

## LOCAL GOVERNMENT STANDARDS PANEL

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

Complaint Number	SP 59 of 2016 DLGC 20160192
Legislation	<i>Local Government Act 1995</i> (WA)
<b>Complainant</b>	Mr Jonathon Throssell
<b>Subject of complaint</b>	Councillor Doug Jeans
Local Government	Shire of Mundaring
Regulation	Regulations 7(1), 9(1) and 10(1)(a) of the <i>Local Government (Rules of Conduct) Regulations 2007</i> (WA)
Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Ms R Yates (Deputy Member)
Heard	31 May 2017 (Determined on the documents)
Outcome	Breach of regulation 7(1)(a) of the <i>Local Government (Rules of Conduct) Regulations 2007</i> (WA)

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### FINDINGS AND REASONS FOR FINDING

**Published 12 June 2017**

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#### DEFAMATION CAUTION

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## 1. Summary of the Panel's Decision

1.1 The Panel found that Councillor Doug Jeans:

- (a) did not commit a breach of regulation 9(1) or 10(1)(a) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (**Regulations**);
- (b) committed a breach of regulation 7(1)(a) of the *Regulations* by engaging in the conduct set out in paragraphs 7.1(k),(m) and (n) below.

## 2. Jurisdiction

- 2.1 On 16 December 2016, the Panel received from the Complaints Officer for the Shire of Mundaring (**Shire**) a complaint of minor breach dated 13 December 2016 (**Complaint**).<sup>1</sup> In the Complaint, Mr Jonathon Throssell (**Complainant**), the Shire's Chief Executive Officer (**CEO**) alleges that Cr Jeans has contravened regulations 7, 9 and 10(1)(a) of the *Regulations*.
- 2.2 On 22 December 2016, the Complainant provided the Panel with further information in support of the Complaint.<sup>2</sup>
- 2.3 The Complaint was made within two years after the alleged breaches of regulations 7, 9 and 10(1)(a) of the *Regulations* that were set out in the Complaint were alleged to have occurred.
- 2.4 The Department of Local Government and Communities (**Department**) has advised the Panel that Cr Jeans was elected as a council member on 17 October 2015 and has remained an elected member of the Shire since that time.<sup>3</sup>
- 2.5 A breach of regulation 7, 9 or 10(1)(a) of the *Regulations* is a "minor breach"<sup>4</sup> and the Panel is required to make a finding as to whether each breach occurred or to send the Complaint to the Chief Executive Officer of the Department under section 5.111 of the *Local Government Act 1995* (WA) (**LG Act**).
- 2.6 The Panel finds that the Complaint was made and has been dealt with in accordance with the requirements of Division 9 of the *LG Act*, that the Complaint is not one that should be dealt with under section 5.111 and that the Panel has jurisdiction to determine whether the breaches 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 Australia;<sup>5</sup> 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, the finding is to be "based on evidence from which it may be concluded that it is more likely

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<sup>1</sup> Document 1 of Attachment "A".

<sup>2</sup> Document 2 of Attachment "A".

<sup>3</sup> Attachment "B".

<sup>4</sup> *LG Act*, s 5.104 and s 5.105(1).

<sup>5</sup> Clause 8(6) of Schedule 5.1 of the *LG Act*.

that the breach occurred than that it did not occur”<sup>6</sup> (**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 Panel considered the following documents:

- (a) the documents set out in Attachment “A”;
  - (b) Attachment “B”, being a “Statement of Particulars” prepared by the Department.
- (collectively, the **Documents**)

#### 5. The Complaint

5.1 The Complaint alleges that:

- (a) Prior to 2 December 2016, a resident of the Shire (**Resident**) made a request under the *Freedom of Information Act 1992* (WA) (**FOI Act**) seeking documents. The Shire made a decision not to release certain documents (**Restricted Documents**) under the FOI Act as such release could breach copyright and privacy;
- (b) The Resident arranged with Ms Danielle Courtin, Governance Coordinator with the Shire, to visit the Shire administration building on 2 December 2016 to inspect the Restricted Documents;
- (c) On 2 December 2016:
  - (i) At around 11 am, the Resident attended the Shire administration office. Cr Jeans also attended at this time, stating to Ms Courtin that his role was as a ‘support person’ for the Resident;
  - (ii) About 11.15 am, following an initial look at the Restricted Documents, Cr Jeans ‘asked Ms Courtin to leave the room’;
  - (iii) Ms Courtin left the room and spoke with Mr Paul O’Connor, the Director Corporate Services. Ms Courtin told Mr O’Connor that ‘she had informed [the Resident] and Cr Jeans that the [Restricted Documents] were for viewing only and could not be copied’;

