

LOCAL GOVERNMENT STANDARDS PANEL

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

Complaint Number	SP 26 of 2015 [DLG 20150125]
Legislation	<i>Local Government Act 1995</i> (WA)
Complainant	Councillor John Ross Henry Gangell
Subject of complaint	Councillor Paul Bridges
Local Government	Town of Bassendean
Regulations	Regulations 4 and 10(3) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Dr C Berry (Deputy Presiding Member) Councillor P Kelly (Member) Mr P Doherty (Member)
Heard	9 July 2015 (Determined on the documents)
Outcome	Two minor breaches under regulation 4(2) established.

FINDINGS AND REASONS FOR FINDING

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

1. Summary of the Panel's Findings

- 1.1 The Panel found that Cr Bridges committed two breaches under regulation 4(2) of the *Local Government (Rules of Conduct) Regulations 2007 (Regulations)* by making a statement during the Council's 28 April 2015 Ordinary Council Meeting which contravened two provisions of the Town's Standing Orders Local law 2011.
- 1.2 The Panel observes that the breaches occurred because of the manner in which Cr Bridges sought to address his concerns relating to the accuracy of unconfirmed minutes of a previous Council Meeting. The breaches would likely not have occurred had Cr Bridges simply identified the error and proposed the wording of a motion designed to correct the same.

2. Jurisdiction

- 2.1 On 8 May 2015 the Panel received a Complaint submitted by Cr John Gangell alleging that at an ordinary meeting of the Town's Council held on 28 April 2015 (**April 2015 OCM**) Cr Bridges made a statement and thereby breached regulations 4 and 10(3) of the *Regulations*.
- 2.2 Regulation 4(2) provides that the breach of a "local law as to conduct" (being a local law relating to the conduct of people at council or committee meetings¹) is a minor breach for the purposes of s 5.105(1)(b) of the *Local Government Act 1995 (LG Act)*.
- 2.3 In the Panel's opinion, regulation 4(2) applies to those provisions of a local law relating to standing orders which relate to the conduct or behaviour of a councillor at a council or committee meeting, but does not apply to any provision of that local law which is procedural in nature or which extends to conduct or behaviour by a councillor outside council or committee meetings.
- 2.4 In the present case, the relevant provisions are Standing Orders 7.15(2)(a) and (3) of the Town's Standing Orders Local law 2011 (**Standing Orders**) which provide as follows:
- “(2) A member is not –
- (a) to reflect adversely on the character or actions of another member or Officer;”
- “(3) A member is not to use offensive or objectionable expressions in reference to any member, Officer or other person.”
- 2.5 The Panel considers that each of these Standing Orders is a local law as to conduct and that a breach of either provision would be a "minor breach" which the Panel has jurisdiction to consider.
- 2.6 Regulation 10(3) provides:
- “If a person, in his or her capacity as a council member, is attending a council meeting, committee meeting or other organised event and members of the public are present, the person must not, either orally, in writing or by any other means —
- (a) make a statement that a local government employee is incompetent or dishonest; or

¹ Regulation 4(1).

- (b) use offensive or objectionable expressions in reference to a local government employee.”

2.7 A breach of regulation 10(3) would also be a “minor breach” which the Panel has jurisdiction to consider.

2.8 The Panel finds that the Complaint was made and has been dealt with in accordance with the requirements of Part 5 Division 9 of the *LG Act*, that the Complaint is not one that should be dealt with under section 5.111 of the *Local Government Act 1995 (LG Act)*, and that the Panel has jurisdiction to determine whether the minor breaches alleged in the Complaint 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 Australia²; 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 by a Councillor, 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”³ (**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
- (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 (**Documents**) are set out in Attachment “A”.

5. The Complaint

5.1 The Complaint alleges that during the April 2015 OCM:

- (a) the unconfirmed minutes of the Town’s ordinary council meeting of 24 March 2015 (**March 2015 OCM**) were tabled and they included the following:

“2.0 PUBLIC QUESTION TIME & ADDRESS BY MEMBERS OF THE PUBLIC

...

