



Local Government Standards Panel

Complaint Number	SP 53 of 2016 [DLGSC 20160181]
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Gary Crawford
Subject of complaint	Mayor Russell Aubrey
Local Government	City of Melville
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Ms M Strauss (Presiding Member) Councillor P Kelly (Member) Ms S Siekierka (Deputy Member)
Sanction Decision	Public apology (Determined on the documents)
Date of Sanction Decision	14 August 2017

DECISION AND REASONS FOR DECISION

Published 24 August 2017

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



Introduction

1. On 3 May 2017 the Local Government Standards Panel found that Mayor Russell Aubrey of the City of Melville (the Mayor), committed a minor breach under the *Local Government Act 1995 (WA)* (the Act) and regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* when sending an email dated 23 October 2016 (the Email) to a member of the public Mr Gary Crawford, and several others concerning building works at 37 Harris Street, Bicton.
2. On 7 June 2017 the Panel published its Finding and Reasons for Finding that the Mayor had breached regulation 7(1)(b).
3. The Mayor breached regulation 7(1)(b) by publishing four paragraphs in the Email to a wide audience. The Panel summarised those four paragraphs¹:

“... the Mayor says it had been brought to his attention that Mr Crawford is involved in court proceedings, that he wanted to “investigate” some aspects of the proceedings to see whether Mr Crawford was “attempting to advantage (his) prospects by creating an illusion”, and that he would “happily offer (himself) as a witness.”

4. The Panel referred to the Mayor’s extensive address list in the Email ²:

“... There is a new address list: the other Councillors, the Association, the named person “@community news.com”, two named people “@commerce.wa.gov.au”, two named Members of the Western Australian Parliament “@mp.wa.gov.au”, “minister.miles@dpc.wa.gov.au”, a named Department employee “@dlgc.wa.gov.au” and a named person “@aph.gov.au”. No subject title appears but the content is provided.

The address “@dpc.wa.gov.au” is the address for the Department of the Premier and Cabinet and “@aph.gov.au” is the address for Federal Parliament. This is the first time the “@mp.wa.gov.au”, minister.miles@dpc.wa.gov.au” and “@aph.gov.au” email addresses have appeared.”

5. The Panel concluded:

“52. It is unlikely that the Mayor created a title which included “City brushing aside public safety concerns”. The Panel has no way of knowing whether the Mayor created his own address list in (the Email) or used the one in the (previous email) because Mr Crawford has not provided the address list for the (previous) email. Neither has Mr Crawford provided the list of people comprising “various” in his “Cc” category at the foot of his letter to the Mayor dated 23 October 2016, which he attached to the (previous) email. Mr Crawford has been disingenuous in not providing this information.

53. The Panel is not satisfied to the required standard of proof that the Mayor initiated the inclusion of the new addressees ... (the Members of Parliament, named officers in State Government Departments and a named person at Federal Parliament). However, the Panel recognises that the Mayor could have omitted these addressees even if Mr Crawford had included them, and takes this into account when considering (the Email).

...

¹ Paragraph 51 of its Reasons.

² Paragraph 22 of its Reasons, page 5, in relation to the “Ninth email”.



56. The Panel recognises the Mayor's wish to correct what he saw as untruths and defend his reputation. The Panel acknowledges that the Mayor did not have the opportunity to complain about Mr Crawford's conduct to anyone in authority to and that in his mind he needed to put his side of the story to people who had received Mr Crawford's emails. However, it is untenable that he needed to refer to the legal proceedings to defend his name. This was personal information which the Mayor should have kept confidential. It was irrelevant to the issues of whether the Works were substandard and what the City and Council were doing about Mr Crawford's complaints about the Works.

...

59. The Panel accepts that Mr Crawford felt embarrassed, insulted and denigrated by the Mayor's publication of this information and that any reasonable person's judgment would be that such information would damage Mr Crawford if it were published in these circumstances.