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<sup>6</sup> *LG Act*, s 5.106.

- (iv) While Cr Jeans and the Resident were the only persons present in the room with the Restricted Documents, the Resident took pictures of the Restricted Documents using a smartphone. Cr Jeans was aware that the Resident was taking images of the Restricted Documents and on at least one occasion, checked the photograph on the smartphone the Resident was using;
  - (v) At about 12 noon, Ms Courtin informed Mr O'Connor that she '*had been asked to return to the interview room to answer some questions*'. Mr O'Connor and Ms Courtin returned to the room with the Restricted Documents and spoke with Cr Jeans and the Resident;
  - (vi) The meeting concluded about 12.10 pm.
- 5.2 Further, the Complaint alleges that, in attending the Shire's administration building on 2 December 2016, in the circumstances described in paragraph 5.1(c) above, Cr Jeans acted improperly and that he did so in contravention of regulation 7(1) of the *Regulations*.
- 5.3 Further, the Complaint alleges that in the circumstances described in paragraph 5.1(c) above, Cr Jeans breached regulation 9(1) of the *Regulations* in that he undertook a task that contributes to the administration of the Shire.
- 5.4 Further, the Complainant alleges that in the circumstances described in paragraph 5.1(c) above, Cr Jeans breached regulation 10(1)(a) of the *Regulations* in that he directed or attempted to direct a local government employee.

## **6. The Response**

- 6.1 On 10 February 2017, the Department provided Cr Jeans with a copy of the Complaint and gave him an opportunity to provide comments and any information he desired in relation to the allegations of breach of regulations 9 and 10(1)(a) of the *Regulations*.<sup>7</sup>
- 6.2 On 22 March 2017 Cr Jeans provided his response to the Panel.<sup>8</sup>
- 6.3 On 8 May 2017, the Department provided Cr Jeans with a copy of the Complaint and gave him an opportunity to provide comments and any information he desired in relation to the allegations of breach of regulation 7(1) of the *Regulations*.<sup>9</sup>
- 6.4 On 19 May 2015, Cr Jeans provided his response to the Panel.<sup>10</sup>
- 6.5 In his responses to the Complaint, Cr Jeans:
- (a) denies that he:
    - (i) committed any breach of the *Regulations*;
    - (ii) directed Ms Courtin to leave the meeting room;
  - (b) admits that:

<sup>7</sup> Document 3 of Attachment "A".

<sup>8</sup> Document 4 of Attachment "A".

<sup>9</sup> Document 5 of Attachment "A".

<sup>10</sup> Document 6 of Attachment "A".

- (i) he was acting in his role as a councillor when accompanying the Resident to view the Restricted Documents on 2 December 2016;
  - (ii) he knew that the Restricted Documents were '*subject to copyright*';
  - (iii) when he and the Resident were in the meeting room, in the absence of Ms Courtin, the Resident used her mobile phone to take images of the Restricted Documents and that he viewed those images;
- (c) Says that:
- (i) he accompanied the Resident to view the Restricted Documents after receiving a request from her to do so at approximately 9.30 am on 2 December 2016;
  - (ii) after receiving the request from the Resident, he notified the Manager of Building and Health Service to advise him that he would be attending with the Resident;
  - (iii) he '*indicated to Mrs Courtin that "Due to the number of pages (approx. 100) that it could take some time to read through all the FOI documents". Mr Courtin replied "that was OK and that she could leave the room and then suggested that the Resident could ask someone at the Admin Reception desk to contact her (Ms Courtin) to return to the meeting room"*';
  - (iv) the Resident '*used her mobile phone to 'photographically enlarge' the document to try and determine the content of the document*' because some of the Restricted Documents '*were of such poor quality*';
  - (v) the Resident did not take images of the entirety of any of the Restricted Documents, but only specific parts of them, '*to determine the actual contour values and measurements*';
  - (vi) he viewed the images of parts of the Restricted Documents on the Resident's mobile phone '*to see if I could determine the actual content of these documents*';
  - (vii) the Resident asked Ms Courtin, when she returned to the room, if '*better quality*' documents could be provided;
  - (viii) Ms Courtin sent an email to the Resident the week after 2 December 2016 '*with the requested documents*'.

