

LOCAL GOVERNMENT STANDARDS PANEL

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

Complaint Number	SP 1 of 2016 [DLGC 20160003]
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Michael Foley
Subject of complaint	Councillor Rod Henderson
Local Government	City of Swan
Regulation	Regulations 7(1), 8(b), 9(1) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr B Jolly (Presiding Member) Councillor R Aubrey (Member) Ms M Strauss (Member)
Heard	17 August 2016 Determined on the documents
Outcome	Breaches of regulations 7(1)(a) and 8(b)

FINDING AND REASONS FOR FINDING

Published November 2016

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.

Summary of the Panel's decision

1. The Panel found that Councillor Rod Henderson (Cr Henderson), a councillor for the City of Swan (the City), committed minor breaches under the *Local Government Act 1995* (WA) (the Act) and regulations 7(1)(a) and 8(b) of the *Local Government (Rules of Conduct) Regulations 2007* (the Regulations) on 22 November 2015 when he sent a letter to the Minister for Planning relating to a development application. The Panel found that Cr Henderson did not breach regulation 9.
2. The Panel met to consider the complaint of breaches under regulations 7, 8 and 9 on 17 August 2016.

Jurisdiction

3. Under the Act the Panel is required to consider a complaint of a minor breach and make a finding as to whether the alleged breach occurred¹.
4. If the alleged conduct may amount to a "recurrent breach", the Panel may instead send the complaint to the Chief Executive Officer of the Department of Local Government and Communities (the Department).²
5. The Act provides for the circumstances in which a council member commits a minor breach.³
6. Cr Henderson is alleged to have committed minor breaches under the Act and regulations 7, 8 and 9. On the alleged facts, regulations 8(a) (which relates to persuading electors to vote in particular way) and 9(2) (which applies to conduct at a council meeting) could not possibly apply.
7. Regulations 7, 8(b) and 9(1) provide:

"7. Securing personal advantage or disadvantaging others

- (1) *A person who is a council member must not make improper use of the person's office as a council member —*
 - (a) *to gain directly or indirectly an advantage for the person or any other person; or*
 - (b) *to cause detriment to the local government or any other person.*

...
- (2) *Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.*

8. Misuse of local government resources

A person who is a council member must not either directly or indirectly use the resources of a local government —

...

¹ Section 5.110(2)(a) of the Act.

² Sections 5.110(2)(b), 5.111(1) of the Act.

³ Section 5.105 of the Act.

(b) for any other purpose,

unless authorised under the Act, or authorised by the council or the CEO, to use the resources for that purpose.

9. *Prohibition against involvement in administration*

- (1) *A person who is a council member must not undertake a task that contributes to the administration of the local government unless authorised by the council or by the CEO to undertake that task.*

...

8. The Panel considered the documents listed in Attachment A to these Reasons, including the Statement of Facts in Attachment B to these Reasons. The Panel was satisfied the complaint had been dealt with in accordance with the administrative requirements in the Act for dealing with the complaint.⁴
9. The Panel accepted the Department's advice that Cr Henderson was elected as a member of the City Council on 19 October 2015, was a councillor at the time of the alleged breaches and a councillor on 17 August 2016 when the Panel met to consider the complaint.
10. Cr Henderson had not previously been found to have committed a minor breach, so the Panel was not required to consider sending the complaint to the Chief Executive Officer of the Department.⁵
11. Based on the information referred to in paragraphs 3 to 10 above the Panel found it had jurisdiction to determine whether Cr Henderson had committed the alleged minor breaches.

Panel's role

12. The Panel is not an investigative body. It determines complaints of minor breaches solely upon the evidence presented to it.
13. Any finding that a councillor has committed a minor breach must be based on evidence from which it may be concluded that it is more likely than not that the breach occurred (the required standard).⁶
14. Where direct proof is not available, in order to find that a breach occurred, the Panel must be satisfied on the evidence that it is more probable than not that the breach occurred. The Panel cannot conclude there is a breach if the evidence merely supports two or more conflicting but equally possible inferences.⁷

⁴ Sections 5.107, 5.108, 5.109 of the Act.

⁵ Sections 5.110(2)(b), 5.111(1) of the Act.

