

Councillor Conduct Tribunal: Inappropriate conduct complaint investigation and recommendation response to Council

Local Government Act 2009: Sections 150K, 150W, 150W, 150AC, 150AD, 150AE and 150DL

1. Complaint:

CCT Reference	F20/6296
Date of request from Council	13 August 2020
Subject councillor	Councillor [REDACTED]
Referring Council	South Burnett Regional Council
Complainant	[REDACTED]
Allegations	It is alleged that on 2 June 2020, Councillor [REDACTED] contacted [REDACTED] and disclosed personal conversations and the contents of a private email about [REDACTED] [REDACTED] had sent to [REDACTED]. It is alleged that the information was private and that [REDACTED] did not give [REDACTED] permission to disclose it. It is alleged that the disclosure by Cr [REDACTED] was in contravention of s150K(1)(a) of the <i>Local Government Act 2009</i> , in that it breached the Code of Conduct for Councillors in Queensland – Standard of Behaviour.

2. Tribunal Member:

Tribunal Member	[REDACTED] ¹
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¹ This Tribunal member was nominated by the President of the Tribunal under s150DL(2) of the *Local Government Act 2009* to constitute the Tribunal to perform the functions mentioned in s150DL(1)(a) for the particular request made to the Council.

3. Conflict of interests disclaimer/declaration (s.150DT)

Having reviewed the material provided, the Tribunal Member confirmed that he/she did not have a real or perceived conflict of interest in proceeding to investigate the complaint.

4. Outcome of investigation:

Date	15 December 2020
Outcome	<ol style="list-style-type: none">1. The Tribunal has investigated the suspected inappropriate conduct referred by the local government to the Tribunal on 13 August 2020.2. Section 150DL(1)(a)(ii) states that the Tribunal is to make recommendations to the local government about dealing with the conduct.3. There is insufficient evidence to prove, on the balance of probabilities that the alleged conduct, amounts to inappropriate conduct pursuant to section 150K of the Act.4. It is within the jurisdiction of the Council to make a finding that the alleged conduct against the Councillor does not amount to inappropriate conduct.5. The Tribunal recommends that no further action be taken pursuant to section 150Y(b)(i) of the Act.

5. Recommendations to local government:

Date of recommendations	15 December 2020
Recommendations	<p>Although there is no stated requirement under the Act for the Council to consider and/or act on the advice of the Tribunal, the Tribunal recommends that:</p> <ul style="list-style-type: none"> a) The Council consider this report, in making its decision as to whether or not the Councillor has engaged in inappropriate conduct as alleged; b) If the Council's decision is that there is no finding of inappropriate conduct, the Council take no further action except to advise the Councillor and update the Councillor Conduct Register as required by sections 150DX(1)(b) and 150DY of the Act c) However, if the Council makes a finding of inappropriate conduct, the Council may consider: <ul style="list-style-type: none"> i. any previous inappropriate conduct of the Councillor: s150AG(2)(a); ii. an order that no action be taken against the Councillor: s150AH(1)(a); or iii. make 1 or more orders set out in section 150AH(1)(b); iv. update the Register in compliance with section 150DY; and v. advise the Councillor, the Registrar of the CCT and the OIA of the finding of inappropriate conduct made by Council of the subject Councillor.

6. Reasons for Recommendations:

Abbreviations Used

The following abbreviations have been used in this determination:

the Act	the <i>Local Government Act 2009</i>
the CCT or the Tribunal	the Councillor Conduct Tribunal established under the Act
the CEO	the Chief Executive Officer of the Council
the Code of Conduct	the Code of Conduct for Councillors in Queensland - approved by regulation on 7 April 2020
the complaint	the complaint made by the complainant
the complainant	the constituent who made the complaint
the council	South Burnett Regional Council
The Councillor	Councillor [REDACTED]
the OIA	the Office of the Independent Assessor
the IA	the Independent Assessor appointed under the Act or a delegate
the Regulations	Local Government Regulation 2012