## 7. Findings of fact

7.1 Having reviewed the Documents, the Panel is satisfied, to the Required Standard, that:

- (a) On 24 November 2016, the Resident made an application to the Shire under the FOI Act for permission to access plans and other documents relating to a property at 1375 Stoneleigh Road, Stoneville (**FOI Request**);<sup>11</sup>
- (b) On 1 December 2016, in response to the FOI Request, the Shire made a decision under the FOI Act to:
  - (i) release copies of some of documents that were the subject of the FOI Request to the Resident;
  - (ii) to give the Resident permission to view the Restricted Documents, on the express condition that the Restricted Documents could not be copied;<sup>12</sup>
- (c) The Shire made the decision set out in paragraph (b)(ii) above because the copying of the Restricted Documents could breach copyright and privacy;<sup>13</sup>
- (d) At 4 pm on 1 December 2016, Mrs Courtin, on behalf of the Shire, telephoned the Resident and arranged with the Resident that she would view the Restricted Documents at Interview Room No. 1 at the Shire's administration buildings (the **Room**) on 2 December 2016 at 11 am;<sup>14</sup>
- (e) At approximately 9.30 am on 2 December 2016, the Resident telephoned Cr Jeans and asked him to attend the Shire's administration building with her to provide support in her husband's absence;<sup>15</sup>
- (f) At approximately 10.45 am on 2 December 2016, Cr Jeans telephoned the Manager of Building and Health Services to advise that he would be attending with the Resident;<sup>16</sup>
- (g) Cr Jeans knew that the Resident had made the FOI Request and that the purpose of the meeting at the Shire on 2 December 2017 was for the Resident to receive documents resulting from the FOI Request;<sup>17</sup>
- (h) At approximately 11.07 am on 2 December 2016, Ms Courtin took the Resident and Cr Jeans to the Room. When in the Room, Ms Courtin gave the Resident the Shire's notice of decision under the FOI Act with certain documents attached, which the Resident could take home. Ms Courtin laid out the Restricted Documents on the table in front of the Resident and Cr Jeans;<sup>18</sup>

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<sup>11</sup> Documents 2(a) and 2(f) of Attachment "A".

<sup>12</sup> Documents 1, 2(a) and 2(f) of Attachment "A".

<sup>13</sup> Document 1 of Attachment "A".

<sup>14</sup> Document 2(a) of Attachment "A".

<sup>15</sup> Document 6 of Attachment "A".

<sup>16</sup> Documents 2(i) and 4 of Attachment "A".

<sup>17</sup> Documents 2(i) and 6 of Attachment "A".

<sup>18</sup> Documents 2(a) and 2(c) of Attachment "A".

