

ARBITRATION PURSUANT TO DIVISION 5 OF PART 6 OF THE *LOCAL GOVERNMENT ACT 2020*

Internal Arbitration Process – Ballarat City Council

(IAP 2026-2)

Applicant: Cr Tracey Hargreaves

Respondent: Cr Damon Saunders

Arbiter: Dr Meredith Gibbs

Date of Hearing: 14 May 2026

DETERMINATION

Pursuant to section 147(1) of the *Local Government Act 2020* (**Act**) the Arbiter makes a finding of misconduct against Cr Damon Saunders.

STATEMENT OF REASONS FOR DETERMINATION

A. INTRODUCTION

A1. The Application

1. On 9 January 2026, the Applicant made Application IAP 2026-2 (**Application**) seeking a finding of misconduct against the Respondent:
 - a. **Allegation 1:** The first allegation relates to the public disclosure by Cr Damon Saunders (**Respondent**) of the nominations for Mayor and Deputy Mayor by Cr Tracey Hargreaves (**Applicant**) and Cr Ben Taylor respectively (**nomination(s)**) during a live radio interview which took place on 6 November 2025. This is alleged to constitute misconduct because the nominations had been shared in a Councillor-only context, were personal information not for public disclosure without prior consent and the disclosure was unfair and disrespectful to the Councillors involved.
 - b. **Allegation 2:** The Applicant further alleged that the Respondent failed to adhere to the Model Councillor Code of Conduct (**Model Code**) when she attempted to address her concerns with the Respondent and during the facilitated discussions that were part of the Council internal resolution process that took place on 22 December 2025 (**Facilitated Discussion**).
2. The Application set out the relevant clauses of the Model Code alleged to be breached. These were slightly modified later¹ as follows:

Clauses 1(c) and (e)	A Councillor must do everything reasonably necessary to ensure that they perform the role of a Councillor effectively and responsibly, including by-
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¹ The Applicant withdrew her allegation in relation to clause 2(3).

	(c) diligently using Council processes to become informed about matters which are subject to Council decisions (e) acknowledging and supporting the Mayor in the performance of the role of the Mayor.
Clause 2(1)	A Councillor must treat others, including other Councillors, members of Council staff and members of the public, with dignity, fairness, objectivity, courtesy and respect.
Clause 2(2)	A Councillor, as an individual at the workplace, must take reasonable care for their own health and safety and take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons by- (a) adhering to applicable systems and policies put in place by the CEO to manage risks to health and safety in the workplace; and (b) [not relevant].
Clause 3	A Councillor must comply with the following Council policies and procedures required for delivering good governance for the benefit and wellbeing of the municipal community- (a) [not relevant] (b) the Council's Governance Rules developed, adopted and kept in force under section 60 of the Act ...
Clause 4(1)(a)	A Councillor must act with integrity, exercise reasonable care and diligence and take reasonable steps to avoid any action which may diminish the public's trust and confidence in the integrity of local government, including by- (a) ensuring that their behaviour does not bring discredit upon the Council; (b) not deliberately misleading the Council or the public about any matter related to the performance of their public duties; and (c) not making Council information publicly available where public availability of the information would be contrary to the public interest.

- When the Application was provided to the Arbiter, the record of the Facilitated Discussion had been removed. The record of the Facilitated Discussion related to Allegation 2 which, as discussed below, was not heard as part of this Hearing. The Arbiter has not otherwise been provided with a copy of this document.

A2. First Directions Hearing

- A Directions Hearing was held in person on 2 March 2026 at the Ballarat City Council offices at which the Arbiter explained the arbitration process to the parties and heard submissions from the parties on various procedural matters (**First Directions Hearing**).
- On the morning of the First Directions Hearing, Cr Saunders requested permission for a support person accompany him to the Directions Hearing. Due to the lateness of the request and the lack of time to seek the views of Cr Hargreaves and to offer her a similar opportunity before commencement of the Directions Hearing, the Arbiter declined the request. At the Directions Hearing, the opportunity for each party to make a request (sufficiently ahead of the Hearing) for a support person at the Hearing was offered.

6. The parties were given an opportunity to speak without the Arbiter present to see whether the matter could be resolved without the need for a Hearing. No resolution was reached.

Agreed facts and jurisdiction to hear Allegation 1

7. At the First Directions Hearing the Arbiter raised several issues in relation to the basic facts relating to Allegation 1, as set out in Annexure 1 (updated to take into account the positions reached at the Directions Hearing and subsequent correspondence). This was done to confine the matters in issue between the parties, assist with the efficient running of the Hearing and guide the parties on the type of submissions that would assist the Arbiter.
8. The Arbiter raised the concern that Allegation 1 was a matter of “*serious misconduct*” as defined in the Act and as such, was not a matter for an arbiter under Division 5 of Part 6 of the Act but rather a matter for a Councillor Conduct Panel under Division 7 of Part 6 of the Act. This depended on whether the nomination was Confidential Information (that is, as the term is defined in the Act).
9. At the Directions Hearing and later in correspondence, the Applicant confirmed she was using the term “confidential information” in a general governance sense, referring to information discussed in Councillor-only time and subject to confidentiality expectations within that setting. While the Applicant considered the information may also fall within the definition of Personal Information under the Act, she was not asking the Arbiter to determine a statutory breach, but rather to consider the conduct under the Model Code.

Jurisdiction to hear Allegation 2

10. At the First Directions Hearing, the Arbiter raised whether an arbiter appointed under Division 5 of Part 6 of the Act has jurisdiction to undertake an internal arbitration in relation to conduct that allegedly occurred as part of an internal resolution process implemented and adopted by a council in accordance with section 140 of the Act and Schedule 1A to the *Local Government (Governance and Integrity) Regulations 2020*. This is the subject matter of Allegation 2.
11. Here, Cr Hargreaves alleged Cr Saunders’ behaviour during the Facilitated Discussions, part of Council’s internal resolution process and which had occurred prior to the Application being made, demonstrated a lack of courtesy, respect, fairness and objectivity toward her as a fellow Councillor and as Mayor. Both parties agreed that the Facilitated Discussions had occurred on a confidential basis but that they had not, at least explicitly, been undertaken on a ‘without prejudice’ basis. Cr Saunders indicated he believed that they should be ‘without prejudice’ although it was not a matter that he had considered at the time.
12. The Arbiter noted that the Principal Councillor Conduct Registrar had not provided her with the supporting material relating to Allegation 2 when referring the Application. As a result, the Arbiter had not read any material concerning the Facilitated Discussions other than that in the main text of the Application.
13. Due to the uncertainty regarding jurisdiction of the Arbiter to hear these allegations, the Arbiter indicated that matters relating to Allegation 2 would be ‘split off’ and dealt with separately after the main case, as necessary, and clarified that no submissions on Allegation 2 should be made in the Hearing.
14. Given that the Arbiter has made a finding of misconduct against Cr Saunders for breach of clause 2(1), it is no longer necessary to decide this jurisdictional point. Having said this, from a public policy perspective, it would be prudent for councils to clarify the status of such discussions within their internal resolution processes. If these types of early discussions are intended to provide an opportunity for the parties to fully and frankly explore the issues, they should be both

confidential and without prejudice (and clearly understood by parties to be so) and the behaviour of the parties within such discussions carefully moderated by the appointed facilitator.

Directions

15. Following the First Directions Hearing, on 4 March 2026 the Arbiter issued a series of Directions consistent with the matters discussed at the First Directions Hearing and setting out the timetable for the tabling and exchange of information by the parties in preparation for the Hearing.
16. In the weeks following, the Arbiter received requests for alterations to the timetable, and subsequent adjustments were made. The parties largely adhered to the adjusted dates.

A3. Second Directions Hearing

17. On 19 March 2026, a Second Directions Hearing was held online to clarify the matters before the Arbiter.
18. At the First Directions Hearing the Applicant raised the possibility of adding an allegation to the Application. As it was unclear to the Arbiter whether this raised an entirely new matter or was part of the matter already before her, the Arbiter requested that the Applicant raise the new matter with the Principal Councillor Conduct Registrar.
19. The Applicant did so by emails on or around 2 and 7 March 2026 and it was determined that the matter fairly related to the internal arbitration process already before the Arbiter.
20. The Arbiter confirmed that all aspects of the Model Code would be considered.