Background:

1. On 8 June 2020, Mark Pitt, the Chief Executive Officer (CEO) of the South Burnett Regional Council referred a complaint about the conduct of Councillor [REDACTED] to the IA in accordance with section 150R of the *Local Government Act 2009*.
2. The complaint alleged that on It is alleged that on the 2 June 2020, Councillor [REDACTED] contacted [REDACTED] (a constituent) about council matters of concern and that [REDACTED] disclosed personal conversations that [REDACTED] had with [REDACTED] and disclosed the contents of a private email [REDACTED] had sent to Cr [REDACTED] about [REDACTED]. It is further alleged that [REDACTED] made repeated requests to meet with Councillor [REDACTED] but without a response to those requests.
3. It is also alleged that Councillor [REDACTED] disclosed private personal information about [REDACTED] which [REDACTED] had shared with the Councillor in confidence, to [REDACTED].
4. [REDACTED] alleges that [REDACTED] did not give permission to Cr [REDACTED] to discuss any part of [REDACTED] with [REDACTED], nor did [REDACTED] give permission for Cr [REDACTED] to disclose the private information from [REDACTED] personal email which was discussed with [REDACTED].
5. It is also alleged that Cr [REDACTED] advised [REDACTED] that [REDACTED] had used [REDACTED]
6. On 11 June 2020, [REDACTED] sent an official complaint to the OIA. The complaint outlined the following **relevant** information (emphasis added):
 - (a) [REDACTED] had sent a complaint to the CEO on 29 May 2020 in [REDACTED] role [REDACTED].
 - (b) [REDACTED] had complained that [REDACTED] had not been able to secure an appointment with Cr [REDACTED] after almost a month of trying.
 - (c) [REDACTED] sent multiple emails to the CEO about the need for Cr [REDACTED] to address constituents, including [REDACTED].
 - (d) On 1 June 2020 [REDACTED] sent an email to Cr [REDACTED] to his private email address stating:

[REDACTED]

[REDACTED] ...please, please go and see [REDACTED] sooner rather than later and listen to whatever [REDACTED] wants to talk about so if anything, I can get some peace. FYI – The day you were at the markets you go out of your car and walked straight by [REDACTED] was sitting down on a seat and [REDACTED] said hello to you and you ignored [REDACTED] /didn't see [REDACTED] [REDACTED] watched you from afar for ages while you walked the markets. [REDACTED] was so peeved off with you and [REDACTED] is still not happy and running you down to whomever [REDACTED] can talk to and I don't have to remind you how [REDACTED] can talk. [REDACTED] goes up town every day and chats to people. Hence why I emailed and sent [REDACTED] the comments from SthBurnett.com today and to give you the heads up. How did I know about the markets... [REDACTED] sent me a text that Saturday morning.

I had to send the email to [REDACTED] & keep it on a professional level because it's not my role to mediate or keep the peace between disgruntled constituents and the [REDACTED] Councillor. [REDACTED] issues need to be actioned and I need to be left out of it as I have told him. I just couldn't take anymore...

██████████ I can't keep protecting you with constituents if you don't follow through with seeing people or contact them. ██████████ is another one you need to follow up with. It is not fair on me that people still contact me ██████████ and that they complain to me because you don't respond to them or make an appointment to see them. Don't you have a council secretary to manager your diary?"

- (e) On 2 June 2020, ██████████ received a phone call from ██████████ who said ██████████ spoke with Cr ██████████ to address council matters and that Cr ██████████ "had a go at ██████████" and disclosed namely that ██████████ repeated:

"The day you were at the markets you got out of your car and walked straight by ██████████, ██████████ was sitting down on a seat and ██████████ said hello to you and you ignored ██████████/didn't see ██████████. ██████████ watched you from afar for ages while you walked the markets. ██████████ was so peeved off with you and ██████████ is still not happy."

- (f) ██████████ disclosed private information that ██████████ disclosed to Cr ██████████. ██████████ states that ██████████ did not give Cr ██████████ permission to disclose this information.

