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**JURISDICTION** : STATE ADMINISTRATIVE TRIBUNAL

**STREAM** : DEVELOPMENT & RESOURCES

**ACT** : LOCAL GOVERNMENT ACT 1995 (WA)

**CITATION** : CORR and LOCAL GOVERNMENT STANDARDS  
PANEL [2012] WASAT 14

**MEMBER** : JUDGE T SHARP (DEPUTY PRESIDENT)

**HEARD** : 1 NOVEMBER 2011

**DELIVERED** : 31 JANUARY 2012

**FILE NO/S** : DR 193 of 2011

**BETWEEN** : BRIAN CORR  
Applicant

AND

LOCAL GOVERNMENT STANDARDS PANEL  
Respondent

ATTORNEY GENERAL OF WESTERN  
AUSTRALIA  
Intervener

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*Catchwords:*

Local government - Rules of Conduct - Information acquired from confidential documents of Council - Whether disclosure of information was a breach of Rules of Conduct - Whether information disclosed was in the public domain - Minor breach

*Legislation:*

*Local Government (Rules of Conduct) Regulations 2007* (WA), Pt 2, reg 6  
*Local Government Act 1995* (WA), s 5.23, s 5.94, s 5.94(n), s 5.94(u)(ii),  
s 5.95(3), s 5.104(1), s 5.105(1), s 5.106, s 5.107(1), s 5.107(2), s 5.110(2)(a),  
s 5.110(6), s 120, s 125, cl 2, Sch 5.1

*State Administrative Tribunal Act 2004* (WA), s 29(3)(c)(ii), s 31(1)

*Result:*

The decision of the Local Government Standards Panel is upheld

*Category:* B

**Representation:**

*Counsel:*

Applicant	:	Self-represented
Respondent	:	Mr N John
Intervener	:	Mr N John

*Solicitors:*

Applicant	:	N/A
Respondent	:	State Solicitor's Office
Intervener	:	State Solicitor's Office

**Case(s) referred to in decision(s):**

Mazza and Local Government Standards Panel [2009] WASAT 165  
R v Mansfield [2011] WASCA 132

**REASONS FOR DECISION OF THE TRIBUNAL:**

*Summary of Tribunal's decision*

1           The Local Government Standards Panel made a finding that a Councillor of the City of Joondalup, Mr Corr, had breached the *Local Government (Rules of Conduct) Regulations 2007* (WA) by disclosing information from confidential documents tabled at a meeting of Council which was closed to members of the public. The Standards Panel ordered that Mr Corr be publicly censured. Mr Corr sought a review by the Tribunal of the Standards Panel's decision.

2           The Tribunal considered whether the information which Mr Corr disclosed was 'information' within the meaning of the Regulations, whether he had in fact derived that information from the documents in question and whether the documents were confidential, again within the meaning of the Regulations.

3           The Tribunal upheld the decision the Standards Panel, both in respect of its finding that there had been a breach of the Regulations and in respect of the sanction for that breach.

*Introduction*

4           On 6 April 2011, the respondent made a finding that the applicant had committed a breach of reg 6(2)(a) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (**Rules of Conduct Regulations**) and on 23 May 2011, the respondent made orders imposing a sanction on the applicant by way of punishment for that breach.

5           The applicant filed an application with the Tribunal dated 13 June 2011, seeking a review of the respondent's findings that he breached the Rules of Conduct Regulations, together with a review of the punishment imposed upon him.

6           Having regard to the possibility that exists in a review proceeding that the Tribunal may invite the decision-maker to reconsider the decision (s 31(1) of the *State Administrative Tribunal Act 2004* (WA) (**SAT Act**)) and to the fact that the powers of the Tribunal on a review include the power to set aside the decision that is being reviewed and to send the matter back to the decision-maker for reconsideration (s 29(3)(c)(ii) of the SAT Act)), the respondent did not play an active part in the review proceedings, other than to file a document setting out the issues and facts it considered arose in the review proceedings and to place relevant documents before the Tribunal. However, the Tribunal was assisted by

the intervention of the Attorney General of Western Australia who acted as a contradictor in the review proceedings.

***Facts***

7           The facts in this proceeding are not disputed by any of the parties.

8           In May 2006 the City of Joondalup (**City**) entered into a contract (**Contract**) with Turfmaster Pty Ltd (**Turfmaster**) under which Turfmaster agreed to spray drainage sumps for weeds. Turfmaster proceeded to carry out the works as provided for in the Contract. From September 2006 tree deaths and declines began occurring in and around the sprayed drainage sumps. In early 2007 there was speculation that Turfmaster may have been responsible for the tree deaths and declines through its use of a herbicide with hexazinone as the active ingredient.