A4. Documentation and the Hearing

21. Prior to the Hearing, the parties reached agreement on a number of facts, set out in Annexure A.
22. Both parties provided written submissions and supporting documentation, including witness statements, prior to the Hearing and oral submissions at the Hearing.
23. Over 80 documents were lodged for consideration by the Arbiter.
24. On 8 May 2026, the Respondent sought to introduce approximately 200 new documents. This was disallowed because:
 - a. The additional information was received less than a week before the Hearing which had been set down for 14 May 2026.
 - b. In accordance with the Arbiter's Directions, Cr Saunders was required to provide all material by no later than midday on Monday 20 April 2026.
 - c. The additional material appeared to relate to a separate, unrelated allegation made by Cr Saunders against Cr Hargreaves and which was not before the Arbiter.
 - d. The additional information would not assist the Arbiter.
25. An all-day, in-person Hearing took place on 14 May 2026 at an external location in Ballarat.
26. Both parties had a support person in attendance who agreed to maintain confidentiality of the process.
27. Both parties provided very detailed written and oral submissions supported by various documents and witness statements. Five witnesses appeared in person, three of them current Councillors. The Hearing was lengthy and a lot of material was covered. The Arbiter has considered all this information. However, only the most relevant material is directly referenced in this document.

A5. Use of terms

28. In this document:
 - a. **Act** refers to the *Local Government Act 2020*
 - b. **CEO** means the Chief Executive Officer of the City of Ballarat

- c. **Communications Policy** means Council’s Councillor Communication and Information Policy (August 2024)²
 - d. **Confidential Information** is used to refer to “confidential information” as defined in the Act
 - e. **confidential information** is used to refer to information that does not fall within the definition of Confidential Information but is otherwise not for public release or is private information
 - f. **Facilitated Discussion** refers to the facilitated discussions on 22 December 2025 between Cr Hargreaves and Cr Saunders as part of the Council internal resolution process, with Cr Hudson facilitating
 - g. **Model Code** means the Model Councillor Code of Conduct, Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020*
 - h. **nomination** and **nominations** refer to the relevant person’s nomination for Mayor and/or Deputy Mayor, depending on the context in which it is used
 - i. **Nomination email** refers to the email dated 31 October 2025 from the Chief Executive Officer, Mr Evan King (**CEO**), to the Councillor group advising of the names of those who had nominated for Mayor and Deputy Mayor
 - j. **Personal Information** is used to refer to “personal information” as set out in the definition of Confidential Information, that is, “*personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs*”
 - k. **secret vote** means the informal vote held at the 5 November Meeting for the positions of Mayor and Deputy Mayor
 - l. **5 November Meeting** refers to the Councillor-only discussions held on 5 November 2025 at which the secret vote occurred.
29. Throughout the process, parties and witnesses used ‘confidential information’ to refer to information that was to be kept private, within the Councillor group or secret, Personal Information and Confidential Information.

B. BACKGROUND

30. The following table sets out the chronology of relevant events.

Date	Event	Method
Friday, 24 October 2025	Nomination period for Mayor and Deputy Mayor commenced	Email from CEO sent individually to Councillors. Email to Cr Hargreaves sent at 3:12pm. Email is marked “OFFICIAL”.
Friday, 24 October 2025, 3:18pm	Cr Hargreaves’ nomination for Mayor provided to the CEO	Email from Cr Hargreaves to CEO. Email is marked “OFFICIAL”.
Friday, 24 October 2025, 3:56pm	Cr Taylor’s nomination for Deputy Mayor provided to the CEO	Email from Cr Taylor to CEO. Email is marked “OFFICIAL”.
Friday, 31 October 2025, 12noon	Date set by the CEO for nominations for Mayor and Deputy Mayor to be received	Email from CEO dated 24 October 2025

² The August 2024 version of the Communications Policy was in force at the time of the radio interview on 6 November 2025.

Friday, 31 October 2025, 12:25pm	CEO advised all Councillors of the Mayoral and Deputy Mayoral nominations, namely: • Mayor: Cr Hargreaves, Cr Saunders, Cr Rinaldi • Deputy Mayor: Cr Taylor, Cr Saunders, Cr Rinaldi (Nomination Email)	Email from CEO to Councillor group. Email is marked "OFFICIAL".
Wednesday, 5 November 2025	'Councillor-only' discussions held at which nominations are confirmed and a 'secret vote' undertaken: • Mayor: Cr Rinaldi withdraws his nomination; Cr Hargreaves defeats Cr Saunders 5-4 • Deputy Mayor: Cr Saunders withdraws his nomination; Cr Taylor defeats Cr Rinaldi 5-4 (5 November Meeting).	In-person; no minutes
Thursday, 6 November 2025	Cr Saunders publicly discloses that the Mayoral race was between himself and Cr Hargreaves.	Live radio interview on 3BA
Saturday, 8 November 2025 and subsequently	Newspaper article published on 8 November 2025 reflecting the information disclosed in the radio interview and subsequent interviews by The Courier with Cr Hargreaves and Cr Taylor.	Newspaper article in <i>The Courier</i>
6-8 November 2025 and subsequently	Subsequently the newspaper article and links to the 3BA radio interview were posted on Facebook.	Facebook pages of <i>The Courier</i> , 3BA and Cr Saunders
Monday, 10 November 2025, 3:26PM	Cr Saunders formally withdraws nomination for Deputy Mayor	Email to CEO
Monday, 10 November 2025, 4:16PM	Cr Rinaldi formally withdraws nomination for Mayor	Email to CEO
Monday, 10 November 2026, 6:30pm	Formal Council meeting and vote on Mayoral and Deputy Mayoral positions resulting in: • Mayor: Cr Hargreaves defeats Cr Saunders 5-4 • Deputy Mayor: Cr Taylor defeats Cr Rinaldi 5-4	In-person in Council Chambers. Agenda and Minutes reflect formal status of the meeting.
Thursday, 13 November 2025	Cr Hargreaves emails Cr Saunders complaining of the public disclosure of nominations: <i>"I was very disappointed to hear you speak publicly about the Mayoral and Deputy Mayoral nominations following our Councillor-only session on 5th November. During that meeting it was made clear that the discussion and nominations were confidential and not to be shared outside the group."</i>	Emails between Cr Hargreaves and Cr Saunders
Thursday, 13 November 2025	Cr Saunders responds saying:	Emails between Cr Hargreaves and Cr Saunders

	<i>"No, it was not made clear that the nominations were confidential. It was made clear that our internal vote, held that night, was confidential."</i>	
Thursday, 13 November 2025	Cr Hargreaves responds saying: <i>"Just to clarify- Councillor-only time is, by definition, a confidential setting. Anything discussed there, including nominations and related commentary, is treated as confidential under the Councillor Code of Conduct and section 125 of the Local Government Act 2020, which prohibits the disclosure of information a Councillor knows, or should reasonably know, is confidential."</i>	Emails between Cr Hargreaves and Cr Saunders
Various dates in December 2025	Cr Hargreaves and Cr Taylor seek (directly and through Civic Support) to meet with Cr Saunders to discuss their concerns. Cr Saunders declines the invitations.	Various (text, telephone)
Monday, 22 December 2025	The Facilitated Discussion between Cr Hargreaves and Cr Saunders occurs as part of the Council Internal Resolution Process with Cr Hudson facilitating. The matter is not resolved. A separate facilitated discussion between Cr Taylor and Cr Saunders is held, and although the matter is not resolved, Cr Taylor does not pursue the issue.	In person facilitated discussion
Friday, 9 January 2026	The Applicant lodges the Application	Formal written Application made by Cr Hargreaves

C. SUBMISSIONS

C1. The Applicant's submissions

31. In summary, the Applicant submitted the Respondent's behaviour constitutes misconduct because:

- a. The Respondent publicly disclosed the Applicant's nomination for Mayor in a live radio interview on 6 November 2026 without her prior consent.
- b. The Respondent also disclosed Cr Ben Talyor's nomination for Deputy Mayor without his prior consent.
- c. The nominations were, by virtue of their character, "personal information" as defined in the Act (**Personal Information**) and therefore confidential information as defined in the Act (**Confidential Information**).
- d. Disclosure of Cr Hargreaves' and Cr Taylor's Personal Information without prior consent was disrespectful and unfair, was a breach of the Governance Rules, and brought the Council into disrepute.
- e. In the radio interview the Respondent did not refer to other 'live' nominations, that is those nominations that although verbally withdrawn at the 5 November Meeting, had not been formally withdrawn in writing to the CEO. This 'selective' disclosure was unfair, was deliberately misleading and brought the Council into disrepute.