Mrs Dreyer asked whether the tennis club or bowling club are going to be moved.

² Clause 8(6) of Schedule 5.1 of the *LG Act*

³ *LG Act*, s 5.106.

The Mayor responded that there has been no discussion or decisions made on the future of either club.”

- (b) the exchange set out in Attachment “B” occurred during the Council’s discussion on a motion to confirm the minutes of the March 2015 OCM (**Exchange**); and
- (c) the confirmed minutes of the April 2015 OCM record that the minutes of the March 2015 OCM were confirmed as a true record “subject to the following amendment to the Mayor’s response to Mrs Dreyer’s question regarding whether the tennis and bowling clubs are going to be moved:

“That discussion has taken place but no decision has been made about the future of these two premises”.

CARRIED UNANIMOUSLY 6/0”

5.2 It is alleged that by participating in the Exchange, Cr Bridges:

- (a) contravened Standing Order 7.15(2)(a) by adversely reflecting on the character or actions of another Council member – being the Council generally and the Mayor in particular (**Allegation 1**);
- (b) contravened Standing Order 7.15(3) by using offensive or objectionable expressions in reference to a Council member – being the Mayor and the other Councillors (**Allegation 2**);
- (c) contravened regulation 10(3)(a) by making a statement that a local government employee is incompetent or dishonest – that employee being the CEO (**Allegation 3**); and
- (d) contravened regulation 10(3)(b) by using offensive or objectionable expressions in reference to a local government employee – that employee being the CEO (**Allegation 4**).

6. The Response

6.1 By letter dated 3 June 2015, the Department provided Cr Bridges with a copy of the Complaint, a Complaints Summary of the same and a reasonable opportunity to respond to the allegations made therein.

6.2 In his response (documents 6, 7 and 8 of the Documents):

- (a) Cr Bridges denies having committed the breaches alleged in the Complaint; and
- (b) contended the Exchange is incorrect in a number of respects and that during the April 2015 OCM he made the statements set out in Attachment “C”, being the note from which he read at the April 2015 OCM (**Note**).

7. Essential elements of a contravention of regulation 4

7.1 The following elements must be established, to the Required Standard, before a minor breach under regulation 4(2) of the *Regulations* is established:

- (a) first, it must be established that the person the subject of the Complaint engaged in the alleged conduct (**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; and
- (c) thirdly, it must be established that a local law as to conduct (in the present case being Standing Orders 7.15(2)(a) and (3)) has been contravened.

8. Essential elements of a contravention of regulation 10

8.1 As well as the elements identified in subparagraphs (a) and (b) of paragraph 7.1, the following elements must be established, to the Required Standard, before a contravention of regulation 10(3)(a) of the *Regulations* is established:

- (a) the Councillor attended a Council meeting, Committee meeting or other organised event in his or her capacity as a Councillor;
- (b) the Councillor either orally, in writing or by some other means, made a statement which a member or members of the public present heard or otherwise became aware of at the time it was made; and
- (c) viewed objectively, the Councillor's statement (or a sufficiently clear inference from the words used) was that an employee of the Councillor's local government was incompetent or dishonest.

8.2 The elements that must be established, to the Required Standard, before a contravention of regulation 10(3)(b) of the *Regulations* is established are the same as those identified in the previous paragraph if subparagraph (c) were to be replaced with the following:

- (c) the expression was an offensive or objectionable expression; and
- (d) the expression was an offensive or objectionable expression in reference to an identified employee of the Councillor's local government.

9. Findings

9.1 The Panel is satisfied to the Required Standard:

- (a) that the Exchange accurately records what transpired at the April 2015 OCM, save to the extent that it attributes words to Cr Bridges which differ from those set out in the Note;
- (b) the Note accurately records what Cr Bridges said at the April 2015 OCM; and
- (c) of the matters set out in paragraphs 7.1 (a) and (b), 8.1 (a) and (b) above.