9           In or about May 2007 the City engaged Minter Ellison Lawyers (**Minter Ellison**) to advise on two issues in relation to the tree deaths, namely:

- (a) environmental management and dealings with the Department of Environment and Conservation; and
- (b) the Contract, and specifically whether there were grounds to terminate it.

10           In August 2007 the City terminated the Contract and, at all relevant times relevant since then, was in dispute with Turfmaster in relation to the terms and effect of the Contract.

11           A Special Meeting of the Council was held on 23 December 2008 (**December 2008 Special Meeting**). The relevant business of the meeting was the consideration of item 'JSC5-12/08 - Confidential Report - Legal Matter', which was the City's Chief Executive Officer's report to Council members (**CEO's Report**) in relation to the City's possible options in the contractual dispute. Attached to the CEO's Report was a copy of an undated three-page paper entitled and Briefing Note to Elected Members prepared by Minter Ellison (**Minter Ellison Briefing Note**).

12           Each page of the CEO's Report has the embedded watermark 'CONFIDENTIAL'. The CEO's Report was also marked 'CONFIDENTIAL: SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE' at the top of each page. The CEO's Report includes the following statements or comments:

... it is timely now for the Council to consider the approach to be taken in regard to pursuing a claim against Turfmaster. Attached is a Briefing Note to guide Council's decision-making in this matter. Elected Members are again reminded of the importance of maintaining confidentiality. Confidentiality is critical to retaining the best case for the City when it issues a claim against the contractor: If Turfmaster is aware of the City's case or if it has copies of confidential material which could be used against the City, this will be detrimental to the City's best prospects of success. All advice provided by the City's solicitors continues to be the subject of legal professional privilege, including this report and its attachments.

This report outlines the strengths and weaknesses of the City's case against Turfmaster initially. ... The paper then identifies six objectives or priorities the Council may have which will also influence the course of action chosen. Finally, the report presents three distinct courses of action: one with two sub-options.

The essential elements of Minter Ellison's recommendation as documented in the Briefing Note is that the City first negotiate with Turfmaster to attempt to resolve the dispute by meeting and mediation before contemplating commencing legal action. On the basis of the legal advice, it is recommended that Council authorises the Chief Executive Officer to initially seek a meeting with Turfmaster's Managing Director with a view to obtaining agreement to refer the dispute to mediation.

...

Representatives from Minter Ellison Lawyers will be present at the Special Council Meeting to discuss with Elected Members the matters articulated in the attached Briefing Note, including outlining an estimate of the costs the City has incurred to date as well as potential cost implications for the options identified.

...

...

- The terms of the contract are not clearly drafted particularly in specifying the detail of the contractor's responsibilities and liabilities

...

- Supervisory issues - there is evidence that the City did not discharge its supervisory obligations under the contract.

13           The Minter Ellison Briefing Note attached to the CEO's Report does not have the watermark 'CONFIDENTIAL' in the same way that the CEO's Report does, but, like the CEO's Report, it does have the same

words at the top of each of its three pages: 'CONFIDENTIAL: SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE'.

14 The Minter Ellison Briefing Note states in effect that Minter Ellison's advice is on:

- (i) the strength of the City's claim against Turfmaster for damages generally; and
- (ii) whether particular expenditure incurred by the City can be recovered from Turfmaster;

and that such advice is 'preliminary in nature'.

15 It includes comments on the City's 'arguable claim against Turfmaster' for damages for a breach of the Contract.

16 Paragraph 2.4 reads:

2.4 We recommend that the City first negotiate with Turfmaster to attempt to resolve its dispute before it contemplates commencing action, by meeting and mediation.

17 Comments are also made in the Minter Ellison Briefing Note about the City's chances of success if it were to commence litigation proceedings against Turfmaster. In particular, paragraph 3.3 reads, relevantly:

The issue of the City's supervisory obligations will be raised in any action. ... A lack of supervision (if established) may, however, have the effect of reducing the amount of any damages awarded to the City.