- f. The Respondent had not properly informed himself about relevant Council processes including how Councillor-only time discussions, Council information, Personal Information and Confidential Information should be handled.
 - g. In failing to engage with Council's internal resolution process and the internal arbitration process appropriately and continuing to deny any wrongdoing, the Respondent failed to acknowledge and support her in the role of the Mayor.
 - h. The Respondent's disclosure of the nomination and subsequent conduct has caused the Applicant stress, distress and psychological impact, matters which were reasonably foreseeable, and which are in breach of relevant health and safety requirements.
 - i. Because the information disclosed was Personal Information including information relating to the Applicant's personal affairs, had not been authorised for public release and was obtained through internal Council processes, it was contrary to the public interest for it to be disclosed.
32. The Applicant's submissions shifted slightly over the course of the internal arbitration process. Initially, the Applicant agreed that she was not alleging that the nomination was Confidential Information but in submissions she made arguments that relied on the nomination being Confidential Information as defined in the Act. In closing, the Applicant focussed heavily on her submission that the nomination was by its nature Personal Information and therefore should not have been disclosed by the Respondent without her prior consent. The implications of this in terms of the role and jurisdiction of the Arbiter are discussed below.

C2. The Respondent's submissions

33. The Respondent denied all allegations.
34. In summary, the Respondent submitted:
- a. The nominations were not Personal Information or Confidential Information.
 - b. The nominations were not confidential by virtue of being contained in the Nomination Email or by virtue being discussed during the 5 November Meeting. Only the result of the secret vote was confidential, and he did not disclose the result.
 - c. The Act's transparency principles require disclosure of Council information unless it is Confidential Information. The nominations are Council information and the nominations are not confidential as defined in the Act.
 - d. The public interest lay in disclosure of the 'true' situation, which included that there were only two nominations in each category because the other 'live' nominations had been withdrawn at the 5 November Meeting, particularly given that the radio interview took place a matter of days before the official Council vote was to be held on 10 November 2025 and there was a lot of public interest in the Mayoral elections.
 - e. The disclosure was not disrespectful or unfair. It was not misleading and did not bring the Council into disrepute.
 - f. There was no breach of the Governance Rules. There is no Council policy or process that covers how nominations are to be dealt with and there is no policy 'forbidding' nominations to be disclosed.
 - g. He was not in breach of any health and safety requirements.
 - h. The Respondent respected and complied with rulings of the Mayor as chair of Council meetings both on a weekly and monthly basis. However, he had maintained, and continues to maintain, that the nominations were not confidential.
 - i. He had attended all relevant training and informed himself of relevant Council processes.

35. Further details regarding both the Applicant's and Respondent's submissions are provided as necessary below.

D. THE ROLE AND JURISDICTION OF THE ARBITER

36. The role of an arbiter in an internal arbitration under Division 5 of Part 6 of the Act is limited.
37. An intentional or reckless disclosure of Confidential Information is an offence (section 125 of the Act). It is not the role of an arbiter to determine whether an offence under section 125 has been committed.
38. The disclosure by a Councillor of information the Councillor knows, or should reasonably know, is Confidential Information constitutes "*serious misconduct*" (section 3(1) of the Act). Allegations of serious misconduct are heard through the Councillor Conduct Panel process under Division 7 of Part 6 of the Act.
39. Section 146 of the Act provides that if, at any time before, during or after the hearing of an application for an internal arbitration process, an arbiter believes that the conduct that is the subject of the application for an internal arbitration process appears to involve serious misconduct, the arbiter must refer the matter in writing to the Chief Municipal Inspector.
40. Because it was initially unclear whether the Applicant was using the term "confidential information" as defined in the Act when alleging that the Respondent had improperly disclosed confidential information, this issue was raised and discussed at the First Directions, as discussed above. At that stage, the parties agreed that the nomination was not Confidential Information (agreed facts). The Applicant confirmed that while she considered the information may also fall within the definition of Personal Information, she was not asking the Arbiter to determine a statutory breach, but rather to consider whether the action of disclosing the nomination constituted misconduct due to a breach of the Model Code.
41. However, over the course of the process and at the Hearing itself, it became clear that to support her submissions regarding the alleged breach of the Model Code, the Applicant was in fact submitting that the nomination was her Personal Information and was therefore Confidential Information.
42. In my reasons below I set out why I am not persuaded that the nominations were Personal Information. In accordance with the requirements of procedural fairness I have examined only the material before me. That material does not include any case law or legal advice. Therefore, my views on the legal matters necessarily involved in this arbitration process are not based on the benefit of any legal research of relevant authorities.

E. CONFIDENTIAL INFORMATION AND THE TRANSPARENCY PRINCIPLES

E1. Overview of the legislative framework

43. Central to the Applicant's case is whether the nominations are properly considered as Confidential Information and how the transparency principles in the Act apply.
44. The Act provides the framework for balancing:
- a. an individual's right to maintain the confidentiality or privacy of their personal information; and
 - b. the public's right to know about the affairs and workings of Council.
45. Neither right is absolute.
46. The Act makes clear that transparency about the affairs and workings of Council are required unless specified exclusions apply. Section 58 of the Act provides:

(a) Council decision making processes must be transparent except when the Council is dealing with information that is confidential by virtue of this Act or any other Act;

(b) Council information must be publicly available unless—

(i) the information is confidential by virtue of this Act or any other Act; or

(ii) public availability of the information would be contrary to the public interest;

47. In this way, the Act balances the public interest in transparency against the need to protect Confidential Information or Council information where public disclosure would not be in the public interest. “Public interest” is not a defined term and will depend on circumstances. It may change over time.

48. The balance between transparency and confidentiality is also reflected in the definitions of Confidential Information and Personal Information.

49. Section 3(1) of the Act defines “confidential information” by reference to a list of types of information (refer Annexure A for the full definition). Included in the list is:

personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.

50. Information about “any person or their personal affairs” is very broad and information about “any person” would capture almost anything about a person. However, to be Personal Information the relevant information, here the nomination, must also be information which if released would result in the unreasonable disclosure of such information.

51. What is “unreasonable” will depend on the circumstances of each situation.

52. In the local government context, therefore, Personal Information is not protected at all costs. Rather it may be disclosed to a greater or lesser degree depending on the circumstances.

E2. Is a nomination Personal Information?

53. The Applicant submitted that the nomination was Personal Information and relating to her personal affairs. As such it was protected from disclosure without her consent.

54. The Respondent submitted that Personal Information is information “*about an identifiable individual and typically includes but is not limited to name, address, postal and email telephone, home, work and mobile, date of birth*” and excludes professional matters unless it falls into a private or sensitive category such as a formal disciplinary record or the like. He submitted that the nomination was about a public office and was not Personal Information.

55. A nomination is information relating to a person, being the relevant Councillor who is nominating for election. However, as noted above, to be Personal Information the information about a person must also be information which if released would result in the unreasonable disclosure of such information.

56. Accordingly, whether a nomination is Personal Information will depend on whether its public disclosure would be unreasonable in the circumstances.