7. On 29 June 2020, the OIA wrote to the Councillor notifying ██████████ by a Notice and opportunity to respond and given under s150AA of the Act, that:

- (a) she reasonably suspected the conduct, the subject of the complaint, is inappropriate conduct;
- (b) the complaint should be referred to the Council to be dealt with; and
- (c) the Councillor was provided with an opportunity to respond to the complaint and to address why the IA should not decide to refer the complaint to the Council to deal with.

8. On 2 July 2020, the Councillor responded by email to ██████████ of the OIA, stating that:

- (a) ██████████ refutes the allegation that ██████████ had acted in an inappropriate manner.
- (b) ██████████ returned ██████████ call on 1 and 2 June 2020 in response to messages via social media comments and messages to call ██████████, passed on from ██████████.
- i. an exert of a post on social media, dated 1 June 2020 entitled *One Response to Chilly Return to Almost-Normal Life* which was alleged to have been written by ██████████. The post criticised Cr ██████████ for not attending the Markets;
- (c) in the conversation with ██████████ responded to a question that ██████████ and that no more public or private conversations with the Councillor were to be had.
- (d) ██████████ provided a copy of a social media post from 1 June 2020 from ██████████. ██████████ explained that the conversation was about ██████████ inaccurate post.
- (e) ██████████ did not forward any personal emails from ██████████ to ██████████ and did not discuss any personal emails from ██████████.
- (f) with permission of ██████████, ██████████ provided a text message from ██████████ to ██████████ that was provided to the Councillor on or about 3 June 2020;
- i. the text message appears to indicate that ██████████ denies the complaint of ██████████ and accuses ██████████ of being vindictive.

9. In the letter dated 27 July 2020, the OIA wrote to the CEO setting out the allegation in

the complaint and advising that the IA reasonably suspected, pursuant to s150W(b) of the Act that the complaint involves inappropriate conduct and was referring the conduct to local government to be dealt with under Chapter 5A, Part 2 Division 5 of the Act. The letter states that the OIA reasonably suspected that the Councillor has engaged in inappropriate conduct in that [REDACTED] has breached the Behaviour Standards of the Code of Conduct for Councillors in Queensland contrary to s150K(1)(a) of the Act namely with respect to:

- (a) Treat fellow councillors, council employees and members of the public with courtesy, honesty and fairness; and
- (b) Have proper regard for other people's rights, obligations, cultural differences, safety, health and welfare.

10. The OIA recommended that the Council investigate the conduct of Cr [REDACTED].

11. On 13 August 2020, the CEO referred the complaint to the President of the Tribunal to deal with the complaint under Chapter 5A, Part 2, Division 5 of the Act.

Functions of the Councillor Conduct Tribunal:

12. Section 150DL(1) of the Act provides that the functions of the conduct Tribunal are:

- a) at the request of the local government –
 - (i) to investigate the suspected inappropriate conduct of a Councillor referred to the local government, by the assessor, to be dealt with by the local government; and
 - (ii) to make recommendations to the local government about dealing with the conduct.

13. Section 150DL(2) provides that a member of the Tribunal chosen by the President may constitute the Councillor Conduct Tribunal to perform the functions mentioned in subsection (1)(a) for a particular request. For this particular request, the President has chosen Tribunal Member [REDACTED] to constitute the Tribunal to perform the functions mentioned.

Scope of the investigation:

14. Having regard to the provisions of the Act, there is no role for the Tribunal to make a finding of "inappropriate conduct" or finally determine the disciplinary action to be taken. Its role is to "investigate the suspected inappropriate conduct" and make recommendations to the council "about dealing with the conduct". It is also noted that the Tribunal's role in making recommendations is within the context that the overall responsibility for both the investigation of the matter and decision remains with the local government under section 150AF and section 150AG.

15. Due to the nature of the alleged inappropriate conduct, the scope of the investigation in this matter is limited. The investigation is conducted on the papers provided to the Tribunal from the Council or by external investigators, as required.