18 Finally, comments are made on the recoverability of the City's expenses as loss and damage.

19 The CEO's Report includes an 'officer recommendation' which is as follows:

That Council:

1. AUTHORISES the Chief Executive Officer to seek a meeting with the Managing Director of Turfmaster Pty Ltd (Turfmaster) to undertake the following actions:
  - a) outline the City's basis for a claim against Turfmaster;
  - b) seek Turfmaster's agreement to a negotiated, confidential reimbursement of the City's costs; and

- c) seek Turfmaster's agreement to mediation of the dispute with the cost of mediation being shared equally by the parties.
2. In the event an agreement as outlined in paragraph 1 is reached at the meeting, AUTHORISES the Chief Executive Officer to approach the Institute of Arbitrators and Mediators Australia with a view to appointing an accredited mediator to mediate the dispute between the City and Turfmaster;
3. At the mediation, AUTHORISES the Chief Executive Officer to negotiate a confidential outcome affirming the actions to be taken by the parties to the mediation and restitution of the City's costs;
4. AUTHORISES the Chief Executive Officer to undertake all measures necessary to effect any outcome agreed upon at the mediation.
5. AUTHORISES the Chief Executive Officer, in the course of the negotiations with Turfmaster, consider the future engagement of Turfmaster for non-herbicide related contracts, including the supply and application of fertiliser or turf maintenance;
6. REQUESTS the Chief Executive Officer to prepare a report on the outcome of any negotiations or mediation with Turfmaster.

20 The publicly available minutes of the December 2008 Special Meeting show that the relevant item was a confidential matter that was considered during a part of the meeting that was closed to members of the public. They also show that representatives from Minter Ellison were present when the item was considered and voted on.

21 The minutes provide that the Council's resolution on the item was carried by a majority, and was as follows:

That Council:

1. AUTHORISES the Chief Executive Officer to commence legal proceedings in the Supreme Court of Western Australia against Turfmaster Pty Ltd for breach of contract;
2. In taking the legal action, seek a determination from the Supreme Court of Western Australia that Turfmaster Pty Ltd should replace significant native trees on a 'like for like' basis.

22 Those minutes also contained the following statement:

Mayor Pickard provided the following reasons for his departure from the Officer's Recommendation:

- It is incumbent on the City to seek restitution from the contractor in a public forum which allows the inappropriate behaviour to be exposed.
- The significant damage caused to the City's property and native flora.
- The potential damage to the reputation of the City of Joondalup.

23 By a Writ of Summons dated and filed on 15 January 2010, the City commenced legal proceedings (**Supreme Court action**) in the Supreme Court of Western Australia against Turfmaster for breach of the contract.

24 A Special Meeting of the Council was held on 29 June 2010 (**the June 2010 Special Meeting**). The relevant business of the meeting was the consideration of two legal matters, one of which was the Supreme Court action.

25 At the June 2010 Special Meeting, as recorded in the publicly available minutes of that meeting:

- (a) the relevant item, denotation 'JSC03-06/10', was a Council confidential matter that was considered during a part of the meeting that was closed to members of the public;
- (b) Minter Ellison's representative, Mr Ferguson, provided a presentation and comments to the meeting in relation to the item before it was voted on, and was present when the item was voted on;
- (c) the Council resolution on the item was carried 9/2, and was:

That Council, having considered the advice provided by Minter Ellison, the City's legal representatives, AUTHORISES the Chief Executive Officer to instruct Minter Ellison to settle the proceedings by accepting the offer by Turfmaster Pty Ltd in the Supreme Court mediation session on 23 June 2010.

26 A Special Meeting of the Council was held on 6 July 2010 (**the 2010/11 Budget Meeting**). The relevant business of the meeting was the consideration of a proposal for levying differential rates for the 2010/11 financial year and a draft of the City's budget for that year.



27 A few hours before the commencement of the 2010/11 Budget Meeting, the City's CEO spoke to the applicant and cautioned him against making any statements in relation to what he referred to as the 'Turfmaster issue' because the settlement agreement between the City and Turfmaster had not yet been signed and the settlement proposal was confidential.

28 At the 2010/11 Budget Meeting, during the debate on the draft budget - when the meeting was open to members of the public, and three members of the public and one member of the press were present - the applicant, according to a transcript from the meeting, said things that included the following statements or comments:

My third concern relates to legal fees and the rehabilitation of sumps and I have to admit that I'm a little bit afraid to say much on this issue but it's cost the City a lot of ratepayer's money. Council took the part of litigation against the advice of our lawyers Minter Ellison. Minter Ellison has raised issues about how the contract was handled by the City's staff and in the end it's the ratepayer's who've spent a lot of money on this.

