

PA Chief Executive

Kangaroo Island Council
CONFIDENTIAL

ATTACHMENT
ITEM 21.2
16 January 2013
E2013/106 - 9.4.22

From: Andrew Boardman
Sent: Monday, 7 January 2013 4:54 PM
To: PA Chief Executive
Subject: E2013/106 - 9.4.22 - FW: Code of Conduct Referral from Council Re Ombudsman Report
Follow Up Flag: Follow up
Flag Status: Orange
Attachments: Code of conduct process objection.doc

From: [Ken Liu](#)
Sent: Saturday, December 22, 2012 10:30 PM
To: 'Jayne'
Cc: 'Peter Clements'
Subject: RE: Code of Conduct Referral from Council Re Ombudsman Report

Dear Mayor Bates,

Thank you for your prompt reply.

I am concerned that my objection outlined in my email of 30 Nov 2012, was withheld and not put to Council at its December 2012 meeting for a satisfactory resolution. According to the requirements of natural justice, it is improper for the LGGP to consider Mr Hains report until all my concerns are addressed.

Regards

Cr Ken Liu

Kangaroo Island Council
P O Box 80, KINGSCOTE SA 5223
Ph: (08) 8553 2823 Mobile: 0428 322 005
Email: ken.liu@bigpond.com

From: Jayne [<mailto:jayne.bates@bigpond.com>]
Sent: Saturday, 22 December 2012 8:41 PM
To: Ken Liu
Cc: 'Peter Clements'
Subject: Re: Code of Conduct Referral from Council Re Ombudsman Report

Hello Ken,

I do believe that I have followed the procedure and it is also appropriate for any concerns raised during an investigation to be provided to the independent assessor. I believe I would have failed in my role if I had not passed them on. Over the course of this Council and the many Code of Conduct complaints I have dealt with, I have received many challenges to the processes followed. In all cases the Ombudsman has been asked to review the process and all have been found to be correct.

However as you feel I have erred in this process, I will place your concerns before the full Council for consideration at the next Council meeting in January. I am expecting the final report from the LGGP to be tabled at that meeting and will include your emails detailing your concern within this report.

I wish you and Clare a safe and joyful Christmas and a healthy, happy and fulfilling new year.

Cheers
Jayne

Jayne Bates
Mayor
Kangaroo Island Council

Ph 08 8553 1087

10/01/2013

Mobile 0427 530 080
 Email jayne.bates@bigpond.com
 Web www.kangarooisland.sa.gov.au

From: [Ken Liu](#)
Sent: Saturday, December 22, 2012 6:46 PM
To: 'Jayne'
Cc: 'Peter Clements'
Subject: RE: Code of Conduct Referral from Council Re Ombudsman Report

Dear Mayor Bates,

Although I did not mark 'private & confidential' in my email ([below](#)) dated 30 Nov 2012, outlining my objection to the manner in which the 'hearing' of the complaint against me was conducted, it is inappropriate for you to forward my email to Mr Steven Hains, the assessor from the LGGP without consulting me first. By forwarding my email to Mr Hains without my consent, it would cause embarrassment to me as some of my concerns raised in my email were directed at him personally. I am offended by your action.

My concerns expressed in my email of 30 Nov 2012 were related to the process which I believed that it had not been followed in accordance with Council's Code of Conduct Procedures. In my email, I gave you my reasons as to why I formed that view.

I would again point out that in my view based on evidence provided to you in my email, Clause 4.3 of Procedure – Code of Conduct for Elected Members has been breached and that it is a matter that rests between myself and the Kangaroo Island Council and not with the LGGP. My concerns should therefore be satisfactorily resolved by the Council prior to referring the issues to the LGGP.

While I have been fully cooperative with Council's resolution so far, I am concerned that Council has not ensure the LGGP would follow the lawful process as required under the provisions of natural justice principles.