⁶ Section 5.106 of the Act.

⁷ *Bradshaw v McEwens Pty Ltd* (1951) 217 ALR 1, paragraph 5.

The Complaint

15. On 6 January 2016, the Panel received a Complaint of Minor Breach Form dated 22 December 2015 (the Complaint Form) from Mr Michael Foley the City's Chief Executive Officer (CEO), who is also the City's Complaints Officer (the Complaint). Mr Foley alleged that on 22 November 2015 Cr Henderson committed minor breaches under regulations 7, 8 and 9 when he sent a letter on his Councillor letterhead dated 21 November 2015 to the Hon John Day MLA, the then Minister for Planning (the Complaint).
16. The letter relates to an application for approval to operate a stockfeed business in Campersic Road in the Swan Valley Rural Zone, lodged with the City on 20 July 2015 (the Application) by two of Cr Henderson's constituents (the Applicants).
17. The Applicants wanted to buy an existing stockfeed business that had to close and move it to their property in Campersic Road.
18. The City refused the Application. The City's Coordinator, Development Assessment and Appeals sent a copy of the City's Determination on Application for Planning Approval dated 7 October 2015 (the Determination) to the Applicants on that date. The accompanying letter advised the Applicants that the City made the decision under the City's Local Planning Scheme "under delegated authority of the Council."
19. The "Advice Notes" in the Determination stated that the City had refused the application because:

"The proposed land use falls into the land use definition of "Shop", which is an "X" use in the Swan Valley Rural zone. It is a use that is not permitted by the City's Local Planning Scheme No.17".

Before the Determination

20. Burgess Design Group (Burgess), on behalf of the Applicants, wrote to the CEO on 18 September 2015 in support of the Application. Burgess accepted that the Application was for a "Shop"; that this was a non-permissible use in the Swan Valley Rural Zone under the City's Local Planning Scheme number 17; and that therefore the City's officers were right to refuse the Application.
21. In this letter Burgess said:

"Although we understand the position of the City's officers in this regard we believe the application is worthy of further consideration by the Community and Elected Members and seek support for the preparation of an officers report that would offer Elected Members an alternate motion that would allow for the proposal to be considered through the "Use Not Listed" process under LPS17".
22. Burgess sent a similar letter to the City's Executive Manager Planning and Development dated 21 September 2015.
23. On 7 October 2015 the City issued its formal Determination refusing the Application on the grounds foreshadowed by Burgess and stated in the Determination.

After the Determination

24. The Applicants sent an email to Cr Henderson asking for his “help and support with this” because the supply of stockfeed was essential for businesses and residents in the area. In discussion with the City they had offered to “modify the business in many different directions so as to fit into a classification that can be supported, all without success”.
25. Cr Henderson replied to the Applicants by email dated 30 October 2015, saying the City’s officers had advised him they had determined the application as Council delegates. Cr Henderson advised the Applicants that their options were to appeal to the State Administrative Tribunal (SAT) or apply for the Local Planning Scheme to be amended.
26. On 31 October 2015 the Applicants wrote to Cr Henderson discussing the possibility of running their proposed business in accordance with the criteria required for a “rural home business” classification.

Cr Henderson’s letter to the Minister

27. On 21 November 2015 Cr Henderson wrote his letter to the Minister on a coloured letterhead (the Letter). The letterhead included the City’s title and logo and a photograph of Cr Henderson. Words beside the photograph read “Cr Rod Henderson, Swan Valley/Gidgegannup Ward Councillor”. Cr Henderson signed the Letter as “Cr Rod Henderson”.
28. After giving the Minister some background to the Applicants’ objectives and the Determination, Cr Henderson said:

“A draft letter from the Burgess group is attached with further detail for your information. My understanding is that the letter has been sent and advice to the applicant is that they can appeal to SAT.

...

The applicant has considered making an appeal to SAT however given the X use they are concerned that this could be a waste of time and money.

...

I request if you are unable to make a determination to allow the closing of the business in one location and the establishment of the same business activity in a nearby location that you advise the City of Swan this be dealt with as a Use Not Listed or some other dispensation to allow the application or that you request (SAT) do so.

...

