

Councillor Conduct Tribunal: Councillor misconduct complaint – Summary of decision and reasons for department’s website

Local Government Act 2009: Sections 150AS(2)(c)

Note that the Tribunal is prohibited from giving another entity information that is part of a Public Interest Disclosure unless required or permitted under another Act; or including in this summary the name of the person who made the complaint or information that could reasonably be expected to result in identification of the person: S150AS(5)(a) and (b).

1. Complaint:

CCT Reference	F19/4656
Subject Councillor	Councillor Adam Hain (the Councillor)
Council	Moreton Bay Regional Council (the Council)

2. Decision (s150AQ):

Date	6 September 2019
Decision	The Tribunal has determined, on the balance of probabilities, that on 14 November 2018, Councillor Adam Hain, a councillor of the Moreton Bay Regional Council, engaged in misconduct as defined in section 176(3)(d) ¹ of the <i>Local Government Act 2009</i> , in that his conduct contravened section 171(3) of that Act, as it involved the release of information that the Councillor knew, or should have reasonably known, was information confidential to the local government.
Reasons	1. The statement of agreed facts, and the decision by the Respondent not to contest the matter establishes that the Respondent accepts that the allegation of misconduct is made out. Notwithstanding this admission, the Tribunal has reviewed the admitted facts, and evidence filed by the Applicant, and finds that information was disclosed to a member

¹It is noted that this provision is no longer in force but is applied by section 322 of the Act in the circumstances of this matter, as further outlined in the decision.

	<p>of the public, the information disclosed was confidential to the Council, and that the Councillor knew or should have reasonably known it was confidential and should not be disclosed.</p> <p>2. The reasons given for the breach of the obligation are not sufficient to exculpate the Councillor. Even though the information disclosed by the Councillor may on his original version of the events, not have included reference to the workshop, this did not alter the confidentiality of the information obtained at the workshop, or change the obligation not to disclose it, until the information otherwise entered the public domain e.g. some of the information became public on 20 November 2018, when the report was adopted by Council.</p> <p>3. Further, as is conceded in the agreed statement of facts, disclosure of the confidential information in order to check on statements made by another Councillor or his conduct at a meeting was not the appropriate manner in which to deal with any suspicion as to the conduct or statements of another councillor.</p>
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3. Orders and/or recommendations (s150 AR - disciplinary action):

Date of orders	6 September 2019
Orders and/or recommendations	<p>1. That the Councillor make a public admission at an ordinary meeting of the Moreton Bay Regional Council (the Council), that he engaged in misconduct, within 60 days of this order. (s.150AR(1)(b)(i)); and</p> <p>2. That the Councillor be counselled by the Chief Executive Officer (CEO) of the Council about the misconduct and how not to repeat the misconduct within 60 days of this order. The CEO is to report to the Independent Assessor at the end of the 60 days, confirming such counselling has been undertaken (s150AR(1)(b)(iii)); and</p> <p>3. That the Councillor pay to the Moreton Bay Regional Council the amount of \$250, to be paid within 60 days of this order (s.150AR(1)(b)(iv)).</p>
Reasons	<p>1. The Tribunal considered the factors identified in the agreed statement of facts and took into account those it considered relevant. It also sought and considered submissions from the parties on the proposed orders.</p> <p>2. The orders made take account of the circumstances and relevant factors as outlined in the agreed statement of facts., Some of the factors considered were that the Councillor is in his first term, has no</p>

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	<p>disciplinary history, has from the outset not denied the essential circumstances as alleged, and has cooperated in these proceedings, in ultimately agreeing on the statement of facts and determining not to contest the matter. It would also appear that the Councillor has obtained some insight into the processes that should be followed in future in respect of issues that arise in Council meetings.</p> <p>3. However, the Tribunal considered it relevant that the Councillor made the disclosure even though the meeting material was clearly stated to be confidential. Further it noted that the Act provides specifically that a breach of confidentiality is misconduct, such that it is not to be treated as being within the lesser category of inappropriate conduct, or left to be considered under more general heads of misconduct. Accordingly, it must be taken that the legislature considers that this type of conduct is serious or potentially serious.</p> <p>4. As the matter involved conduct that occurred prior to 3 December 2018, the Tribunal made orders under section 150AR substantially the same as orders that could have been made under the former section 180 of the pre-amended Act ².</p>
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²Section 322(2)(c).