Regards
Cr Ken Liu
 Kangaroo Island Council
 P O Box 80, KINGSCOTE SA 5223
 Ph: (08) 8553 2823 Mobile: 0428 322 005
 Email: ken.liu@bigpond.com

From: Jayne [<mailto:jayne.bates@bigpond.com>]
Sent: Tuesday, 11 December 2012 9:16 PM
To: ken.liu@bigpond.com
Subject: Fw: Code of Conduct Referral from Council Re Ombudsman Report

Hello Ken...my apologies...here is the response from Stephen

Cheers
 Jayne

Jayne Bates
 Mayor
 Kangaroo Island Council

Ph 08 8553 1087
 Mobile 0427 530 080
 Email jayne.bates@bigpond.com
 Web www.kangarooisland.sa.gov.au

From: [Stephen Hains](#)
Sent: Friday, November 30, 2012 5:41 PM
To: [Jayne](#)
Cc: [marjorie schulze](#)
Subject: Re: Fw: Code of Conduct Referral from Council Re Ombudsman Report

Jayne

Thank you. We will deal with these issues in our report.

On 30 November 2012 17:06, Jayne <jayne.bates@bigpond.com> wrote:

Hi Stephen.....below is an email received from Ken this afternoon. I have let him know I would forward onto you for your information.

Cheers
Jayne

Jayne Bates
Mayor
Kangaroo Island Council

Ph 08 8553 1087
Mobile 0427 530 080
Email jayne.bates@bigpond.com
Web www.kangarooisland.sa.gov.au

From: [Ken Liu](#)
Sent: Friday, November 30, 2012 3:00 PM
To: '[Peter Clements](#)'; '[Jayne Bates](#)'
Subject: Code of Conduct Referral from Council Re Ombudsman Report

To Mayor & Deputy Mayor of Kangaroo Island Council:

I wish to register my concerns with the manner in which the inquiry into the Ombudsman's report has been conducted so far. While I have endeavoured to cooperate fully with the investigations and Council's resolution, despite the issues which I have raised prior to the interview on 26 November 2012, it was quite evidenced that the 'common law rules' referred to in natural justice principles relating to procedural fairness have not been followed and that in my view, Clause 4.3 of *Procedure – Code of Conduct for Elected Members* has been breached.

Main issues are:

1. I have been threatened of a further 'Code of Conduct complaint' against me, if I failed to cooperate with the investigations when I raised concerns with regard to the LGGP appointment (*emails to prove*).
2. As I am personally known to the assessor appointed by the LGGP, there would appear to be a conflict as independence and objectivity could be questioned.
3. Mr Hains' name was not on the list of approved assessors by the Council per *Clause 4.0 of the Procedure*.
4. Two key persons named in the Ombudsman's report and relevant to key issues associated with this investigation, namely Rosalie Chirgwin and Michael Pengilly appear not to have been spoken to for the purposes of receiving their input into the inquiry (*Clause 4.2 of the Procedure*).

5. Mayor Bates appears to have been the only Elected Member given the opportunity to speak to the assessor. As I have reason to believe that she may have a conflict in this investigation, my concern is that her view would contaminate the inquiry and taint the independence of the process.
6. I was not provided with a reasonable opportunity to explain and make submissions in relation to the allegations made in the Ombudsman findings, as my request for a list of questions proposed to be asked prior to the interview was rejected (*Clause 4.4. of the Procedure*).
7. The extensive distribution of Kelledy's legal advice (*email of 12 November 2012*) to all Elected Members and others involved is likely to have unreasonably influenced witnesses, the decision makers, and Elected Members.
8. Council's resolution (*17 Oct 2012*) was not at all clear in the intent of the inquiry. I have not been properly informed of the rationale for the investigations nor the reasons as to why Council could not make a decision from the Ombudsman's findings contained in his comprehensive report (*Clause 2.4 of the Procedure*).

I would like to reiterate that '**natural justice**' is a legal requirement which applies to all government agencies and local councils to ensure compliance of all necessary processes in making fair and reasonable decisions.

Cr Ken Liu

Kangaroo Island Council

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