It is not our intention of opening the floodgates to other applications more broadly. I see this as a specific case where the use exists and is needed however LPS17 has been applied to the detriment of local needs.”

29. In the Letter Cr Henderson said, “My co-ward councillor Cr. Trease is also supportive ...”⁸

Cr Henderson’s Response

30. Cr Henderson completed the response form the Department sent him and submitted a letter to the Department dated 24 February 2016.
31. In his response to the first question in the form Cr Henderson said he didn’t accept the information in the Department’s Complaint Summary. The second question was whether he accepted that he had contravened regulation 7, to which he answered “No”.
32. The second question in the response form didn’t refer to regulations 8 and 9. However, the Panel was satisfied that Cr Henderson knew of the allegations in relation to regulations 8 and 9. The Department included the allegations under regulations 8 and 9 in its Complaint Summary and Cr Henderson addressed these regulations in his letter dated 24 February 2016.

Essential elements for contravention of regulation 7

33. In order to find that Cr Henderson committed a minor breach under regulation 7(1)(a), the Panel must be satisfied, to the required standard, that each of these requirements is met:
- Cr Henderson was a councillor at the time of the alleged breach;
 - he used his office as a councillor when sending the Letter to the Minister;
 - he used his office as a councillor improperly by sending the Letter; and
 - he sent the Letter to gain directly or indirectly an advantage for any person.

Was Cr Henderson a councillor at the time of the alleged breach?

34. The Panel accepts the Department’s advice that Cr Henderson was a councillor on 22 November 2015 when he sent the Letter to the Minister.

Did Cr Henderson use his office as a councillor when writing the letter to the Minister ?

35. In his letter in response dated 24 February 2016, in relation to the alleged breach of regulation 7, Cr Henderson did not deny that he wrote to the Minister in his capacity as a councillor. In relation to regulation 8, Cr Henderson said the Letter was not “in the name of the City of Swan it was personal correspondence from me, a councillor seeking direction on (a) matter.”
36. Cr Henderson used the City’s letterhead and signed in his capacity as a councillor. Although Cr Henderson said the Letter was “personal correspondence”, he also stated he sent it as a councillor.

⁸ Page 2, penultimate paragraph.

37. The Panel is satisfied to the required standard that Cr Henderson used his office as a councillor when sending the Letter.

Did Cr Henderson use his office improperly?

38. In his response Cr Henderson said his motivation was to ensure the equestrian community had readily accessible feed, by allowing the 30-year stockfeed business to continue, although at a different site. He said he was open and accountable in his actions, having sent Mr Foley, as CEO, a copy of the Letter.
39. Cr Henderson also said a Director in the Department of Planning, suggested, “an option could be” to write to the Minister “in the manner that I did” as it was the Director’s opinion that the Minister could ask SAT to determine the matter.
40. The dictionary definition of “improper” is “not in accordance with propriety of behaviour, manners, etc; unsuitable or inappropriate for the purpose or occasion; abnormal or irregular.”⁹
41. The meaning of “improper” must be considered in the context of relevant legislation, such as the Act and the Regulations, and other rules and standards that apply to a councillor’s role and conduct, such as the local government’s Code of Conduct, and the circumstances and context of the case.¹⁰
42. Whether there is impropriety is to be assessed objectively:
- “For behaviour to be improper it must be such that a right-thinking person would regard the conduct as so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty.”¹¹
43. Conduct can be improper even though the councillor’s judgment is that it isn’t improper. A councillor’s use of his or her office can be improper even though the councillor is intending to benefit the council.¹²
44. It follows that a use of office can be improper even if the councillor believes he or she is doing the right thing by the residents, ratepayers or other individuals or organisations operating in the community.
45. Judge Sharp in *Yates and Local Government Standards Panel* [2012] WASAT 59¹³ recognised a fiduciary relationship in saying that the standards of conduct that would be expected of a councillor can also be discerned from the fiduciary obligations which councillors owe to their councils.¹⁴
46. Once Council has delegated the power to make a relevant decision to an officer, a councillor has a duty of fidelity to the Council and the City to conduct himself of

⁹ Macquarie Dictionary, Revised Third Edition.

¹⁰ *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 10, referring to *Treby and Local Government Standards Panel* [2010] WASAT 81 (*Treby 2010*).