9.2 In relation to Allegation 1, the Panel is satisfied to the Required Standard that by making the statement set out in the Note, Cr Bridges adversely reflected on the character or actions of another Council member, being the Mayor, in that:

- (a) Cr Bridges claimed the unconfirmed minutes of the March 2015 OCM were incorrect when they recorded that "[t]he Mayor responded that there has been no discussion or decisions made on the future of either club";

- (b) the Mayor responded that “No decision has been made”;
- (c) Cr Bridges then responded with:
- “I agree that no final decisions have been made and will not disclose the nature of these proposals as the CEO has declared these matters confidential.
- ...
- My issue is that the recorded answer creates a false impression and does not reflect the truth.
- Councillors are not allowed to speak during question time as the mayor answers on behalf of Council.
- I have sat here on a number of occasions when speakers have given answers that I know to be untrue and fear that this has become an acceptable culture for this Council. The correct answer is to state that a matter has been declared confidential and ideally state the reason for this confidentiality rather than give an answer that is not honest or impartial.
- Because the CEO has declared a matter confidential does not give licence for anyone to tell untruths or provide false information. I give notice to the mayor and the CEO that in future if I know that answers or information given to the public are not accurate I will remain silent but will raise a red card...”
- (d) this adversely reflected on the character of the Mayor in that it observed that only the Mayor is permitted to respond to questions during question time, and then added that “I have sat here on a number of occasions when speakers have given answers that I know to be untrue” thereby imputing that the Mayor had knowingly given incorrect answers during question time;

and the Panel accordingly finds that the minor breach set out in Allegation 1 has been established.

9.3 In relation to Allegation 2, the Panel is satisfied to the Required Standard that by making the Statement Cr Bridges used offensive or objectionable expressions in reference to a Council member – being the Mayor – in that in the context in which he uttered the words “[b]ecause the CEO has declared a matter confidential does not give licence for anyone to tell untruths or provide false information” implied that the Mayor was using the CEO’s designation of matters as confidential, as a basis for imparting untruths or false information during question time.

9.4 **It follows that the Panel finds that the minor breach set out in Allegation 2 has been established.**

- 9.5 The Panel is not however satisfied, to the Required Standard, of the minor breach allegations set out in Allegations 3 and 4 above, because it is not satisfied that, viewed objectively, a reasonable person would understand that Cr Bridges, by reading the Note was alleging that the CEO was incompetent or dishonest or had used an offensive or objectionable expressions *in reference* to the CEO. The only reference to the CEO is to his declaration of a matter being confidential.
- 9.6 **The Panel therefore finds that the minor breaches set out in Allegations 3 and 4 have not been established.**



Christopher Berry (Deputy
Presiding Member)



Paul Kelly (Member)



Peter Doherty (Member)

Attachment "A"

Doc ID	Description	Page #
	Complaints Officer originating correspondence:	
01.doc	Copy of (1-page) correspondence from Mr Bob Jarvis, the CEO and Complaints Officer of the Town of Bassendean, dated 7 May 2015.	21
02.doc	Copy of (1-page) completed Council Member Details form dated 7 May 2015.	22
	Complaint and accompanying information:	
03.doc	Copy of (6-page) Complaint of Minor Breach No. SP 26 of 2015 dated 7 May 2015 made by Cr John Ross Henry Gangell, and its attachment.	23
	Correspondence with the Complainant:	
04.doc	Copy of (7-page) email to Cr Gangell dated 22 May 2015, and email from him Gangell dated 29 May 2015	29
	Correspondence with the Cr complained about:	
05.doc	Copy of (5-page) Request for Comments letter and attachment to Cr Paul Bridges dated 3 June 2015.	36
06.doc	Copy of (1-page) correspondence from Cr Bridges dated 9 June 2015.	41
07.doc	Copy of (3-page) completed Form A signed by Cr Bridges dated 9 June 2015.	42
08.doc	Copy of (1-page) written statement from Cr Bridges that he claims he read out at the Town OCM held on 28 April 2015.	45
	Information obtained from the Town's website, not sent with the said Request for Comments letter to Cr Bridges	
09.doc	Copy of (1-page) a relevant page of the unconfirmed minutes of the Town OCM held on 24 March 2015.	46
10.doc	Copy of (2-page) relevant pages of the confirmed minutes of the Town OCM held on 28 April 2015.	47

Attachment “B” Transcript

[“Cr Paul Bridges] I refer to Mrs Dreyer’s question as to whether the tennis club or bowling club will be moved. The answer recorded is “The Mayor responded that there has been no discussion or decision made on this matter”. Every Councillor and senior member knows that this is not the case.

