

Decision-maker's Title: **LOCAL GOVERNMENT STANDARDS PANEL**
Jurisdiction: Complaints of minor breach by local government council members
Act: *Local Government Act 1995*
File No/s: SP 19 of 2008 (DLGRD 20080087)
Heard: Determined on the documents
Considered: 18 July 2008
Coram: Mr Q. Harrington (Presiding Member)
Councillor C. Robartson (Member)
Mr J. Lyon (Member)

SP 19 of 2008

Complainant: Peter CRAWFORD

Council member complained about: Councillor James Dino MAZZA

Finding

The Panel finds that, for the following reasons, Councillor Mazza has committed a breach of regulation 6(2)(b).

Reasons for finding

1. In these Reasons unless otherwise indicated:
 - (a) a reference to a section is a reference to the corresponding section in the *Local Government Act 1995*; and
 - (b) a reference to a regulation or a sub-regulation is a reference to the corresponding regulation or sub-regulation in the *Local Government (Rules of Conduct) Regulations 2007*.
2. The complainant, Mr Crawford, was at the time of making his complaint the complaints officer and Chief Executive Officer ("CEO") of the Shire of Menzies.
3. The complaint consists of a 3-page *Complaint of Minor Breach*. Under the complaint, Mr Crawford alleges that:
 - (a) on 28 or 29 February 2008 Councillor Mazza disclosed confidential Council information, that Councillor Mazza acquired at a closed part of the Shire's Ordinary Council Meeting held on 28 February 2008 ("the OCM"), to Mr Lloyd Lansdown, the Shire's Road Crew Leading Hand;
 - (b) the information so disclosed ("the relevant information") was that: *Brad Pepper had resigned from being the Shire's Deputy Chief Executive Officer.*; and
 - (c) Councillor Mazza's conduct in making the disclosure was a breach of sub-regulation 6(2)(b) and a breach of regulation 7(1)(b).

In these Reasons unless otherwise indicated a reference to "the allegation" is a reference to this allegation.

4. The Panel Administration sent to Councillor Mazza a Panel *Notice of Complaint* dated 26 May 2008 containing a copy of the complaint, a statement of the allegation and an invitation to Councillor Mazza to respond to the allegation within 21 days, and a *Notice of Admission* and a *Notice of Denial* in regard to the two alleged minor breaches. The Panel and the Panel Administration have not received any response from Councillor Mazza in relation to the Panel *Notice of Complaint*.

5. The minutes of the OCM record that a part of the meeting, from 3.29 pm to 3.40 pm, was closed to members of the public ("the closed meeting part").

6. In the complaint Mr Crawford says, inter alia, that:

- (a) during the closed meeting part, in his capacity as the CEO, he advised the Council members that:
 - (i) he had just received the resignation of Mr Brad Pepper ("Mr Pepper"), the Shire's Deputy Chief Executive Officer ("DCEO");
 - (ii) he had a very slim chance of getting Mr Pepper to retract his resignation and needed every bit of luck to make this chance work; and
 - (iii) until they (the Council members) had heard further from him, the matter was to be kept "extremely confidential" and not divulged to any other person under any circumstances; and
- (b) on 29 February 2008 he was advised by Mr Pepper that:
 - (i) he (Mr Pepper) had been told by Carol McAllan (the Shire's Customer Services Officer) that Quentin Seinor (the Shire's Depot Services Manager) had told her that Mr Lansdown had told him (Mr Seinor) that Mr Pepper had resigned;
 - (ii) Mr Lansdown had told Mr Seinor that Councillor Mazza had told him (Mr Lansdown) about Mr Pepper's resignation; and
 - (iii) he (Mr Pepper) was extremely annoyed at this news, and if that was the way that Councillors treated confidential business in Council, then he wanted no part of the organization and that his resignation was confirmed.

7. The Panel notes that on 8 May 2008 Mr Crawford advised the Panel Administration that Mr Pepper had withdrawn his resignation and remained the Shire's DCEO.