Consideration of the elements of inappropriate conduct:

16. Section 150K of the Act defines inappropriate conduct. The Tribunal has applied the definition set out in subsection 150K(1)(a) of the Act, namely:

- (1) The conduct of a Councillor is *inappropriate conduct* if the Councillor

contravenes –

(a) a behavioural standard...

17. This definition is the appropriate section to consider with respect of this investigation, namely that the OIA alleges that Cr [REDACTED] engaged in inappropriate conduct by virtue of breaching a condition of the Code of Conduct for Councillors in Queensland, as 7 April 2020, being the relevant version at the time of the alleged conduct.
18. Schedule 2 of the Act sets out the definitions in the Act and references chapter 5A, section 150C of the Act as to the definition of *behavioural standard*.
19. Section 150C of the Act defines *behavioural standard* to mean a standard of behaviour for councillors set out in the code of conduct approved under section 150E of the Act.
20. Section 150E of the Act refers to the approval and publication of the code of conduct. It requires that the Code of Conduct must be tabled in the Legislative Assembly with the regulation approving the code and be published on the Department's website.
21. Section 239A of the *Local Government Regulation 2012*, current as at 2 June 2020, approved the Code of Conduct dated 7 April 2020.
22. The Code of Conduct for Councillors in Queensland ('the Code of Conduct') which was approved on 7 April 2020 contains a number of conditions. Of relevance and stated by the OIA in its correspondence with Cr [REDACTED] and the Council, the Code of Conduct includes condition 2 which states "2. *Treat people in a reasonable, just, **RESPECTFUL** and non-discriminatory way*". The OIA alleges that Cr [REDACTED] has breached:
 - 2.1 Treat fellow Councillors, Council employees and members of the public with courtesy, honesty and fairness....
 - 2.3 Have proper regard for other people's rights, obligations, cultural differences, safety, health and welfare
23. The Code of Conduct does not define the term *courtesy, honesty and fairness*. Further, it does not define a person's *rights and obligations*. The Tribunal does not rely on the interpretation of cultural differences, safety, health and welfare.
24. The Tribunal applies the ordinary definition of courtesy to mean – *the showing of politeness in one's attitude and behaviour towards others*.
25. The Tribunal applies the ordinary definition of honesty to mean – *the quality of being honest*.
26. The Tribunal applies the ordinary definition of fairness to mean – *impartial and just treatment or behaviour without favouritism or discrimination*.
27. The Tribunal applies the ordinary definition of rights to mean – *morally good, justified or acceptable*.
28. The Tribunal applies the ordinary definition of obligations to mean – *an act or course of action to which a person is morally or legally bound; a duty or commitment*. The Tribunal interprets this to include the Act, Regulations and the Code of Conduct.

Consideration of the evidence as to whether it tends to support or not support a finding of inappropriate conduct:

29. The facts and circumstances are set out in detail above.

30. The core of the issue is that [REDACTED] believes that Cr [REDACTED] has disclosed confidential information about the contents of an email [REDACTED] sent the Councillor on 1 June 2020. In particular, [REDACTED] states that [REDACTED] recited the contents of [REDACTED] email to Cr [REDACTED] word for word, namely:

“The day you were at the markets you got out of your car and walked straight to [REDACTED], [REDACTED] was sitting down on a seat and [REDACTED] said hello to you and you ignored [REDACTED]/didn't see [REDACTED]. [REDACTED] watched you from afar for ages while you walked the markets. [REDACTED] was so peeved off with you and he is still not happy.”

31. Cr [REDACTED] states that [REDACTED] spoke with [REDACTED] in response to a social media post which was attached to his response to the OIA on 2 July 2020 which indicated that Cr [REDACTED] did not attend the market, which [REDACTED] also referred to. However, the context of the conversation related to correcting [REDACTED] perception that the Councillor failed to attend the market. Cr [REDACTED] response to the OIA indicates that [REDACTED] corrects [REDACTED] and that [REDACTED] had seen [REDACTED] at the event.