60. Further, any reasonable person would form the view that the Mayor's statement that he would be prepared to give evidence against Mr Crawford in court amounted to a threat."

Possible sanctions

6. 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).”

7. 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.

The Mayor's submission

8. 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.³

³ Section 5.110(5) of the Act.



9. 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).
10. By letter dated 7 June 2017 the former Department advised the Mayor of the Panel's decision, provided him with a copy of the Finding and Reasons for Finding published 7 June 2017 and invited him to make a submission on penalty. On or around 3 July 2017 the Department received the Mayor's undated eight page submission (Submission).
11. The Mayor does not address the matter of penalty in his Submission. He rejects the Panel's breach finding and challenges its Finding and Reasons for Finding in detail. He defends his actions in referring to the legal proceedings in the Email and sending it to a wide audience. He presents what he describes as "new and clarifying evidence" to explain and justify his conduct and requests "a withdrawal of the wrongful accusations made against (him)."

Panel's consideration

12. 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 the Mayor had ceased to be a Councillor.
13. The Mayor has been a councillor since 1 May 1999. The Panel takes into account the fact that he has not committed any minor breaches since the Regulations commenced on 21 October 2007 but as an experienced councillor he should have known that sending the personal information in the Email, and what amounted to a threat, to a wide range of people who would not know about the court proceedings, and had no reason to know, was highly inappropriate and unprofessional.
14. The Mayor took time to compose the Email. He had time to reflect on the effect of sending it to anyone other than Mr Crawford. He had plenty of opportunities to disengage with Mr Crawford but chose to continue the email conversation and allowed things to escalate. The Mayor was forthright in his Submission in again seeking to justify circulating the offending words. He has shown no contrition.
15. As Mayor, Cr Aubrey has a special duty to uphold the standards of conduct expected of all councillors to protect the reputation of the local government and give the community confidence in the way they perform their public duties.
16. 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.
17. Training is not appropriate. The Mayor does not accept he has done anything wrong and shows no willingness to engage in any programme that may reinforce the standards of conduct expected of a councillor.



18. The Panel has weighed up the value of the other possible sanctions – public apology and public censure. As Mr Crawford is the person who has suffered the damage it is appropriate that he receive an apology. The Mayor should also apologise to his fellow councillors for not upholding the standards of conduct that all councillors are expected to maintain and for casting a shadow over the professionalism of the Council.

Panel's decision

19. The Panel orders that the Mayor make a public apology in the terms of the attached Order.

Merranie Strauss (Member)

Paul Kelly (Member)

Sheryl Siekierka (Deputy Member)

Date of Reasons 23 August 2017



ATTACHMENT

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ORDER

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Mayor Russell Aubrey of the City of Melville (the City) publicly apologise to Mr Gary Crawford, a member of the public, and his fellow Councillors as specified in paragraph 2 below.
2. At the City's first Ordinary Council Meeting Mayor Aubrey attends after the expiration of 28 days from the date of service of this Order on him Mayor Aubrey shall:
 - (a) address the meeting to make a public apology to Mr Crawford and all other City Councillors;
 - (b) 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;
 - (c) address the Council 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 a provision of the *Local Government (Rules of Conduct) Regulations 2007* when I responded to an email on 23 October 2016.
- (ii) I sent the email to Mr Crawford, all other City Councillors, three people employed in Western Australian Government Departments, three Members of the Western Australian Parliament, a person at the Federal Parliament's email address and the Community Newspaper Group.
- (iii) The Panel found that my email contained personal information about Mr Crawford relating to court proceedings and a statement that I was prepared to give evidence against him.
- (iv) The Panel found that by sending this material to Mr Crawford and the other people I have referred to above I made improper use of my office as a Councillor with the intention of damaging Mr Crawford, thereby committing a breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007*.
- (v) I accept that I should not have sent the damaging material to Mr Crawford and the other people referred to above and I apologise to Mr Crawford and all my fellow Councillors for having done so."