- (i) At approximately 11.12 am, Cr Jeans spoke to Ms Courtin and she left the Room with the Restricted Documents set out on the table in front of the Resident and Cr Jeans, who were seated next to each other;<sup>19</sup>
- (j) At approximately, 11.15 am, the Resident took out a mobile phone from her handbag (**Phone**) and commenced taking images of a page of the Restricted Documents using the Phone;<sup>20</sup>
- (k) At approximately 11.16 am, Cr Jeans observed the Resident's conduct, held the Phone, examined the image on it and then returned the Phone to the Resident after a period of approximately 30 seconds;<sup>21</sup>
- (l) The Resident continued to sporadically take images of various pages of the Restricted Documents for approximately 20 minutes, on occasion standing to take the images;<sup>22</sup>
- (m) During that period of approximately 20 minutes, Cr Jeans continued to provide support to the Resident, remaining seated next to the Resident and, on occasion, interacted with the Resident, actively observed her conduct and looked at the images the Resident had taken with the Phone;<sup>23</sup>
- (n) At approximately 11.39 am, the Resident intermittently swiped through the images taken with her Phone over a period of about 3 minutes. Cr Jeans actively observed this conduct;<sup>24</sup>
- (o) At approximately 11.49 am, the Resident returned the Phone to her handbag;<sup>25</sup>
- (p) At approximately noon, the Resident left the Room and asked for Ms Courtin to return. Ms Courtin and Mr O'Connor entered the Room and were asked by Cr Jeans and the Resident to provide clearer versions of some of the Restricted Documents. Ms Courtin and Mr O'Connor agreed to search for those;<sup>26</sup>
- (q) The Resident and Cr Jeans departed the Room at approximately 12.07 pm. The Resident took her handbag, containing the Phone, with her.<sup>27</sup>

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<sup>19</sup> Document 2(a) and 4 of Attachment "A".

<sup>20</sup> Document 2(c) of Attachment "A".

<sup>21</sup> Document 2(c) of Attachment "A".

<sup>22</sup> Document 2(c) of Attachment "A".

<sup>23</sup> Document 2(c) of Attachment "A".

<sup>24</sup> Document 2(c) of Attachment "A".

<sup>25</sup> Document 2(c) of Attachment "A".

<sup>26</sup> Documents 2(a), 2(b), 2(c) and 6 of Attachment "A".

<sup>27</sup> Documents 2(a), 2(b), 2(c) and 6 of Attachment "A".

## 8. Alleged contravention of regulation 9(1)

8.1 In the Panel's view, the following elements must be established, to the Required Standard, before a contravention of regulation 9(1) of the *Regulations* is established:

- (a) firstly, that the person the subject of the Complaint engaged in the alleged conduct;
- (b) secondly, that the person the subject of the Complaint was a council member both at the time of the alleged conduct and the time when the Panel makes its determination;
- (c) thirdly, that the alleged conduct involved the person participating in the performance, attempted performance, or part-performance, of a function or responsibility which under the *LG Act* or by delegation it is for the local government's CEO to perform or direct<sup>28</sup> (**Function**);
- (d) fourthly, that by so acting the person contributed to that Function (in the sense of played a part in its achievement<sup>29</sup>); and
- (e) fifthly, that the alleged conduct was not authorised by the Council or the CEO or undertaken as part of the person's deliberations at a council or committee meeting.

8.2 The Panel is satisfied that the first, second and fifth elements are satisfied in that:

- (a) Cr Jeans engaged in the alleged conduct, in that on 2 December 2016, he observed and supported the Resident when she made a copy of portions of the Restricted Documents by taking images of them on the Phone;
- (b) Cr Jeans was a council member of the Shire on 2 December 2016 and engaged in the conduct in his capacity as a Shire member;
- (c) Cr Jeans did not engaged in the conduct as a part of the deliberations at a council or committee meeting and, prior to Cr Jeans engaging him the conduct, neither the council nor the CEO authorised Cr Jeans to engage in that conduct.

8.3 However, the Panel finds that the third and fourth elements are not satisfied in that:

- (a) The decision as to whether the Resident was permitted to have a copy the Restricted Documents (whether in whole or in part) was a responsibility of the CEO of the Shire, or his delegate;<sup>30</sup>

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<sup>28</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59 (30 March 2012) [48] – [49], [53]–[54] (Sharp J).

<sup>29</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59, [56] (Sharp J).

<sup>30</sup> *Freedom of Information Act 1992* (WA), s 100; *Local Government Act 1995* (WA), ss 5.41(h), 5.41(i).