¹¹ *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 9.

¹² *Yates and Local Government Standards Panel* [2012] WASAT 59, paragraph 64, referring to *Treby 2010*

¹³ Summarising principles relevant to improper use given in *Treby and Local Government Standards Panel* [2010] WASAT 81.

¹⁴ Paragraph 64.

herself, on behalf of the Council, in a way that is consistent with the officer's decision.

47. The Act requires the Panel members to have regard to the general interests of local government in Western Australia.¹⁵ Regulation 3 of the Regulations sets out general principles to guide the behaviour of council members, although contravention of any of any of these does not amount to a minor breach.¹⁶ Regulation 3 provides that councillors should act with honesty and integrity, avoid damage to the reputation of the local government, and be open and accountable to the public.
48. It is in the interests of local government that decisions are authorised, fair and consistent so that all-comers are treated equally. Ratepayers, residents and other individuals or organisations operating in the local government's area are entitled to know the rules and have confidence that the rules will be applied consistently. Proper decision-making processes will earn the community's trust and respect. A local government's reputation would be damaged if community members thought decision-making processes were not being applied consistently or that individuals in the local government were not abiding by, or were actively seeking to overturn, decisions lawfully made by officers or the Council.
49. The City's Code of Conduct provides, in relation to the role of councillors and their relationships with officers (pages 7,14):
- Councillors sitting formally as the Council, either make, or are accountable for all decisions that are to be taken at the Council level. Decisions are made through a formal Council meeting process or through the formal delegation of powers to Committees, the CEO or City staff through the CEO.
- The focus of the Council and Councillors should be on strategy, policy and outcomes. That is, they should focus on how the community is to benefit from the City's activities and in what way. The role of City staff is to focus on advice, implementation and operations.
- A number of factors contribute to a good relationship between Councillors and City staff. These include goodwill, a clear understanding of each other's roles, good communication, agreed structures and protocols, an appreciation of legislative requirements and clear delegations.
50. There is no doubt that Cr Henderson knew that City officers had refused the Application. In his 30 October 2015 email Cr Henderson told one of the Applicants he had discussed the matter with City officers, who had advised him they had delegated authority to make the decision and that "under the current rules there is no recourse to the Council should officers exercise their discretion." Cr Henderson did not challenge the City officers' advice to him that they, or one of them, had authority to accept or refuse the Application.
51. There is no reason to doubt Mr Foley was correct in saying in the Complaint Form that Cr Henderson had the appropriate induction and was a member of the Governance Committee that reviewed the Code before Cr Henderson wrote the Letter, and that the revised Code was the one Council unanimously adopted on 21 November 2015.

¹⁵ Section 5.122(3) of the Act, Schedule 5.1 of the Act, clause 8(6).

¹⁶ Regulation 3.

52. It doesn't matter that Cr Henderson thought he was doing his best to help the Applicants and other members of the community, or that he thought he was using a proper process. The question is whether, in all the circumstances, a reasonable person would consider he acted improperly.¹⁷
53. The Panel is satisfied to the required standard that a reasonable person, looking at all the circumstances, including the standards of conduct expected of councillors and their duty to Council, would conclude that Cr Henderson knew or should have known that:
- the relevant officer made the decision to refuse the Application as a delegate of the Council;
 - the delegate made the decision on behalf of Council;
 - he owed a duty of fidelity to Council to accept and support that decision, not to undermine the officer's decision, which was in effect the Council's decision;
 - Cr Henderson's actions in asking the Minister to effectively overturn the City's decision did not meet the standards of conduct expected of councillors;
 - it was not appropriate for Cr Henderson to write to the Minister, effectively asking him to approve the Application – “ if you are unable to make a determination to allow the closing of the business in one location and the establishment of the same business activity in a nearby location ...” after the City had made its Determination;
 - it was not appropriate for Cr Henderson to ask the Minister to “advise” the City to give the proposed land use a different classification so it would be permitted under the local planning scheme; and
 - it was not appropriate for Cr Henderson to ask the Minister to ask SAT to decide the matter in favour of the Applicants so the Applicants didn't have to spend money on applying to SAT themselves.
54. The Panel is satisfied to the required standard that a reasonable person would judge Cr Henderson's actions in asking the Minister to intervene in the ways listed in the paragraph above to be improper. Accordingly the Panel finds that Cr Henderson used his office improperly.
- Did Cr Henderson use his office improperly to gain directly or indirectly an advantage for the person or any other person?
55. Cr Henderson denied he sought to gain an advantage for the Applicants.