[Mayer] Cr Paul Bridges, no decision has been made.

[Cr Paul Bridges] I agree that no final decisions have been made and we have not disclosed the nature of these proposals as the CEO has declared this a confidential matter. I also appreciate there is up to a \$10,000 fine or up to six months jail for breaching confidentiality. My issue is that the recorded answer gives a false impression and does not reflect the truth. Councillors are not allowed to speak during question time and the Mayor’s answers are on behalf of Council. I have sat here on a number of occasions and listened to answers that I know to be untrue and fear that this has become acceptable. The correct answer is to state that a matter has been declared confidential and clearly state the reasons for that confidentiality. Because the CEO has declared a matter confidential does not give licence to anyone to tell untruths or give false information,

[Acting Chief Executive Officer (Michael Costarella)] Cr Bridges, if I can stop you there, we are currently confirming the Minutes as a true and correct record. If you have an amendment to those Minutes you are entitled to make that correction. To make allegations of what may not be true is not a matter for confirming the Minutes ...

[Cr Paul Bridges] I will remain silent but will raise a red card, [Takes red card out of shirt pocket] If it does not curtail the situation and I have to show the red card three times, you will have a whistle-blower on your hands. I will accept whatever fine or jail sentence is imposed.

[Mayor] I stand by what I said. No decision has been made on those two premises.

[Cr Paul Bridges] But the Minutes state that no discussion has occurred.

[Acting Chief Executive Officer] Would you like that amended to say that no decision has been made.

[Mayor] I am happy to clarify for the Minutes that discussion has taken place regarding the proposed Landcorp precinct development, however, no decision has been made about either of those premises.

[Cr Pule] I would like to register my objection to the statements made by Cr Bridges and that I am offended that the implication of dishonesty was mentioned and I would say to Cr Bridges and the public here that I am quite happy to confirm the Minutes, they do not have to be verbatim, but the Minutes I have confirmed I believe them to be true and I believe our officers do a very good Job and translate with accuracy”.

**Attachment “C”
Note**

“I agree and have no quarrel with the minute taker but will vote against the motion as they don't reflect the truth. I refer to Mrs Dryer's question as to whether the tennis club or bowling club are to be moved.

The answer recorded is: The mayor responded that there has been no discussion or decisions made on the future of either club. Every Councillor and senior staff member present knows that this is not the case.

I have been at meetings behind closed doors where these matters have been discussed and proposals presented as options that affect the future of both clubs.

I agree that no final decisions have been made and will not disclose the nature of these proposals as the CEO has declared these matters confidential.

I also appreciate that there is an up to \$10,000 fine or up to six months gaol for breaching confidentiality.

My issue is that the recorded answer creates a false impression and does not reflect the truth.

Councillors are not allowed to speak during question time as the mayor answers on behalf of Council.

I have sat here on a number of occasions when speakers have given answers that I know to be untrue and fear that this has become an acceptable culture for this Council. The correct answer is to state that a matter has been declared confidential and ideally state the reason for this confidentiality rather than give an answer that is not honest or impartial.

Because the CEO has declared a matter confidential does not give licence for anyone to tell untruths or provide false information. I give notice to the mayor and the CEO that in future if I know that answers or information given to the public are not accurate I will remain silent but will raise a red card. If this doesn't curtail the culture and I have had to show the card on three occasions you will have a whistle blower on your hands and I will accept whatever fine or gaol sentence is imposed.”