- (b) Cr Jeans did not have the authority or delegated authority under the FOI Act to give permission to the Resident to receive a copy of a portion of the Restricted Documents;
  - (c) The effect of Cr Jeans' conduct was not to give the Resident authority from the Shire to copy a portion of the Restricted Documents.
- 8.4 The Panel therefore finds that Cr Jeans did not breach regulation 9(1) of the *Regulations*.
- 9. Alleged contravention of regulation 10(1)(a)**
- 9.1 In the Panel's view, the following elements must be established, to the Required Standard, before a contravention of regulation 10(1)(a) of the *Regulations* is established:
  - (a) firstly, that the person the subject of the Complaint engaged in the alleged conduct;
  - (b) secondly, that the person the subject of the Complaint was a council member both at the time of the alleged conduct and the time when the Panel makes its determination;
  - (c) thirdly, that the person gave or tried or made an effort to give a direction or an order or command (**Direction**);
  - (d) fourthly, that the Direction was given to another person, who was an employee of his or her local government;
  - (e) fifthly, the Direction was to do or not do something in the other person's capacity as a local government employee; and
  - (f) the Direction was not part of anything the person did as part of the deliberations at a council or committee meeting (which may include something he or she did as a part of his or her preparation for any such deliberation).
- 9.2 In relation to the first element, the alleged conduct of Cr Jeans is that he gave a direction to Ms Courtin, which resulted in her leaving the Room at approximately 11.12 am on 2 December 2016. The Panel notes that:
  - (a) it has not been provided with a contemporaneous recording of the conversation between Ms Courtin and Cr Jeans;
  - (b) there is a difference in the recollection of Ms Courtin and Cr Jeans as to the words that were spoken by Cr Jeans;
  - (c) Ms Courtin does not set out in her statement the precise words used by Cr Jeans, but states that the substance of those words were that Cr Jeans '*asked me to leave the room so that he and [the Resident] could have a thorough look through the documents and have a discussion. He said that they would call me when they were ready*' (**Statement**);<sup>31</sup>

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<sup>31</sup> Document 2(a) of Attachment "A".

- (d) Cr Jeans emphatically denies asking Ms Courtin to leave the Room.<sup>32</sup>
- 9.3 Even if the Panel were to accept the evidence of Ms Courtin, the Panel could not be satisfied that the third element has been established. Cr Jeans did not make a Direction to an employee of the Shire, because:
  - (a) the Macquarie Dictionary definition of the term 'direct' includes 'to give authoritative instructions to', 'to command; order or ordain';<sup>33</sup>
  - (b) the Statement was consistent with Cr Jeans encouraging or persuading Ms Courtin to leave the Room, but fell short of amounting to a direction or command or an attempt to do so.
- 9.4 If Cr Jeans did not make a Direction to Ms Courtin, the elements that must be established for a contravention of regulation 10(1)(a) of the *Regulations* cannot be satisfied.
- 9.5 Therefore, the Panel finds that Cr Jeans did not commit a breach of regulation 10(1)(a) of the *Regulations* as alleged.
- 10. Alleged contravention of regulation 7(1)**
- 10.1 Where, as here, the alleged conduct is not conduct that contravenes s 5.93 of the *LG Act* or s 83 of *The Criminal Code*, the following elements must be established, to the Required Standard, before a contravention of regulation 7(1) of the *Regulations* is established:
  - (a) first, it must be established that the person the subject of the Complaint engaged in the alleged 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;
  - (c) thirdly, it must be established that by engaging in the conduct, the person the subject of the complaint made use of his or her office as a council member (in the sense that he or she acted in their capacity as a councillor, rather than in some other capacity);
  - (d) fourthly, that when viewed objectively<sup>34</sup>, such use was an improper use of the person's office as council member in that it:
    - (i) involved a breach of the standards of conduct that would be expected of a person in the position of a councillor by reasonable persons with knowledge of the duties, powers and authority of the councillor and the circumstances of the case (by for example, an abuse of power or the doing of

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<sup>32</sup> Document 4 of Attachment "A".

<sup>33</sup> *Macquarie Dictionary Online* (2016, Macquarie Dictionary Publishers Pty Ltd) <[www.macquariedictionary.com.au](http://www.macquariedictionary.com.au)>.