8. At the request of the Panel Administration, Mr Crawford (in his capacity as the Shire's complaints officer) sought and has provided the Panel with written accounts of events from each of Mr Lansdown, Mr Seinor and Ms McAllan.

9. On the basis of the information in the complaint and these written accounts of events, it is the Panel's view that there is evidence from which it may be concluded that it appears more likely than not that Cr Mazza:

- (a) was a Council member as at 28 and 29 February 2008;
 - (b) attended at the OCM and, during a closed part of the OCM, aurally acquired the relevant information from the CEO; and
 - (c) disclosed the relevant information to Mr Lansdown at Woolworths, Kalgoorlie at some time on 29 February 2008 prior to 4.00 pm;
- and accordingly the Panel considers these circumstances to be the relevant facts in this matter.

10. Regulation 7 is a rule of conduct under section 5.104(1) and, in accordance with section 5.105(1)(a), a contravention of regulation 7(1) is a minor breach. Regulation 7(1)(b) reads:

“A person who is a council member must not make improper use of the person’s office as a council member:

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(b) to cause detriment to the local government or any other person.”

11. Regulation 7 is a purposive provision – that is, the Council member must have made an improper use *for the purpose* (motive or intent) of gaining an advantage or causing a detriment. See the case of *Chew v R* [1992] HCA 18. On the available information there is no evidence that indicates that Councillor Mazza had any such purpose in mind when he was talking with Mr Lansdown on 29 February 2008 at Woolworths, Kalgoorlie. Accordingly, the Panel finds that Councillor Mazza did not commit a breach of regulation 7(2).

12. Regulation 6 is a rule of conduct under section 5.104(1) and, in accordance with section 5.105(1)(a), a contravention of regulation 6(2) is a minor breach. Regulations 6(1) and 6(2)(b) read:

“(1) In this regulation:

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

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

“non-confidential document” means a document that is not a confidential document.

(2) A person who is a council member must not disclose:

(b) information that the council member acquired at a closed meeting other than information derived from a non-confidential document.”

By virtue of sub-regulation 6(3), sub-regulation 6(2) does not prevent a council member from disclosing information that is already in the public domain.

13. The Panel notes that:

- (a) by virtue of section 5.94 a person can attend the office of a local government and, unless it would be contrary to section 5.95, inspect certain described information;
- (b) by virtue of regulation 29A(2) of the *Local Government (Administration) Regulations 1996* (“the Administration Regulations”), information referred to in section 5.94 which deals with anything in respect of which a meeting has been closed under section 5.23, is prescribed as information that is confidential but that, under section 5.95(7), may be available for inspection (by any person) if a local government so resolves; and
- (c) Regulation 29A(2) of the Administration Regulations is consistent with regulation 6 as sub-regulation 6(2)(b) also recognises that the “information” is Council’s information, and not the information of any one or more of the Councillors.

14. In the Panel's view, in the context of confidentiality obligations the term "in the public domain" means "public knowledge".

15. In the Panel's view, as a consequence of sections 5.23, 5.94 and 5.95, regulations 29 and 29A of the Administration Regulations and regulation 6, and the meaning of the term "in the public domain", the information in relation to a closed part of a Council meeting that by virtue of regulation 6 a Councillor is *not* permitted to disclose publicly (including to any elector or ratepayer) is:

- (a) any information in a document marked by (or on behalf of) the CEO to clearly show that the information in the document is not to be disclosed, except for any information that is public knowledge at the time of the Councillor's disclosure;
- (b) anything said during the closed part of the meeting, except for:
 - (i) so much of what is said that is public knowledge at the time of the Councillor's disclosure; and
 - (ii) otherwise, only to the extent specified by Council and subject to such other conditions as Council determines; and
- (c) any information referred to in section 5.94 which deals with anything in respect of which a meeting has been closed under section 5.23, except for such of that information that Council has resolved be available for inspection.