Lack of clarity in the Council’s governance framework

57. The public disclosure of the nominations took place in the context of a lack of clarity in Council policies and processes about how a nomination should be treated including:

a. Neither the Governance Rules, nor any other written Council policy or process, expressly covers:

i. whether nominations are Confidential Information;

ii. whether, how or when nominations for Mayor or Deputy Mayor can or should be made public;

iii. the status of information generated, discussed or shared in Councillor-only time and how that information should be dealt with; or

- iv. the secret voting process.
 - b. These processes relied on 'common' understandings and informal, undocumented processes or customs.
- 58. Section 3.5 of the City of Ballarat's Governance Rules³ sets out the process for Mayoral and Deputy Mayoral elections. The formal election of the Mayor and Deputy Mayor is to be held at a Council meeting called for this purpose. The election is to be carried out by a show of hands.
- 59. Section 3.5.4 sets out the nomination process:
 - 3.5.4 Procedure for Election of the Mayor*
 - a) All nominations to be a candidate for Mayor and Deputy Mayor are to be provided in writing to the Chief Executive Officer no later than a date and time to be fixed by the Chief Executive Officer.*
 - b) The Chief Executive Officer will advise all Councillors of the names of the candidates within 24 hours of nominations closing.*
 - c) The Chief Executive Officer must preside during the election of the Mayor.*
 - d) The Chief Executive Officer must formally invite nominations for the office of Mayor and confirm acceptance of the nomination with the nominee.*
 - ...
 - 3.5.5 Procedure for Election of the Deputy Mayor*
 - a) If Council resolves to have the office of Deputy Mayor, the provisions of sub-rules 3.5.3 and 3.5.4 apply to the election of the Deputy Mayor with all necessary modifications and adaptations.*
- 60. The Governance Rules do not otherwise deal with the nomination process.
- 61. Further, the Council's Governance Rules and other policy documents do not deal with 'Councillor-only time'. There was no training provided on 'Councillor-only time' and it was left up to Councillors how they work together in this respect. The Councillor group did not document how they would work together in Councillor-only time nor the bounds of the confidentiality that would apply to these discussions. This was likely because they were intended to be informal discussions.
- The handling of the nominations within Council: the Nomination Email*
- 62. The Nomination Email was marked "OFFICIAL" but was otherwise silent on the issue of confidentiality of the nominations and whether, how or when nominations for Mayor or Deputy Mayor could or should be made public.
- 63. The Applicant submitted that this label indicated that the contents were confidential and there was nothing in the Nomination Email to indicate that the information was intended or approved for public release: *"This was not an ambiguous situation, but one in which a clear indicator was provided and disregarded."*
- 64. In contrast, the Respondent submitted the email was not confidential because it was labelled "OFFICIAL" (and not given a higher security level) and not otherwise marked or expressed to be confidential.
- 65. Document 9 sets out Council's explanation and guidance for applying sensitivity labels. According to that document:
 - a. Non-work-related information should be marked "UNOFFICIAL".
 - b. One of three sensitivity labels must be applied to all work-related information (documents, emails etc): "OFFICIAL", "OFFICIAL: Sensitive" or "PROTECTED".
 - c. The "OFFICIAL" label is the lowest sensitivity category used for Council-related information. Some examples of use include emails and documents pertaining to day-

³ Note that the 2024 version of the Governance Rules were in force at the time of the Allegations.

- to-day operations, general correspondence to customers, and policies and procedures.
- d. All work-related documents that contain information considered especially sensitive should be labelled "OFFICIAL: Sensitive". Examples include contracts, quotes, proposals with confidential terms; any health-related information; material that you would normally restrict to your team; employment details (payroll, personal and family information); any record containing banking details of staff, customers etc; and complaints against staff.
 - e. "PROTECTED" should only be used in very limited situations such as confidential DHHS referrals relating to child safety, whistle blower documents and ICT administration including access details.
66. Witness Cr Taylor stated that because the Nomination Email was labelled "OFFICIAL", he interpreted it as being for Councillors only and that it would be up to the individual Councillor if, when and how they disclosed that information publicly. However, Cr Rinaldi stated that the "OFFICIAL" label means it is coming from the City of Ballarat and is an official document, but not confidential or sensitive. Cr Lapkin stated that he understood the Nomination not to be confidential because it was marked "OFFICIAL" and not a higher level of sensitivity, and if the CEO had intended it to be confidential it would have been labelled as such. He considered the "OFFICIAL" label to be the default setting for email labels and could not think of an instance where Confidential Information was contained within an email labelled "OFFICIAL".
67. In my view, the "OFFICIAL" label makes it clear that the nominations were Council information and tends to suggest that they were not confidential or otherwise more sensitive information than other general Council information. The label descriptions from Council's guidelines on their use above (Document 9) indicates that the "OFFICIAL" label is used for general correspondence to customers and policies which are clearly public-facing information. This contrasts with "OFFICIAL: Sensitive" which is for information that is restricted. Indeed, some Councillor witnesses stated that their menu choices were generally marked "OFFICIAL".
68. The Applicant submitted that because the Nomination Email was sent only to the Councillor group it was implicit that the information contained within the email must be kept within that same group. However, according to Document 9, material that would normally be restricted to a 'team' should be labelled "OFFICIAL: Sensitive". By analogy, if the CEO had intended that the nominations be restricted to the Councillor group only, he should have labelled the email "OFFICIAL: Sensitive". He did not. There is no evidence before me of what his intentions were or whether he considered the nominations to be confidential.
69. In her closing submissions, Cr Hargreaves stated that she did not think that the labelling of the email mattered because the information concerned was Personal Information.
70. At the Hearing, Cr Taylor explained that a former CEO of Council, Mr Anthony Schinck, had instituted a practice of publicly disclosing nominations for Mayor after the nominations had closed but before the formal elections took place. He said there was heightened media interest in the Mayoral elections at the time. Councillors were aware when they nominated for office that their nomination would be made public. The practice was confined to that particular CEO and has not been in place since 2016.
71. All Councillor witnesses except Cr Rinaldi agreed that the current CEO, Mr Evan King, does not have a practice of publicly disclosing nominations. Some said that by implication, the expectation now is that nominations will not be disclosed publicly.
72. In response to my questioning, Cr Rinaldi, a Councillor of eight years, stated that the list of nominations (such as the list contained in the Nomination Email) is normally made public. He was unsure how it was made public and thought it may come from the CEO. He said:

... so those who nominated, I didn't have an issue with that being released, it had been released before, because it's common knowledge. Like, people ask whether through media, radio, or the CEO - what he puts out as well.

73. However, when questioned by Cr Hargreaves, Cr Rinaldi stated that the current CEO had not made the list contained in the Nomination Email public.
74. Cr Hargreaves clearly expected that her nomination would be kept confidential to the Councillor group when she supplied it to the CEO. However, based on the information before me, not all Councillors shared that expectation.
75. Therefore, in my view the Nomination Email cannot be relied on to support a position that the nominations (full or partial list) were confidential or that their disclosure would be unreasonable.

The handling of the nominations within Council: the 5 November Meeting

76. Turning to the handling of the nominations in the 5 November Meeting, there were differing views about:
 - a. whether everything discussed in Councillor-only time was confidential (in the sense that it was to be kept within the Councillor group); and
 - b. what the agreement made at the end of the 5 November Meeting covered – just the vote result or the nominations as well.
77. Councillor witnesses and the parties had divergent views about the purpose and confidentiality of Councillor-only time discussions including:
 - a. to discuss things without the CEO or staff present;
 - b. to discuss improvements to the way Council delivered services;
 - c. to develop collegiality or comity between Councillors;
 - d. to develop trust between Councillors;
 - e. to promote frank discussion of issues;
 - f. to provide a safe space for Councillors to discuss matters between themselves;
 - g. all matters discussed in Council-only time were confidential; and
 - h. only Confidential Information and matters agreed to be kept confidential to the Councillor group were confidential.
78. The Respondent submitted that matters discussed in Councillor-only time are not necessarily confidential, and the agreement made by Councillors at the end of the 5 November Meeting only covered the result of the secret vote and not the nominations.
79. The Applicant submitted that all information discussed in the 5 November Meeting was confidential to the Councillor group and not for public disclosure. This was supported by Cr Taylor, a fourth term (13-year) Councillor. In his witness statement he stated:

It is agreed by all councillors at the beginning of the term, that all content within Councillor only time is confidential ... so that councillors can have a frank and honest discussion without fear of anything being leaked to the media or council officers if a matter relates to them, for example the CEO remuneration or performance.

...