...

The cost of the sumps debacle I'll call it, worries me as we didn't accept the legal advice we paid for and then we litigate and lose.

29 On 20 July 2010, the Mayor of the City, Mayor Pickard, made a complaint under s 5.107 of the LG Act (**Complaint**). The Complaint alleged that the applicant, who was a member of Council of the City:

- a) on 6 July 2010, during the discussion on item JSC06-07/10 at the City's Special Meeting of Council, when it was open to members of the public, contravened reg 6(2)(a) of the Rules of Conduct Regulations in that he disclosed information that he derived from one or more confidential documents; and
- b) on 6 July 2010, at the same meeting, contravened reg 6(2)(b) in that he disclosed information that he acquired at one or more of three closed meetings other than information derived from a non-confidential document.

30 The complaint was considered by the respondent on 6 April 2011. The respondent concluded that:

- a) on 6 July 2010, during the discussion on item JSC06-07/10 at the City's Special Meeting of Council, when the meeting was open to members of the public, the applicant disclosed information that he derived from a document marked by the City's CEO to show clearly that the information in it was not to be disclosed;
- b) the information that the applicant so disclosed was:
- (i) Council took the part of litigation against the advice of its lawyers Minter Ellison;
  - (ii) Minter Ellison has raised issues about how the contract was handled by the City's staff; and
  - (iii) we [Council] did not accept the legal advice it paid for
- and was information that was not in the public domain when he disclosed it; and
- c) the applicant committed a minor breach as defined in s 5.105(1) of the LG Act in that he committed a breach of reg 6(2)(a) of the Rules of Conduct Regulations.

31 The respondent on 23 May 2011 ordered that the applicant be publicly censured.

***Statutory framework***

32 Section 5.104(1) of the *Local Government Act 1995* (WA) (**LG Act**) permits regulations to be made prescribing rules that council members are required to observed. The Rules of Conduct Regulations are regulations made under s 5.104(1) of the LG Act. A council member commits a 'minor breach' if he or she contravenes a rule of conduct made under s 5.104(1) of the LG Act.

33 Part 2 of the Rules of Conduct Regulations contains the rules of conduct referred to in s 5.104(1) of the LG Act. Of relevance to the present case is reg 6, which provides:

**Use of information**

- (1) In this regulation -

*closed meeting* means a council or committee meeting, or a part of a council or committee meeting, that is closed to members of the public under section 5.23(2) of the Act;

*confidential document* means a document marked by the CEO to clearly show that the information in the document is not to be disclosed;

*non-confidential document* means a document that is not a confidential document.

- (2) A person who is a council member must not disclose -
- (a) information that the council member derived from a confidential document; or
  - (b) information that the council member acquired at a closed meeting other than information derived from a non-confidential document.
- (3) Subregulation (2) does not prevent a person who is a council member from disclosing information -
- (a) at a closed meeting; or
  - (b) to the extent specified by the council and subject to such other conditions as the council determines; or
  - (c) that is already in the public domain; or
  - (d) to an officer of the Department; or
  - (e) to the Minister; or
  - (f) to a legal practitioner for the purpose of obtaining legal advice; or
  - (g) if the disclosure is required or permitted by law.

34 A person who has reason to believe that a council member has committed a minor breach may complain of the breach by sending to the officer designated as the complaints officer by the local government concerned (under s 5.120 of the LG Act) a complaint setting out the particulars of the complaint referred to in s 5.107(2) of the LG Act; s 5.107(1) of the LG Act.

35 A complaint of a minor breach is dealt with by a standards panel appointed by the Minister under cl 2 of Sch 5.1 to the LG Act. In the case of a complaint which does not involve a current breach of the LG Act, a

standards panel is required to make a finding as to whether the breach alleged in the complaint occurred; s 5.110(2)(a) of the LG Act.

36 The LG Act provides some guidance on how a determination should be made that a breach has occurred. Section 5.106 of the LG Act provides:

**Deciding whether breach occurred**

A finding that a breach has occurred 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.

37 If a standards panel finds that a council member has committed a minor breach, then after giving the council member an opportunity to make submissions about how that breach should be dealt with, the standards panel is to deal with the breach in accordance with s 5.110(6) of the LG Act.