32. The social media post was made on 1 June 2020 which is also contemporaneous to the email that [REDACTED] states that [REDACTED] sent to the Councillor. Further to this, the text message sent by [REDACTED] to [REDACTED] is alleged to have occurred on 3 June 2020, which is also contemporaneous to the complaint.

33. The Tribunal places weight on the Councillor's response, together with the social media post and the text message from [REDACTED] to [REDACTED] which indicates that [REDACTED] did not agree with the complainant, [REDACTED] and that [REDACTED] (Cr [REDACTED] 'hasn't done what [REDACTED] thinks [REDACTED] should have'.

34. Given that [REDACTED] was not a party to the conversation between Cr [REDACTED] and [REDACTED] both of whom deny the allegation, on the balance of probabilities, the Tribunal finds that the version of Cr [REDACTED] is corroborated.

35. The Tribunal also considered whether, if [REDACTED] version of events was correct, the conduct amounted to a breach of the Code of Conduct.

36. The OIA alleges that the Councillor breached:

2.1 Treat fellow Councillors, Council employees and members of the public with courtesy, honesty and fairness....

2.3 Have proper regard for other people's rights, obligations, cultural differences, safety, health and welfare

37. The Tribunal finds that in circumstances where the Councillor disclosed the email from [REDACTED] to [REDACTED], it does not breach condition 2.1 as there is no evidence to support a finding that [REDACTED] was discourteous, dishonest or unfair in [REDACTED] communication with [REDACTED] or [REDACTED].

38. The Tribunal finds that in the circumstances where the Councillor disclosed the email from [REDACTED] to [REDACTED], it does not breach condition 2.3 of the Code of Conduct as there is no evidence to support a finding that [REDACTED] breached any rights or obligations. In

forming this finding, the Tribunal considered whether the Councillor contravened section 171 of the Act in relation to the use of information as councillors. On application of section 171 of the Act, the Tribunal finds that whilst the information came to the councillor in [REDACTED] capacity as a Councillor, the information was not used to gain a financial advantage or to cause detriment to the local government.

39. Consequently, notwithstanding if any finding as to whether the facts and circumstances are supported on behalf of the complainant or the Councillor, no finding of inappropriate conduct could be made out on interpretation of the Code of Conduct.

Tribunal's recommendations for further action:

40. The Tribunal has investigated the suspected inappropriate conduct referred by the local council and considers there is insufficient evidence to find that:

- a) Cr [REDACTED] breached section 150K(1)(a) of the Act in that [REDACTED] contravened a behaviour standard, namely clause 2.3 of the Code of Conduct for Councillors in Queensland (as was approved on 7 April 2020).

41. Section 150DL(1)(a)(ii) states that the Tribunal is to make recommendations to the local government about dealing with the conduct.

Tribunal's recommendations for Council's consideration:

42. The Council consider this Report in making its decision as to whether the Councillor has engaged in inappropriate conduct.

43. If the Council's decision is that the complaint is not sustained, it is open to the Council to take no further action except to advise the Councillor and update the Councillor Conduct Register as required by sections 150DX(1)(b) and 150DZ of the Act.

44. However, if the Council finds the complaint of inappropriate conduct is sustained, the Council may consider:

- (a) any previous inappropriate conduct of the Councillor: s150AG(2)(a);
- (b) an order that no action be taken against the Councillor: s150AH(1)(a); or
- (c) make 1 or more orders set out in section 150AH(1)(b);
- (d) update the Register in compliance with section 150DY; and
- (e) advise the Councillor, the Registrar of the CCT and the OIA of the finding of inappropriate conduct made by Council of the subject Councillor.

45. If the Councillor is no longer a councillor, Council must not make an order pursuant to section 150AH(1)(b)(iii), (iv), (v) or (vi) of the Act.

Member:

Date amended:

[REDACTED]
11 January 2021