I was shocked and disappointed that Cr Saunders disclosed my nomination and did not disclose all including those who withdrew, as it was confidential and was up to me to disclose this information if I was asked by the media.
80. However, Cr Taylor also stated:

Before concluding the [5 November Meeting] Cr Hudson mentioned the outcome of this meeting was confidential.
81. Cr Hudson, who acted as facilitator to the discussion, explained the process of the secret vote for Mayor and Deputy Mayor in his witness statement and stated:

19. With the indicative outcome known for Mayor and Deputy Mayor for 2025/26, I suggested to the group that the outcome of the vote should remain confidential until the statutory meeting on the 10th November. I stated that while the results of the vote have at times become public in the past, the test of any councillor group is the ability to keep this confidential until the statutory meeting. It was agreed that the result should remain confidential.

20. I further explained that the statutory meeting is the formal meeting where the decision becomes absolute, and while largely ceremonial, it is special for the Mayor and Deputy Mayor elect to have their family members in the gallery for this event.

82. Cr Lapkin stated that he did not consider the information generated or shared in Councillor-only time generally to be Confidential Information purely by virtue of it being discussed in that setting. He said that whether information was Confidential Information depended on the nature of the information and only Confidential Information as defined in the Act is legally protected.
83. In relation to the 5 November Meeting, Cr Lapkin stated that there had been a type of 'gentleperson's agreement' not to disclose the results of the secret vote, and he did not consider the nominations to be part of this agreement. He did not otherwise consider that the nominations were Confidential Information or otherwise restricted in terms of public disclosure.
84. Cr Rinaldi stated at the Hearing that some information disclosed during Councillor-only time is confidential and some is not. He said it was up to the Councillor group to decide what was confidential. After some difficulty, he recalled that Cr Hudson had stated that the result of the secret vote was to be treated as confidential.
85. Some Councillor witnesses were more compelling than others; one Councillor appeared to have a very poor grasp of the relevant processes. In her closing submissions and based on hearing the views of other witnesses at the Hearing, Cr Hargreaves conceded that Councillor-only time might not be confidential.
86. In my view, there was a lack of clarity about whether all information generated or shared within Councillor-only time was intended to be confidential and no common understanding between all Councillors to this effect. I do not know what the consensus of the entire Councillor group was at the relevant time, or even if there was one. As a result, I have placed more reliance on the actual agreement about what was to be kept within the Councillor group at the 5 November Meeting.
87. Having said this, the 'gentleperson's agreement' following the 5 November Meeting was itself ambiguous and permitted various interpretations of what was covered by it. There were differing views whether the agreement included all or only some of:
- a. the full list of nominations (as per the Nomination Email);
 - b. nominations withdrawn at the meeting (but still live because they had not formally been withdrawn – indeed some Councillors were not aware of this distinction and its implications); and
 - c. the outcome or result of the secret vote.
88. Based on the material before me, I consider that Cr Saunders' interpretation that the agreement only covered the outcome of the secret vote is a reasonable interpretation of what was agreed.
89. Therefore, in my view the 5 November Meeting cannot be relied on to support a position that the nominations (full or partial list) were confidential or that their disclosure would be unreasonable.

Timing of the disclosure

90. The disclosure by Cr Saunders during the radio interview was made after the 5 November secret vote but before the formal vote at the Council meeting on 10 November. Cr Saunders submitted that this was relevant because his disclosure was made in the context of being just a few days before the formal vote and in a context where Cr Hargreaves would likely win the vote.

91. There was no suggestion that Cr Saunders was intending to, or ever in fact did, lobby other Councillors to change their vote between 6 and 10 November 2025. Although some witnesses agreed that it was possible for Councillors to change their vote between the secret vote and the formal vote, my impression was that this would be unusual.
92. The Applicant submitted that the Respondent's public disclosure of her nomination took away her ability to withdraw her nomination and organise her personal affairs at a time of her choosing; to withdraw after the radio interview and before the formal vote would have damaged her public reputation. Cr Hargreaves stated that she was still considering whether to withdraw right up until the formal vote on the night of 10 November 2025. Witness Nathan Hargreaves (the Applicant's husband) said that Cr Hargreaves did not finally decide to run for Mayor until the weekend prior to the formal vote and that the disclosure and subsequent newspaper article had forced her hand.
93. However, this is inconsistent with Cr Hargreaves' outward behaviour at the secret vote. Witnesses stated that at the 5 November Meeting, Cr Hargreaves confirmed her nomination and spoke about why other Councillors should vote for her. She did not indicate that she had doubts about a second term as Mayor due to her other commitments.
94. It appears, therefore, Cr Hargreaves gave other Councillors the impression she was a definite candidate, without doubt that she would go ahead, even though she had private doubts about whether she would go ahead. There was no way that Councillor Saunders could have known about her private doubts and I consider it reasonable for Cr Saunders to have relied on Cr Hargreaves' outward presentation to the Councillor group as being a definite candidate.
95. Cr Hargreaves submitted that the implications of disclosure were severe because she had not yet spoken to her employer (she was on a leave of absence) or fully decided what to do with her business that employed eight people (Yoga Studio). It took away her ability to tell them at a time of her choosing. However, Nathan Hargreaves stated that the "*idea*" of Cr Hargreaves running for a second term had been discussed with (one or more of) her employees at the Yoga Studio.
96. The Respondent submitted that it was reasonable to expect that as Mayor, running for a second term, the Applicant would have her affairs in order before she nominated. Cr Taylor explained that he had told his employer about his intention to run for Deputy Mayor about a month before his nomination, out of respect for his employer organisation and to ensure that he had everything "*in a row*".
97. This state of affairs raises the question of whether the impacts of the disclosure were because of the disclosure itself or because of Cr Hargreaves not having her affairs in order by the time she nominated on 24 October 2026 and confirmed that nomination to the Councillor-only group at the 5 November Meeting. In my view, these impacts do not lead to the conclusion that the disclosure was unreasonable. The situation may have been different if she had specifically told Cr Saunders or the Councillor-only group of her doubts about maintaining her nomination and of these implications, and Cr Saunders went ahead and disclosed the nomination itself. But that it not the case here.
98. From a public-facing perspective, there was no detriment as a result of the disclosure. The situation as presented by Cr Saunders at the radio interview matched what occurred at the formal vote (this is discussed further below).

The nomination was for public office

99. In the context of the Governance Rules which set out the process for nominations for the public office of Mayor and Deputy Mayor, a nomination is not a matter relating to the relevant person's "*personal affairs*". It is a nomination for public office. That is the relevant context. The nomination may have implications for the nominee's personal affairs, but it predominantly

concerns the individual in their public life as a Councillor. Further, at the time Cr Hargreaves lodged her nomination for Mayor, she was already Mayor and was nominating to run for a second term.

100. Cr Hargreaves submitted that public figures are still entitled to a level of control over their own plans and personal affairs. Cr Hargreaves had that control before 6 November 2026 when the disclosure was made and could have discussed matters with her employer and with her employees at the Yoga Studio. She was having discussions about the implications of a second term as Mayor with her husband during that time. And during this time she chose not to publicly disclose her intention (to the extent that it had crystallised) to nominate and her actual nomination by email to the CEO.
101. However, between 6 and 10 November, Cr Saunders' disclosure of her nomination meant that she lost the ability to choose when she would make her nomination public.