38 The LG Act permits a party to apply to the Tribunal for a review of a decision made by a standards panel; s 5.125 of the LG Act. The applicant's application was brought pursuant to that section. In dealing with that application the Tribunal is exercising its review jurisdiction.

39 Under s 5.23(1)(a) of the LG Act, ordinarily all council meetings are to be open to members of the public. However, a council may close a meeting, or part of a meeting, to members of the public; s 5.23(2) of the LG Act. Subsection 5.23(3) of the LG Act requires that a decision to close a meeting, and the reason for the decision, be recorded in the minutes of the meeting.

40 Section 5.94 of the LG Act confers a right to inspect a variety of documents, including any confirmed minutes of council meetings and such other information relating to a local government as may be prescribed; s 5.94(n) and s 5.94(u)(ii) of the LG Act. However, the right to inspect information contained in confirmed minutes of council meetings does not apply if the meeting or that part of the meeting to which the information refers was closed to members of the public, or in the CEO's opinion, could have been closed to members of the public but was not closed; s 5.95(3) of the LG Act.

***Issues in the review proceedings***

41 In its statement of issues and facts, the respondent contends that the following issues arise in the review proceedings:

- 1) Was the applicant a Council member between 23 December 2008 and 6 July 2010?
- 2) If issue 1 is answered in the affirmative, did the applicant on 6 July 2010 at the 2010/11 Budget Meeting of Council make the following statements:
  - a) Council took the part of litigation against the advice of its lawyers Minter Ellison;
  - b) Minter Ellison has raised issues about how the contract was handled by the City's staff; and
  - c) we [Council] didn't accept the legal advice we paid for?
- 3) If issue 2 is answered partly or wholly in the affirmative, did the statement or statements made by the applicant contain:
  - a) information that he derived from a confidential document; or
  - b) information that he acquired at a closed meeting other than information derived from a non-confidential document?
- 4) If issue 3 is answered in the affirmative, did the disclosure fall within any of the exceptions in reg 6(3) of the Rules of Conduct Regulations?
- 5) If issue 4 is answered in the negative, how should the applicant's breach of reg 6(2) of the Rules of Conduct Regulations be dealt with pursuant to s 5.110(6) of the LG Act?

42 In his statement of contentions, the Intervener adopts the issues identified by the respondent, and submits that issues 1 - 4 should be answered in the affirmative and that the respondent's order should be affirmed subject to a variation changing the date of compliance from a time calculated by reference to the date of service of the respondent's order to a time calculated by reference to the Tribunal's determination of this application for review.

*The applicant's submissions*

43 The applicant contends that what he said at the 2010/11 Budget Meeting, namely that Council took the part of litigation against the advice of its lawyers, Minter Ellison, and that Council did not accept the legal advice it paid for, was incorrect, on the basis that the City subsequently maintained that it had not acted contrary to its legal advice. The applicant says that the information which he disclosed was therefore not 'information' within the meaning of reg 6(2) of the Rules of Conduct Regulations.

44 The applicant further contends that the information which he disclosed on 6 July 2010 at the 2010/11 Budget Meeting was derived, not from the CEO's Report, but from the minutes of the December 2008 Special Meeting. Those minutes, the applicant says, were published on the City's website and were therefore in the public domain. That being so, the applicant argues, the disclosure falls within the exception under reg 6(3)(c) of the Rules of Conduct Regulations.

45 He also makes the point that the advice from Minter Ellison was not 'legal advice' but was 'strategic advice'.

46 Finally, the applicant says that his statement that 'Minter Ellison had raised issues about how the contract was handled by the City's staff' was not derived from the CEO's Report, but was an issue that was being actively discussed amongst members of the community and was therefore, again, in the public domain.

*Findings on the complaint*

47 The Tribunal agrees that the issues to be determined are as outlined by the intervener and set out at [41] above.

48 There is no dispute between the parties, and the Tribunal finds, that the applicant was a Council member between 23 December 2008 and 6 July 2010 and that the applicant at the 2010/11 Budget Meeting on 6 July 2010 made the statements:

- a) Council took the part of litigation against the advice of its lawyers Minter Ellison;
- b) Minter Ellison has raised issues about how the contract was handled by the City's staff; and
- c) we [Council] didn't accept the legal advice we paid for.

49 The Tribunal now turns to whether what the applicant disclosed at the 2010/11 Budget Meeting was information within the meaning of reg 6(2) of the Rules of Conduct Regulations.

