide support to a ratepayer of the Shire. However, a councillor's responsibility to his or her constituents is subject to the councillor's duty to abide by the provisions of the (Act and Regulations), the fiduciary obligations owed to the local government as a whole and the procedures and decisions of his or her local government”⁴;

and

“by engaging in the Conduct, Cr Jeans provided support to the Resident when she was acting contrary to an express decision of the Shire of which he was aware”⁵.

¹ Paragraphs 7(h) to (n) on pages 6 and 7 of the Finding and Reasons for Finding.

² Paragraph 10.4(d)(i) of the Finding and Reasons for Finding.

³ Paragraph 10.5(b) of the Finding and Reasons for Finding.

⁴ Paragraph 10.4(a) of the Finding and Reasons for Finding.

⁵ Paragraph 10.4(f) of the Finding and Reasons for Finding.



Possible sanctions

5. Section 5.110(6) of the Act provides that the Panel is to deal with a minor breach by —

“(a) *dismissing the complaint; 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*

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

Cr Jeans’ submission

6. 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.⁶
7. Prior to 1 July 2017 the Government Department assisting the relevant Minister to administer the Act was the Department of Local Government and Communities (the former Department). On 1 July 2017 the Department of Local Government, Sport and Cultural Industries became the Department responsible for administering the Act (the Department).
8. By letter dated 13 June 2017 the former Department advised Cr Jeans of the Panel’s decision, provided him with a copy of the Finding and Reasons for Finding published 12 June 2017 and invited him to make a submission on penalty.
9. Cr Jeans sent his submission on penalty to the former Department by letter dated 30 June 2017. He attached a copy of a letter dated 20 December 2016 from the Resident’s solicitors, Hotchkin Hanly Lawyers, to Mr Jonathan Throssell, the Shire’s Chief Executive Officer (the CEO).
10. In his letter to the Department Cr Jeans asks the Panel to dismiss the complaint on the grounds that:
 - he did not breach regulation 7(1)(a) because he did not intend to gain an advantage for the Resident;
 - he had 25 years of experience in the surveying industry and his role was purely to assist the Resident interpret the Restricted Documents;

⁶ Section 5.110(5) of the Act.



- the Resident only took the photographs to magnify the Restricted Documents because the copies the Shire provided to the Resident were not clear enough; and
- he did not intend to breach the Regulations.

Panel's consideration

11. On 14 August 2017 the Panel met to consider how it should deal with the minor breach. At that time the Department did not have any information to indicate that Cr Jeans had ceased to be a councillor.
12. The Panel does not have the power to review its finding of a breach. The Panel may dismiss a complaint under section 5.110(6), not to reverse the Panel's finding of a breach but to indicate that in all the circumstances the councillor should not be penalised and the breach should not be recorded against the councillor's name.
13. The letter from Hotchkin Hanly to the CEO is not relevant to the matter of penalty for the minor breach. In its letter Hotchkin Hanly disputed the Resident had breached copyright by taking the photos and made submissions to the Shire about a development on the land adjoining her property.
14. Cr Jeans made a conscious decision to remain in the room for over 20 minutes while the Resident took the photographs. They both clearly intended that the photographs be taken without the Shire employee's knowledge. They betrayed her trust. Cr Jeans had a duty to be faithful to the Shire's decision to allow the Resident to view the Restricted Documents but not to give her copies to take away. He was complicit in circumventing that decision.
15. Cr Jeans acted contrary to a Shire officer's decision in the presence of a member of the public. It is possible that other members of the public would learn about his actions in secretly gaining an advantage for a constituent. It is important for the good standing of local government in the eyes of the community that councillors act with honesty and integrity. They must be seen to work harmoniously with the administration to show that the local government has sound and consistent decision-making processes that ensure members of the community are treated fairly and equally.
16. The Panel notes that Cr Jeans has been a councillor since 17 October 2015. He has not previously been found to have committed a minor breach. However, this is a serious breach of the standards of conduct expected of councillors. Cr Jeans has not acknowledged the breach or expressed any remorse.
17. It is not appropriate to dismiss the breach. This would trivialise the breach and send a message that this type of misconduct is not serious enough to warrant a penalty.
18. Training is not appropriate. Cr Jeans does not accept he has done anything wrong and shows no willingness to engage in any programme that may reinforce the obligations of councillors to stand by Shire officers' authorised decisions.
19. The Panel has weighed up the appropriateness of the other possible sanctions – public apology and public censure. The Panel decides that a public censure is the appropriate penalty. This will send a message to the community and other councillors that this conduct was unacceptable and deserving of a serious penalty.



Panel's decision

20. The Panel orders that Cr Jeans be publicly censured under 5.110(6)(b)(i) of the Act in the terms of the Attachment to this Decision.

A handwritten signature in black ink, appearing to read 'Merranie Strauss', written above a horizontal line.

Merranie Strauss (Member)

A handwritten signature in blue ink, appearing to read 'Paul Kelly', written above a horizontal line.

Paul Kelly (Member)

A handwritten signature in black ink, appearing to read 'Sheryl Siekierka', written above a horizontal line.

Sheryl Siekierka (Deputy Member)

Date of Reasons 01 September 2017



ATTACHMENT

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ORDER FOR PUBLIC CENSURE

Published 04 September 2017

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NOTICE OF PUBLIC CENSURE

The Local Government Standards Panel has found that Councillor Doug Jeans of for the Shire of Mundaring breached regulation 7(1)(a) of the *Local Government (Rules of Conduct) Regulations 2007* on 2 December 2016 when accompanying, observing and supporting a Shire resident as she took photographs of Shire documents without the Shire's knowledge.

The Shire had made a decision under the *Freedom of Information Act 1992 (WA)* that the resident could view the documents but not have copies of them (the FOI Act decision).

The Panel found that by supporting the resident in this way, knowing that the Shire had made the FOI decision, Councillor Jeans made improper use of his office as a councillor with the intention of gaining an advantage for the resident.

The Panel censures Councillor Jeans for the breach of regulation 7(1) (a).

**LOCAL GOVERNMENT
STANDARDS PANEL**