¹⁷ Treby and Local Government Standards Panel [2010] WASAT 81, paragraph 30.

56. The Shorter Oxford English Dictionary¹⁸ defines “advantage” as “a favouring circumstance; something which gives one a better position ... benefit; increased well-being or convenience ... pecuniary profit ...” The Macquarie Dictionary¹⁹ defines “advantage” as “any state, circumstance, opportunity or means specifically favourable to success, interest or any desired end ... benefit, gain, profit.”
57. “To” in “to gain directly or indirectly an advantage” indicates that for this element to be satisfied the councillor must have an intention to gain an advantage. He must be found to have taken action for the purpose of, or with a view to, gaining an advantage for the Applicants.
58. For this element to be satisfied, it is not necessary to establish that Cr Henderson’s actions did, or could reasonably have, delivered the result he sought for the Applicants.²⁰
59. Cr Henderson asked the Minister to:
- make a determination himself in favour of the applicants;
 - advise the City to deal with the Application under a different use criteria;
 - advise the City to make some other “dispensation to allow the application”; or
 - ask SAT to “do so”.
60. The meaning of “do so” is unclear. It could mean Cr Henderson wanted the Minister to ask SAT to tell the City it should assess the Application in a way that would result in an approval; or that he wanted the Minister to ask SAT to itself approve the Application.
61. The only possible inference is that Cr Henderson wrote to the Minister with the intention of getting an approval for the Applicants, which would in turn allow them to conduct their business in their property.
62. The Panel notes that regulation 7(1)(a) does not use the term “advantage over another person”, or “unfair advantage”. Applying the dictionary definitions of “advantage” referred to above, it is not necessary to establish the councillor’s intention is to give a person more favourable treatment than another person. It is enough if the intention is simply to benefit the person.
63. Cr Henderson fully understood what the Applicants were seeking to achieve, and why, and decided to ask the Minister to help achieve it after they hadn’t been able to get the City’s approval.
64. The Panel is satisfied to the required standard that by writing to the Minister Cr Henderson intended to gain a benefit for the Applicants, that is, to get approval to run the stockfeed business from their property, which was in an area in which such use was not permitted. Cr Henderson sought to gain the advantage directly or indirectly – he requested the Minister to take specified action which, in Cr Henderson’s mind, would result in approval of the Application (a benefit), which

¹⁸ Sixth Edition.

¹⁹ Revised Third Edition

²⁰ *Yates and Local Government Standards Panel* [2012] WASAT 59, paragraphs 71,72.

in turn would allow them to operate the business from their property (a subsequent benefit).

65. Mr Foley complained of a breach of regulation 7. The Panel finds that Cr Henderson breached regulation 7(1)(a). It is not necessary therefore for the Panel to consider whether Cr Henderson has breached regulation 7(1)(b).

Essential elements for contravention of regulation 8(b)

66. The Panel can only find there has been a breach of this regulation if it is satisfied, to the required standard, that all these elements are met:
- Cr Henderson was a councillor at the time of the alleged breach;
 - the letterhead is a local government resource;
 - Cr Henderson directly or indirectly used the letterhead; and
 - Cr Henderson used the letterhead for a purpose that was not authorised by the Act, the Council or the CEO.
67. Cr Henderson's response to the alleged breach of regulation 8 was that he wrote the Letter in his personal capacity, not representing the Council. He cited the words "personal correspondence" and the addition of his personal website in the footer as evidence of this. He said the Letter was not "in the name of the City" – it was "personal correspondence from me, a councillor seeking direction on (a) matter."
68. Cr Henderson also said the CEO should not issue these letterheads if they are not for "personal correspondence".
69. The Panel has already found that Cr Henderson was a councillor at the time of the alleged breach and sent the Letter in his capacity as a councillor.

Did Cr Henderson use the City's resources?