50 The word 'information' is not defined in the Rules of Conduct Regulations and there is no reason to give it anything other than its ordinary meaning, which is knowledge or facts communicated about a particular subject, event etc; *Shorter Oxford English Dictionary* (6th ed., 2009). It is not limited to 'advice', legal, strategic or otherwise.

51 The applicant contends that the information he disclosed was not true and factual because the City's Mayor was quoted in the media as saying that at no stage did the City ever go against its legal advice on the Turfmaster issue. The applicant then says that '[the] plain words of regulation 6 do not prevent a council member from disclosing information that is not true and factual because such information that is disclosed or uttered cannot exist in a confidential document'.

52 It is unclear whether the applicant is arguing that the information in the documents is itself incorrect, and therefore not 'information', or whether he is arguing that he did not accurately disseminate that information and therefore did not disclose information derived from those documents.

53 Certainly, there is authority for the proposition that the fact that information is untrue does not cause it to cease to be information; see *R v Mansfield* [2011] WASCA 132 at [308]. It is less clear, however, whether a statement which does not at least to some extent reflect the information contained in a document can be said to be information derived from that document.

54 In any event, the Tribunal considers that it is unnecessary to make any finding with regard to these points. Taking into account all of what the applicant said at the 2010/11 Budget Meeting, the knowledge or information which the applicant disclosed was in effect that Council had received advice from Minter Ellison not to 'take the part of litigation' because of possible weaknesses in Council's case arising from 'how the contract was handled by the City's staff'. The Tribunal finds that this is information within the meaning of reg 6(2) of the Rules of Conduct Regulations and that it was disclosed by the applicant at the 2010/2011 Budget Meeting.

55 The Tribunal now needs to consider whether it is more likely than  
not that the information disclosed by the applicant was derived from a  
confidential document.

56 As the Tribunal has already observed, a confidential document  
within the meaning of the Rules of Conduct Regulations is a document  
marked by the CEO to clearly show that the information in the document  
is not to be disclosed. The CEO's Report and the Minter Ellison Briefing  
Note are both clearly marked, presumably by the CEO or by someone on  
his direction, as confidential. Thus, in the Tribunal's opinion, those  
documents clearly show on their face that the information in them is not to  
be disclosed.

57 The fact that there may have been other indications as to the  
confidentiality of the information contained in those documents is not  
relevant. For documents to be confidential for the purposes of the Rules  
of Conduct Regulations, the documents themselves must be marked by the  
CEO as confidential, not as a result of any separate advice, whether  
written or verbal.

58 The Tribunal finds that the CEO's Report and the Minter Ellison  
Briefing Note are both confidential documents within the meaning of the  
Rules of Conduct Regulations.

59 The applicant in his written submissions to the Tribunal prior to the  
hearing of the proceeding stated that 'I was not in possession of the  
Confidential Reports and simply relied on memory, and in this instance  
the statement made was factually incorrect'. This suggests that the  
applicant did in fact derive the information which he disclosed from the  
CEO's Report of the Minter Ellison Briefing Note or from both of them.

60 However, at the hearing of this proceeding, the applicant contended  
that he had derived at the information which he disclosed at the 2010/11  
Budget Meeting directly from the minutes of the December 2008  
Special Meeting; T:[30], [1.11.11]. He submits that these minutes were  
published on the City's website and that therefore the information which  
he disclosed was in the public domain.

61 The Tribunal has some difficulty in seeing how the information  
disclosed at the 2010/11 Budget Meeting could have been derived from  
the minutes of the December 2008 Special Meeting. The minutes make  
no mention of any advice received from the City's lawyers nor does it  
make any reference to the City's staff and the manner in which the



contract was administered. Also, there is no reference to the adherence or otherwise to the 'legal advice it paid for'.

62 The CEO's Report, on the other hand, refers specifically to Minter Ellison's recommendation that 'the City first negotiate with Turfmaster ... before it contemplates commencing action'. This is drawn from para 2.4 of the Minter Ellison Briefing Note.

63 The CEO's Report refers to 'evidence that the City did not discharge its supervisory obligations under the contract' and it would not be unreasonable for the applicant or anyone else to draw from that statement that this was an issue that had been raised by Minter Ellison. The Minter Ellison Briefing Note does in fact refer to this, albeit without expressly 'raising issues'.

64 The note in the minutes referring to the Mayor's 'departure from Officers' Recommendations' says the applicant, indicates a departure from legal advice on the basis that it would be 'inconceivable to think that the CEO would go against that legal advice'; T:[25], [1.11.11].