Cr Hargreaves and Cr Taylor won the secret vote

102. There appeared to be a consensus amongst the parties and witness Councillors that one of the purposes of the secret vote was to test where support lay and allow Councillors who did not have support to win the election to withdraw their nomination, thereby avoiding the embarrassment of a public defeat.
103. Here, Councillor Rinaldi withdrew from the Mayoral election because he did not have support. The Respondent withdrew his nomination for Deputy Mayor and decided to maintain his nomination for Mayor, albeit knowing that he would lose the Mayoral vote.
104. In considering the disclosure of the Applicant's nomination for Mayor by the Respondent, it is important to recognise that this is not a situation where one Councillor (here, Cr Saunders) disclosed the nomination of another Councillor (here, Cr Hargreaves) where the second Councillor (Cr Hargreaves) then lost the formal vote.
105. There could be an argument that the confidentiality of the list of nominations should not be made public to protect the public reputation and minimise impacts to psychological safety, for example from stress, anxiety or embarrassment should the nominee not receive support publicly. These matters may well be a reason for putting in place confidentiality requirements for nominations in the future. However, this reasoning does not apply in relation to Cr Hargreaves' nomination given that Cr Hargreaves won both the secret vote and the formal vote.
106. The argument is slightly different for Cr Taylor and Cr Rinaldi.
107. Again, Cr Taylor won the secret vote and went on to win the formal vote. At the Hearing he said that if the nominations were to be publicly disclosed (which he disagreed with because he said they were confidential) in his view the full nominations list for each position should have been divulged. This is surprising given that disclosure of the full list would have exposed those without support to potential public embarrassment.
108. In contrast, Cr Rinaldi expressed no concern about the public disclosure of his nomination for Deputy Mayor and the Respondent's failure to mention his still 'live' nomination for Mayor. He said he thought that the Respondent's interview was excellent – it was "*clear and precise*". However, given Cr Rinaldi's lack of understanding of the need to advise the CEO in writing of his withdrawal of his Mayoral nomination at the 5 November Meeting, this point carries little weight.

Communications Policy

109. The Applicant submitted that the Respondent had breached the Council's Councillor Communication and Information Policy (**Communications Policy**). Most of the policy deals with interactions between Councillors and Council staff and is not relevant here.

110. However, section 3.4 “Councillor media interactions and support”, set out the requirements Councillors were required to adhere to when dealing with the media:
In performing the role of a Councillor, Councillors must:
 ...
- *not breach any confidentiality protocols or understandings when speaking to the media, issuing media statements or using social media; and*
 - *not attribute any views or positions to other Councillors without their express consent.*⁴
111. The first bullet point quoted above does not weigh either way in considering whether the disclosure was “unreasonable” because this exercise is about determining what is Confidential Information.
112. Regarding the second bullet point, the Respondent submitted that the policy is referring to “policy positions”, not “job positions” and he had not attributed a policy position to her.
113. In my view, by stating that Cr Hargreaves was running for Mayor, Cr Saunders attributed a position to her. I use the word “position” here to refer to a “view” or “stance”, rather than “position” in the sense of a “role”. He indicated that Cr Hargreaves’ position in terms of the Mayoral election was that she would be a candidate. It was done without her express consent and was a breach of the policy.
114. However, the seriousness of a breach of Council policy will depend on the policy, the breach and the consequences. For example, not all breaches of Council policies are grounds for misconduct under the Model Code.
115. The Model Code clearly specifies the policies, breach of which, in and of itself, is a breach of the Model Code. They are:
- a. Clause 2(2): health and safety policies put in place by the CEO to manage risks to health and safety of the workplace;
 - b. Clause 2(3): policies developed and implemented under section 46 of the Act that support arrangements between members of Council staff and Councillors;
 - c. Clause 3: the specified policies required for delivering good governance, namely:
 - i. Clause 3(a): Council’s expenses policies adopted and maintained under section 41 of the Act;
 - ii. Clause 3(b): Council’s Governance Rules developed, adopted and kept in force under section 60 of the Act; and
 - iii. Clause 3(c): Council’s Councillor gift policy adopted under section 175 of the Act.
116. Clauses 2(2), 3(a) and 3(c) are clearly not relevant here.
117. Although other parts of the Communications Policy appear to have been made under section 46 of the Act, section 3.4 of the policy was not because it does not fairly relate to interactions between Council staff and Councillors; it is a media policy. Therefore, Clause 2(3) is not relevant.
118. By using the words “A Councillor must comply with the following Council policies and procedures required for delivering good governance” (emphasis added), Clause 3 provides a complete list of the governance policies and procedures that a Councillor is required to comply with. The only relevant possibility here is listed in paragraph (b), namely “*the Council’s Governance Rules developed, adopted and kept in force under section 60 of the Act*”.

⁴ The August 2024 version of the Communications Policy was in force at the time of the radio interview on 6 November 2025. The current version (December 2025) has only slight wording changes for the two requirements quoted.

119. The Communications Policy is not a policy or procedure made under section 60. It is not expressed to be so and does not deal with the types of matters referred to in section 60(1) or (2) of the Act.
120. Therefore, clause 3(b) is not relevant here.
121. This suggests that although breach of the Communications Policy is not to be condoned, it is not as serious as some other breaches. In my view, therefore, breach of this policy is not determinative of whether the public disclosure of the nomination is “unreasonable”.

The disclosure did not bring discredit on the Council

122. The Applicant submitted that the disclosure brought discredit on the Council.
123. I disagree. The disclosure reflected the true situation at the time and from the perspective of the public there was no discrepancy or issue that arose.
124. Cr Hargreaves had confirmed her nomination at the 5 November Meeting and she won the secret vote. Cr Hargreaves said that despite this she had not decided whether she would continue with her Mayoral nomination at the formal Council meeting on 10 November 2026. However, this doubt was a private matter, never expressed to other Councillors or publicly.
125. Given that Cr Hargreaves was Mayor at the time, it would not have been a surprise or a ‘scoop’ to hear that she was running a second time.
126. Cr Saunders maintained his Mayoral nomination and lost the vote, both at the 5 November Meeting and at the formal Council meeting. There was no suggestion at the Hearing that Cr Saunders ever attempted to lobby or change other Councillor’s minds about the Mayoral vote in the period between 5 and 10 November 2025.
127. Cr Rinaldi withdrew his Mayoral nomination. I accept his statement that he did not intend to change his mind and that his formal withdrawal of his nomination by email to the CEO was made the afternoon of 10 November 2026 because he had not been aware previously that he needed to formally withdraw his nomination.
128. Similarly, the Deputy Mayoral situation did not change between 5 and 10 November 2025.
129. The public were unaware of the secret discussions and agreements between Councillors going on behind the scenes. In these circumstances, I am not satisfied that the Respondent’s disclosure during the radio interview brought discredit on the Council.

Conclusion

130. On balance, and although far from ideal, I am satisfied that the disclosure of the nominations was not an unreasonable disclosure in the circumstances. I have placed considerable weight on the lack of clarity in Council processes – the lack of any clear guidance in Council documentation on whether nominations can be publicly disclosed, the lack of clarity around the status of information discussed in Councillor-only time, and the way that the Nomination Email was labelled. Cr Saunders understood the agreement made at the end of the 5 November Meeting to be that the secret vote was not to be disclosed beyond the Councillor group. I am satisfied this was a reasonable interpretation of what was said by Cr Hudson at the close of the meeting.
131. In my view, the solution to this uncertainty is for Council to address this issue in relevant policy and processes. It is not to make a finding of misconduct against Cr Saunders on this basis.
132. Therefore, I am not persuaded that the nominations amounted to Personal Information or Confidential Information under the Act.

E3. Are the nominations exempt from the general requirement for transparency of Council information?

Are the nominations Council Information?

133. Yes.
134. "Council information" is not a defined term. It is clearly a broader category of information than Confidential Information. It refers to information generated by Council or in relation to Council affairs.
135. The nominations are clearly information related to Council decision making processes and Council information as it relates to the process for electing the Mayor and Deputy Mayor. The "OFFICIAL" label on the Nomination Email indicating it related to Council business supports this conclusion.
136. Therefore, section 58 requires the nominations to be publicly available unless:
- a. they are Confidential Information; or
 - b. their public availability would be contrary to the public interest.
137. For the reasons set out above, I am not persuaded the nominations were Confidential Information.
138. This leaves the matter of whether the public availability of the nominations as they stood after the 5 November Meeting for the period between the radio disclosure on 6 November and the formal Council meeting on 10 November would be contrary to the public interest.

Would public availability of the nominations be contrary to the public interest?