16. In the Panel's view the relevant information was information that:

- (a) Councillor Mazza acquired at a closed meeting other than information derived from a non-confidential document;
- (b) was not information in the public domain;
- (c) Council had not resolved be available for inspection by any person; and
- (d) more likely than not was disclosed by Councillor Mazza to Mr Lansdown at Woolworths, Kalgoorlie at some time on 29 February 2008 prior to 4.00 pm.

17. For these reasons, the Panel finds that Councillor Mazza has committed a breach of regulation 6(2)(b).

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Quentin Harrington (Presiding Member)

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Clive Robartson (Member)

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John Lyon (Member)

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File No/s: SP 19 of 2008 (DLGRD 20080087)
Heard: Determined on the documents
Considered: 18 July 2008 and 2 October 2008
Coram: Mr Q. Harrington (Presiding Member)
Councillor C. Robartson (Member)
Mr J. Lyon (Member)

SP 19 of 2008

Complainant: Peter CRAWFORD

Council member complained about: Councillor James Dino MAZZA

Local Government: Shire of Menzies

Decision:

The Panel has made a finding ("the finding") that Councillor Mazza committed a breach of regulation 6(2)(b) of the *Local Government (Rules of Conduct) Regulations 2007* ("the breach") by disclosing information that he acquired during a closed part of a Council meeting.

The Panel's decision on how the breach is dealt with under section 5.110(6) of the *Local Government Act 1995* ("the Act") is that pursuant to paragraph (c) of section 5.110(6) of the Act it orders two of the sanctions described in paragraph (b) of section 5.110(6) of the Act, as set out in the attached Minute of Order.

REASONS FOR DECISION

1. The Panel has given to Councillor Mazza:
 - (a) notice of the finding;
 - (b) a copy of the Panel's written *Reasons for Finding* in regard to the finding; and
 - (c) a reasonable opportunity for him to make submissions about how the breach should be dealt with under s 5.110(6) of the Act.
2. Councillor Mazza has not made any such submissions.
3. The Panel notes that it has found that the information wrongly disclosed by Councillor Mazza ("the relevant information") was: "*Brad Pepper had resigned from being the Shire's Deputy Chief Executive Officer.*"
4. Although the Panel has been advised that Mr Pepper subsequently "withdrew" his resignation, the Panel notes that had he not done so the likely consequences, as described in the complaint, included:

- (a) the Shire would have lost Mr Pepper's services, due in part to Councillor Mazza's wrongful disclosure of the relevant information; and
 - (b) the Shire would have faced difficulty and expense in engaging someone else to replace Mr Pepper.
- 5. Councillor Mazza has not previously been found under Part 5 Division 9 of the Act to have committed any minor breach.
- 6. Having regard to the said *Reasons for Finding*, the above matters and the general interests of local government in Western Australia, the Panel's decision in this matter is that pursuant to paragraph (c) of section 5.110(6) of the Act it orders two of the sanctions described in paragraph (b) of section 5.110(6) of the Act, as set out in the attached Minute of Order. Two sanctions are ordered due to the seriousness of the potential consequences to the Shire when Councillor Mazza breached his duty of confidence in this matter. He ought to be admonished by the Panel and also ordered to publicly apologise to the other Shire members.

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Quentin Harrington

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Clive Robartson

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John Lyon

NOTICE TO THE PARTIES TO THE COMPLAINT/S

RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (“the Decision-maker”) hereby gives notice that:

- (1) Under section 5.125 of the Local Government Act 1995 the person making a complaint and the person complained about each have the right to apply to the State Administrative Tribunal (“SAT”) for a review of the Panel’s decision in this matter. *In this context “decision” means a decision to dismiss the complaint or to make an order.*
- (2) Generally, an application to SAT under its review jurisdiction must be made within 28 days of the day on which the Decision-maker gives a notice under subsection 20(1) the *State Administrative Tribunal Act 2004* (“SAT Act”).
- (3) The Decision-maker’s *Reasons for Finding* and these *Reasons for Decision* constitute the Decision-maker’s notice given under subsection 20(1) of the SAT Act.