65 On balance, the Tribunal considers that it is more likely than not that the information disclosed by the applicant was derived from the CEO Report or the Minter Ellison Briefing Note, or both, which are confidential documents within the meaning of the Rules of Conduct Regulations.

66 The Tribunal also considers that none of the information disclosed by the applicant falls within any of the subparagraphs of reg 6(3) of the Rules of Conduct Regulations, particularly subparagraph (c). The disclosure was made at a meeting which was open to the public and none of the information disclosed was already in the public domain.

67 The applicant contends, and the Tribunal accepts, that there had been a great deal of community discussion about the manner in which the Contract had been managed by Council staff. However, the Tribunal does not consider that this leads to the conclusion that the information which the applicant disclosed on that particular point was in the public domain. As the Tribunal has already observed, the confidential information which was disclosed was that the issues of how the Contract was administered had been raised in the context of enforcement of the terms of the Contract, which was not in the public domain.

68 Having regard to the evidence before the Tribunal, and to s 5.106 of the LG Act, the Tribunal is satisfied that it is more likely than not that the

applicant breached reg 6(2)(a) of the Rules of Conduct Regulations by disclosing information which the applicant had acquired from confidential documents as that term is defined in reg 6(1) of the Rules of Conduct Regulations. The Tribunal therefore finds that the applicant has committed a minor breach as defined in s 5.105(1) of the LG Act in that he committed a breach of reg 6(2)(a) of the Rules of Conduct Regulations.

*Sanction for the minor breach*

69 The respondent found that the applicant's conduct in committing the minor breach warranted the making of an order that he be publicly censured for having committed that conduct. The respondent said that a public censure is not only a reprimand aimed at reformation of the offending council member and prevention of further offending acts, but also acts as a measure in support of the institution of local government and those council members who observe the rules of conduct in the Rules of Conduct Regulations.

70 The respondent took into account the fact that the applicant had not previously been found to have committed any minor breach under the LG Act.

71 The Tribunal heard submissions from the applicant in relation to the question of the punishment which should be imposed in the event that the Tribunal upheld the respondent's decision.

72 The applicant submits that the finding by the respondent that the applicant committed a minor breach is already well known within the Joondalup community and he therefore considers that, because residents are aware of this, it would be a waste of the City's money to publish a Notice of Censure.

73 The applicant also submits that, if he is to be publicly censured, then the wording of the Notice of Censure should be such that the public be fully aware of the specific and precise details that were confidential and made public.

74 The intervener submits that the sanctions imposed by the respondent should be affirmed.

75 It is the Tribunal's view that the maintenance of confidentiality by council members is a serious obligation. An unauthorised disclosure has the potential to undermine the trust and confidence of council members in each other and has the potential to impair the efficacy of a council's

deliberation. An unauthorised disclosure of confidential information is, therefore, a serious matter; see *Mazza and Local Government Standards Panel* [2009] WASAT 165 at [97].

76 A public censure of the kind ordered by the respondent is, in the Tribunal's view, a significant sanction, but also an appropriate one. The applicant was advised by the City's CEO prior to the 2010/11 Budget Meeting that the settlement agreement between the City and Turfmaster had not been signed and that the settlement proposal was confidential. He cautioned the applicant against making statements in relation to the 'Turfmaster issue'. The applicant therefore should have been aware of the seriousness of the consequences of his conduct.

77 The Tribunal therefore affirms the decision of the respondent that the applicant be publicly censured.

78 Because the Tribunal does not share the applicant's view that the wording of the public censure as specified in the respondent's order could be misconstrued, the Tribunal also affirms the respondent's order as to the wording of the public censure.

### ***Orders***

79 The Tribunal makes the following orders:

1. The decision of the Local Government Standards Panel made on 23 May 2011 that the applicant had committed a minor breach of the *Local Government Act 1995* (WA) (as defined in s 5.105(1) of that Act) in that he committed a breach of reg 6(2)(a) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) is affirmed.
2. The orders of the Local Government Standards Panel made on 23 May 2011 in relation to the sanction to be imposed on the applicant for the minor breach he committed are affirmed save that the time for compliance

with Order 2 is within the period of 29 days to 43 days from the date of delivery of these reasons.

I certify that this and the preceding [79] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

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**JUDGE T SHARP, DEPUTY PRESIDENT**