139. As noted above, the Act does not define the public interest.
140. The Applicant submitted that public availability of the nominations would be contrary to the public interest because:
- a. The information disclosed was Personal Information, including information relating to the Applicant's personal affairs, and is protected under the Act's transparency principles.
 - b. The disclosure had not been authorised for public release.
 - c. The information was obtained through internal Council processes.
 - d. The disclosure was used to promote the Respondent's own candidacy by putting the Applicant and her track record as Mayor in comparison to himself in a manner that resulted in personal advantage to the Respondent.
 - e. The public would be more interested to know the full list of nominations (that is, the 'live' list of nominations) rather than the shorter, revised list after the 5 November Meeting.
 - f. The public interest of transparency does not apply here because the nomination was Personal Information and arose out of Councillor-only discussions which were confidential.
 - g. The requirement of transparency of the Mayoral electoral process is met by the election being conducted formally in Council Chambers in accordance with the Governance Rules.
141. The Respondent submitted that the public availability of the nominations would not be contrary to the public interest, and disclosure would be in the public interest because:
- a. The disclosure was accurate and reflected the true situation at the time of the interview.
 - b. The radio interview took place a matter of days before the official Council vote was to be held and there was a lot of public interest in the Mayoral elections.
 - c. There was a reasonable expectation that nominations for the position of Mayor, being a public office paid for by the ratepayers, would be made public, especially close to the time of the formal election.
 - d. The disclosed information was about a public office, not Cr Hargreaves' personal affairs.

- e. Cr Hargreaves was already in the position of Mayor and had put her herself in the public domain.
 - f. Cr Saunders undertook the interview in his position as Councillor representing Council under authorisation of the Mayor. His obligation was to give his honest opinion – to be transparent – without criticising other Councillors or the City of Ballarat.
142. At the outset it is important to note that it does not necessarily follow that because the public are very interested in certain information, it is in the public interest that the relevant information is publicly available. Further, Cr Hargreaves' submission that the transparency principles are met because the formal vote is public does not address how the public availability of the nominations between 6 and 10 November 2026 was contrary to the public interest which is the relevant test.
143. There is clear public interest in respecting the privacy of individuals and their personal affairs, but as discussed above, there is a balance to be struck and in the local government context. Personal Information is not absolutely protected. In any case, as discussed above, I am not persuaded the nominations were Personal Information.
144. The fact that the public disclosure of the nominations had not been authorised (either through a relevant Council process or by consent from the individuals concerned) and was in breach of the Communications Policy suggests that their public availability could be contrary to the public interest because to make this information available *in this manner* undermines Council's processes and effectively condones breaches of Council's processes. Although these implications would be contrary to public interest, they do not persuade me either way about the public availability *per se* of the nominations.
145. I don't accept the submission that the disclosure of the nomination was done to promote the Respondent's own candidacy. There is no suggestion that he tried to use the disclosure of nominations in the interview to change any Councillor's mind about the vote. He didn't lobby any other Councillors between 6 and 10 November. I accept he did post the interview on social media, but the public do not vote in mayoral elections, so it is unclear how this was to his personal advantage when he knew he was going to, and in fact did, lose the Mayoral election.
146. There could be an argument that public availability of the nomination list would be against the public interest because it would discourage Councillors to nominate in the future if they are not confident that their nomination will be kept confidential. This factor could be relevant in considering a request under the *Freedom of Information Act 1982* (FOI) where a decision is being made about the public interest in releasing documents that would reveal certain information.
147. However, in this case, the public interest is being examined in the context of whether a Councillor has engaged in misconduct because they have failed to "*act with integrity, exercise reasonable care and diligence and take reasonable steps to avoid any action which may diminish the public's trust and confidence in the integrity of local government, including by ... not making Council information publicly available where public availability of the information would be contrary to the public interest*". I do not consider that the public availability of the nominations several days prior to the formal Council vote in any way diminishes the public's trust and confidence in the integrity of local government. Indeed, given that otherwise the nominations are first made public in the Council Chambers at the formal Council meeting, here on 10 November 2025, with the formal vote then following, it could well increase public trust and confidence in the integrity of local government by having the nominations public available prior to that formal Council meeting. It would be more transparent.
148. Further, because the secret vote had already taken place and Councillors knew who had support and who did not, and had had the opportunity to withdraw their nominations at the 5 November Meeting, I do not think that public availability of the remaining nominations in the

four days prior to the formal Council vote would discourage Councillors to nominate in the future.

149. In my view, the 'solution' here is not to say that it is contrary to the public interest to have the nomination list publicly available but rather for Council (and the Councillors themselves in terms of how they work together and any secret vote should it be decided that this practice is appropriate to continue) to clarify for future elections when public disclosure might occur and according to what process and when it would not. The public interest concerning the public availability of nominations will change over time depending on the circumstances. The example provided where the previous CEO made available the list of nominations indicates that there could well be instances where the public interest is served by disclosure. I accept that this past practice was done with Councillors' prior knowledge and consent. I also accept the need to make Council processes as safe as possible for Councillors – that is one of the overall objectives of the Model Rules – but when entering local politics Councillors must be prepared for public attention.
150. Further, if nominations are to be treated as confidential, Council officers and Councillors alike should be trained in the appropriate handling of them in the lead up to the formal vote.
151. There was no harm to Cr Hargreaves' public reputation by her nomination being publicly available during the period 6-10 November 2025, because ultimately, she was elected Mayor. During the live interview, Cr Saunders did not speak disrespectfully about her. There was no detriment to the public or the Council, or to the public's trust and confidence in the integrity of local government.
152. On one view, at least some of the harm was caused by Cr Hargreaves' delay in speaking to her employer and employees about her intentions to run for a second term as Mayor. Her right to tell them of her intentions and discuss the implications with them during the period 6 to 10 November 2026 was taken away. She could have spoken to them before that period. Yet, at the Hearing the Applicant admitted that she was not intending to speak with her employer until after the formal vote. Had the Respondent not disclosed her nomination on 6 November, and assuming she stuck to her plan not to discuss it with them before the formal vote, then the result would have become public before she spoke with her employer, and they would have been presented with a *fait accompli*. It is not clear to me how that is a better or worse outcome than what actually happened.
153. On balance, I am not satisfied that the public availability of the nominations during the period 6-10 November 2025 was contrary to the public interest.

Conclusion

154. I am not satisfied that the nominations were exempt from the general transparency requirements of the Act.

F. FINDINGS AND REASONS

F1. Findings of the Arbiter on breach of clause 1(c)

155. The Arbiter finds that Cr Damon Saunders has not breached clause 1(c) of the Model Code.

Submissions regarding Clause 1(c)

156. Clause 1(c) requires that a Councillor must do everything reasonably necessary to ensure that they perform the role of a Councillor effectively and responsibly, including by diligently using Council processes to become informed about matters which are subject to Council decisions.

157. The Applicant submitted that the Respondent was in breach of Clause 1(e) because, variously:
- a. The Respondent failed to treat the nomination as confidential when the email was classified as not for public release by use of the security tag "OFFICIAL".
 - b. The Nomination Email is part of the Council's process for election of Mayor and Deputy Mayor under section 3.5.4 of the Governance Rules.
 - c. The Council's email security classification system is a Council process.
 - d. The Respondent failed to treat the nomination as confidential after having participated in the 5 November Meeting "*in which the discussions were expressly identified as confidential*".
 - e. The Respondent failed to complete all relevant training.
 - f. The Respondent therefore failed to diligently use Council processes to become informed about matters which are subject to Council decisions, "*including how other people's personal information should be handled*" and failed to exercise reasonable steps to inform himself of the proper handling of the nomination.
158. The Respondent submitted that he was not in breach of Clause 1(e) because, variously:
- a. The nomination was not Confidential Information or Personal Information.
 - b. He had attended all relevant training and informed himself of relevant processes.

Reasons

159. As discussed above, I am not persuaded the nominations were Confidential Information. They were not exempt from the general transparency requirements of the Act.
160. I am satisfied the Respondent attended relevant training. None of the training records provided as part of this process indicated that Councillors had been trained specifically on the nomination process, most likely because there is no written Council policy or process in this regard.