70. It appears to the Panel that Cr Henderson considers correspondence in his capacity as a councillor to be "personal correspondence", and that he denies the paper with the City letterhead is a "local government resource".
71. "Resource" is defined as "a source of supply, support, or aid ... money, or any property which can be converted into money; assets ..." ²¹
72. The Panel finds that the City's letterhead is a City resource. The letterhead includes the title of the local government and its logo. It is the property of the City to be used by officers and councillors when conducting local government business.
73. The Panel finds the letterhead did not lose its character as a City resource when Cr Henderson added in the footer of his letter "Personal Correspondence" and his personal address and website.

²¹ Macquarie Dictionary, Revised Third Edition

Did Cr Henderson directly or indirectly use the letterhead?

74. Clearly Cr Henderson used the letterhead when writing to Minister Day.

Did Cr Henderson use the letterhead for a purpose that was not authorised by the Act, the Council or the CEO?

75. The Panel has already found that Cr Henderson acted improperly by writing the Letter, in contravention of the Regulations and the standards of conduct expected of councillors. The Act requires councillors to abide by the Regulations. Nothing in the Act authorises a councillor to use a local government resource for an improper purpose.
76. Although Mr Foley did not say explicitly in the Complaint Form that neither he nor the Council had authorised the use of the letterhead by a councillor in these circumstances, the only reasonable conclusion open to the Panel is that neither the Council nor Mr Foley authorised Cr Henderson to use the letterhead in a letter asking the Minister to take action that would undermine the decision of an authorised delegate of Council.
77. The Panel is satisfied to the required standard that Cr Henderson breached regulation 8.

Essential elements for contravention of regulation 9

78. Considering all the circumstances of the matter there is nothing that could lead the Panel to conclude that Cr Henderson was undertaking a task that contributed to the administration of the local government.
79. The Panel finds that Cr Henderson did not breach regulation 9.

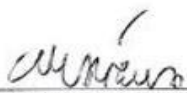
Panel's decision

80. The Panel finds that Cr Henderson breached regulations 7(1)(a) and 8(b), therefore committed two minor breaches.



Brad Jolly (Presiding Member)

|



Merranie Strauss (Member)



Rebecca Aubrey (Deputy Member)

Date of Reasons - 11 November 2016

Attachment A

The available information

Doc ID	Description	Page #
Attachment B	Statement of Facts	9
01	Copy of complaint from the City's Complaints Officer made by Mr Michael Foley, with its attachments	10
02	Copy of Department's notification letter dated 18 January 2016 to Cr Henderson	32
03	Copy of Department's letter to Cr Henderson dated 9 February 2016 requesting response to allegations (incl. Complaint Summary and Form A)	33
04	Copy of Cr Henderson's response (incl. Form A) dated 24 February 2016	37
05	Copy of Cr Henderson's letter to Minister for Planning (and covering email) dated 21 November 2015	40
06	Copy of email trail between Cr Henderson and applicant, Mr James Baxter. Includes supplied attachments	43

Attachment B

Statement of Facts

- The complaint was received by the Presiding Member of the Standards Panel on 6 January 2016.
- The Complaint is made in writing in the form approved by the Minister pursuant to section 5.107(2) of the Act and the Complaint was sent to the Complaints Officer within two years of the alleged breaches occurring, in accordance with section 5.107(4) of the Act.
- Under regulation 5, regulations 7(1), 8(b) and 9(1) are rules of conduct for the purposes of section 5.104(1). Accordingly, a contravention of regulations 7(1), 8(b) and 9(1) are minor breaches under section 5.105(1)(a).
- The Panel has jurisdiction to determine whether the breach of regulations 7(1), 8(b) and 9(1), as alleged in the Complaint, occurred.
- Councillor Henderson has been an elected member of the City Council since 17 October 2015 and his current term expires in October 2019.
- On 18 January 2016 the Department sent an acknowledgement to Cr Henderson.
- On 9 February 2016, the Department wrote to Cr Henderson putting the allegation to him and provided him with a copy of the complaint and associated material, and gave him the opportunity to provide his comments and any information he desires in relation to the allegation.
- On 26 February 2016, the Department received Cr Henderson's email response to the allegation.