<sup>34</sup> That is, when viewed by a reasonable person (i.e. a hypothetical person with an ordinary degree of reason, prudence, care, self-control, foresight and intelligence, who knows the relevant facts).

an act which the councillor knows or ought to have known that he or she had no authority to do);<sup>35</sup> and

- (ii) was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty;<sup>36</sup> and
- (e) fifthly, that the person engaged in the conduct in the belief that:
  - (i) for a breach of regulation 7(1)(a), the person or another person would directly or indirectly gain an advantage; or
  - (ii) for a breach of regulation 7(1)(b), detriment would be suffered by the local government or another person.

10.2 The Panel is satisfied that Cr Jeans engaged in the conduct alleged in the Complaint that is the subject of the Panel's findings set out in paragraphs 7.1(k), (m) and (n) above (**Conduct**).

10.3 On the evidence before the Panel, it is satisfied that:

- (a) on 2 December 2016 Cr Jeans was a council member and continues to be so;
- (b) Cr Jeans engaged in the Conduct in his capacity as a council member.

The Panel is, therefore, satisfied to the Required Standard that the second and third elements have been established.

10.4 The Panel is satisfied to the Required Standard on the evidence before it that the fourth element has been established, in that:

- (a) it was within the role of Cr Jeans as an elected member to provide support to a ratepayer of the Shire.<sup>37</sup> However, a councillor's responsibility to his or her constituents is subject to the councillor's duty to abide by the provisions of the *LG Act* and *Regulations*, the fiduciary obligations owed to the local government as a whole and the procedures and decisions of his or her local government;
- (b) the Shire had made a decision as to the level of access the Resident was permitted to the Requested Documents under the FOI Act;
- (c) at the time Cr Jeans engaged in the Conduct, the Shire's decision was that the Requested Documents were not to be copied;
- (d) prior to engaging in the Conduct, Cr Jeans knew that:
  - (i) the Shire had made a decision in response to the FOI Request;
  - (ii) the purpose of the Resident attending at the Shire's administration building was in response to the Shire's decision;

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<sup>35</sup> *Treby and Local Government Standards Panel* [2010] WASAT 81 (11 June 2010), [26] – [33]

<sup>36</sup> *Hipkins and Local Government Standards Panel* [2014] WASAT 48 (22 April 2014), [9].

<sup>37</sup> See, eg, *Hipkins and Local Government Standards Panel* [2014] WASAT 48 (28 January 2014).

- (iii) as a result of the Shire's decision, the Restricted Documents could only be viewed at the Shire's administration building and they were not to be copied;
    - (e) Cr Jeans had available to him in the Room, at the time of engaging in the Conduct, a copy of the Shire's notice of decision in response to the FOI Request;
    - (f) by engaging in the Conduct, Cr Jeans provided support to the Resident when she was acting contrary to an express decision of the Shire of which he was aware.
- 10.5 The Panel is satisfied to the Required Standard that the fifth element has been established for a breach of regulation 7(1)(a) of the *Regulations*, in that the Panel is satisfied that Cr Jeans engaged in the Conduct to gain an advantage for the Resident in that:
- (a) the Resident obtained a copy of a portion of the Restricted Documents by taking images of them on the Phone. In so doing, the Resident acquired something that she was not permitted to have at the time the Conduct was engaged in. The acquisition of a copy of a portion of the Restricted Documents constituted an advantage to the Resident;
  - (b) there is no evidence that Cr Jeans attempted to stop the Resident from taking the images of a portion of the Restricted Documents;
  - (c) Cr Jeans states that the reason that he engaged in the Conduct was to '*determine the actual content of the documents*', because '*Some of the documents were of such poor quality*' that the Resident could not '*determine the actual contour values and measurements*'. Cr Jeans has identified three documents that were the subject of this concern;<sup>38</sup>
  - (d) the Panel considers that Cr Jeans' evidence is contrary to the totality of the evidence of the observed conduct of the Resident and Cr Jeans in the Room<sup>39</sup>, which included:
    - (i) the Resident taking images with the Phone of various pages of the Restricted Documents sporadically over a period of approximately 20 minutes;
    - (ii) neither the Resident, nor Cr Jeans, leaving the Room over that period of 20 minutes to inform a Shire employee that they had attempted to use the Phone to take images of the Restricted Documents because of difficulties they had experienced in the first 3 minutes of examining them; and
    - (iii) the Resident removing the Phone from her handbag approximately 3 minutes after Ms Courtin left the Room, leaving it on the table or holding it while she and Cr Jeans were together in the Room but returning it to her handbag prior to Ms Courtin re-entering the Room;

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<sup>38</sup> Documents 4 and 5 of Attachment "A".

<sup>39</sup> Document 2(c) of Attachment "A".

- (e) no explanation is provided by Cr Jeans for the totality of the Conduct;
- (f) the Panel considers that the only reasonable inference which is open on the consideration of all of the evidence before it, is that, by engaging in the Conduct, Cr Jeans intended to gain an advantage for the Resident.

10.6 For these reasons the Panel finds that Cr Jeans committed a breach of regulation 7(1)(a) of the *Regulations* by engaging in the Conduct.



Brad Jolly (Presiding Member)



Paul Kelly (Member)



Rachel Yates (Deputy Member)

Date of Decision – 12 June 2017

### Attachment “A”

<b>Doc ID</b>	<b>Description</b>
Document 1	Copy of complaint of Minor Breach dated 13 December 2016 made by Mr Jonathon Throssell.
Document 2	<p>Copy of letter dated 22 December 2016 from Mr Throssell providing further information and attachments:</p> <ul style="list-style-type: none"> <li>(a) witness statement – Danielle Courtin;</li> <li>(b) witness Statement – Paul O’Connor;</li> <li>(c) copy of CCTV footage of meeting with the Resident and Cr Jeans (2 December 2016);</li> <li>(d) copy of Shire President’s letter to Cr Jeans dated 19 December 2016 in response to Cr Jean’s letter of 15 December 2016;</li> <li>(e) copy of Cr Jeans’ letter of 15 December 2016 concerning his involvement;</li> <li>(f) copy of CEO’s letter to the Resident dated 13 December 2016 regarding the copying of plans;</li> <li>(g) copy of email from McLeods dated 12 December 2016 outlining advice to Shire and draft letter to the Resident regarding the copying of plans;</li> <li>(h) copy of CEO file note dated 5 December 2016 regarding a telephone conversation with Cr Jeans;</li> <li>(i) copy of Manager Building and Health Services’ file note dated 2 December 2016 with Cr Jeans.</li> </ul>
Document 3	Copy of request for comments letter from the Department to Cr Jeans dated 10 February 2017.
Document 4	Copy of Cr Jeans’ response to the Department dated 15 March 2017.
Document 5	File copy of request for comments letter from the Department to Cr Jeans sent on 8 May 2017.
Document 6	Copy of Cr Jeans’ response to the Department dated 19 May 2015.
Document 7	Letter from the Department to Mr Throssell dated 2 February 2017
Document 8	Letter from Mr Throssell to the Department dated 4 May 2017

## Attachment “B”

### STATEMENT OF PARTICULARS

- The complaint was received by the Presiding Member of the Local Government Standards Panel on 16 December 2016.
- The Complaints Officer complied with his obligations under section 5.107(3) of the *Local Government Act 1995* (WA) (**LG Act**) and the complaint was made in writing in the form approved by the Minister pursuant to section 5.107(2).
- The complaint was sent to the Complaints Officer within two years after the breaches alleged in it occurred, as required by section 5.107(4).
- Regulations 7(1), 9(1) and 10(1)(a) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (**Regulations**) are each rules of conduct for the purposes of section 5.104(1). Accordingly, a contravention of regulation 7(1), 9(1) and/or 10(1)(a) is a minor breach under section 5.105(1)(a) of the *LG Act*.
- Cr Jeans was elected to Council on 17 October 2015.
- At the time of the alleged contravention of the *Regulations*, Cr Jeans was an elected member of the Shire of Mundaring and continues to be so.
- On 10 February 2017 and 8 May 2017 the Department advised Cr Jeans of the complaint and provided him with an opportunity to provide his comments and any information he desires in relation to the allegation contained within.
- On 22 March 2017 and 19 May 2017 Cr Jeans provided a response to the allegations.