F2. Findings of the Arbiter on breach of clause 1(e)

161. The Arbiter finds that Cr Damon Saunders has not breached clause 1(e) of the Model Code.

Submissions regarding Clause 1(e)

162. Clause 1(e) provides that a Councillor must do everything reasonably necessary to ensure that they perform the role of a Councillor effectively and responsibly, including by acknowledging and supporting the Mayor in the performance of the role of the Mayor.
163. The Applicant submitted that the Respondent was in breach of Clause 1(e) because, variously:
- a. The Applicant had raised the alleged misconduct with the Respondent by email, sought to arrange a meeting with him to address the issue (by direct approach and through Council's Civic Support team) and had participated in the Facilitated Discussion.
 - b. At all times the Respondent failed to accept that the nomination was confidential and not for public disclosure and continued to deny there was any issue with his behaviour.
 - c. The Respondent had not cooperated when she tried to organise an informal meeting to discuss the matter and subsequently.
 - d. Promoting compliance with the Model Code is part of the role of Mayor.
 - e. The Respondent's behaviour was a governance risk, significantly undermined trust within the Councillor group and compromised the integrity of Councillor-only time generally. The Applicant was required to take steps to mitigate risks of further inappropriate disclosure including pausing Councillor-only time. Due to the confidentiality requirements of this internal arbitration process, the Applicant was unable to explain why

these measures had been undertaken. This led to critical and discourteous feedback from other Councillors. This placed the Applicant in a difficult and constrained position in the performance of her role as Mayor, requiring her to manage competing governance obligations, confidentiality requirements and internal conflict in circumstances directly arising from the Respondent's conduct.

164. The Respondent submitted that he was not in breach of Clause 1(e) because, variously:
- a. He respected and complied with rulings of the Mayor as chair of Council meetings both on a weekly and monthly basis.
 - b. However, he had maintained, and continues to maintain, that the nominations were not confidential. He had disagreed with the Mayor because he thought she was wrong in thinking that the nominations were confidential.
 - c. He had declined Cr Hargreaves' offer to meeting informally because the meeting would have been with both Cr Hargreaves and Cr Taylor and he was uncomfortable with a 'two against one' meeting. Further, he had understood an invitation for discussions to be in relation to a different matter.
 - d. He attended the Facilitated Discussion.

Reasons

165. The role of the Mayor includes promoting behaviour among Councillors that is consistent with the Model Code and assisting Councillors to properly understand their role.
166. It is not clear whether Cr Hargreaves was acting in her role as an individual Councillor or as Mayor when writing the email dated 13 November 2025 to Cr Saunders (Cr Hargreaves states in the email she is writing as a Councillor but the email states her position as Mayor also) or subsequently (it appears some contact could have come from her personal phone).
167. However, when making the Application Cr Hargreaves was acting in her capacity as an individual Councillor making an allegation of misconduct against Cr Saunders.
168. Although Cr Saunders did not agree to meet with Crs Hargreaves and Taylor to discuss the matter informally, he had the right to maintain his position that the nominations were not confidential.
169. In my view, the problems faced by the Applicant in managing the issues relating to the subject matter of this internal arbitration process stem from the lack of clarity in the Council's policies and procedures. I acknowledge that the situation was a difficult one to manage as Mayor, but I am satisfied that Cr Saunders was correct in maintaining that the nominations were not Confidential Information.

F3. Findings of the Arbiter on breach of clause 2(1)

170. The Arbiter finds that Cr Damon Saunders has breached clause 2(1) of the Model Code.

Submissions regarding Clauses 2(1)

171. Clause 2(1) provides that a Councillor must treat others, including other Councillors, members of Council staff and members of the public, with dignity, fairness, objectivity, courtesy and respect.
172. Many of the parties' submissions on this clause of the Model Code have been discussed above.
173. The Applicant submitted that the Respondent was in breach of Clause 2(1) because, variously:
- a. The Respondent's public disclosure of the nomination was made without her consent and exposed her to public scrutiny, professional pressure, potential reputational impact and forced her to accelerate important decision-making at time when she had not yet

finalised or communicated key decisions relating to her professional, business or personal circumstances to affected third parties. This caused her to suffer stress and took away her right to decide when to disclose her nomination.

- b. The premature disclosure forced the Applicant to respond to external enquiries before internal conversations had occurred, accelerate decision-making regarding the future of her business, and manage uncertainty for employees and the broader community without control over the timing.
- c. The Respondent knew that the Applicant had chosen not to disclose that she was running for Mayor because she had declined to comment when asked during a radio interview the previous week, a fact that was repeated during the radio interview with the Respondent on 6 November 2025.
- d. Nominations can be withdrawn before the official vote and the Respondent's public disclosure of her nomination took away her ability to control her continued participation in the election process.
- e. The public disclosure was inconsistent with the Communications Policy.
- f. This behaviour demonstrated a clear disregard for the Applicant's autonomy in managing her own communications and is inconsistent with the requirement to treat others with dignity, fairness, objectivity, courtesy and respect.
- g. The selective nature of the Respondent's disclosure of the then 'live' list of nominations was unfair and misleading. By omitting his own nomination for Deputy Mayor and Cr Rinaldi's nomination for Mayor, when these nominations were still formally active even though they had been information withdrawn at the Council-only discussion, created an incomplete and unbalanced public narrative. This behaviour did not treat other Councillors with objectivity and fairness in breach of clause 2(1). It was also in breach of clause 4(1)(b) (discussed below).
- h. Further, when the Applicant raised these issues with the Respondent, he failed to acknowledge the Applicant's experience demonstrating a lack of courtesy and respect.
- i. The Respondent's behaviour in this internal arbitration process was invasive and disrespectful, for example:

Cr Saunders has described me in the following terms: acting like a queen; abusing my position; childish; petty; vindictive; passive aggressive; gaslighting; hypersensitive; ego driven; having a sense of entitlement; micromanaging; nitpicking; focused on power and control; and demonstrating no leadership. He has accused me of lying on radio and pursuing this process out of spite.

...

Beyond the language, the conduct of this proceeding has been deeply invasive. Cr Saunders submitted over 200 images sourced from personal media accounts and featured members of my extended family including my own children, nieces and nephews. These people have no role in this proceeding and the extent to which Cr Saunders has gone to in this area is alarming to me. Thankfully, some of that material has been rejected by the Arbiter ...⁵

174. The Respondent submitted that he was not in breach of Clause 2(1) because, variously:

- a. The nominations were not Confidential Information.
- b. The record of the live interview shows that the Respondent spoke respectfully about Cr Hargreaves, and then only in passing in relation to his decision to run for Mayor. He was

⁵ Transcript of proceedings.

- being “*conversational*” and talking about what he was doing, that is running for Mayor, when he disclosed that he was running against Cr Hargreaves, the existing Mayor.
- c. The disclosure was not misleading or unfair because it accurately reflected the situation.
 - d. He did not breach the agreement reached after the 5 November Meeting to keep the result of the secret vote confidential.
 - e. The Applicant’s behaviour since the Mayoral elections has been a pattern of behaviour that is “*retribution against the four councillors, including me, who did not vote for her, for that reason*”. The Respondent submitted:

She is micromanaging, nit picking and trying to dig up dirt on trivial matters to find an excuse to discipline half of our councillor group.

...

She seems intent on having power and control.

It is also carried out by Tracey in a passive aggressive, gaslighting way.

...

Internally there is no leadership from the Mayor.

She is not treating us with fairness or objectivity as she is required to do and it is intentional, childish, petty, spiteful and vindictive.

She demonstrates a sense of entitlement.

She is acting as though she is unaccountable, like The Queen.

She is abusing her position.⁶

Reasons

- 175. I am satisfied that during the radio interview Cr Saunders did not speak disrespectfully about Cr Hargreaves. He did not refer to the 5 November Meeting, nor did he disclose the secret vote. He mentioned she was running but he focussed on what he would offer if he were to be elected Mayor. He did that knowing he would most likely lose the Mayoral vote. He was not trying to embarrass her or denigrate her. He was not discourteous.
- 176. I accept that he had no malice in disclosing her nomination. I accept that he did not know very much at all about her personal arrangements regarding her family, her employment and her Yoga Studio and what she had or hadn’t arranged with her employer if she were to win a second term as Mayor. If he had known and then disclosed the nomination, or disclosed matters relating to her personal work and family arrangements, the case would be different, and I may have formed the view that the disclosure was disrespectful and unfair on this basis.
- 177. I have discussed my reasons above for not being satisfied that the disclosure was misleading or unfair.
- 178. However, even though Cr Hargreaves had already discussed the ‘idea’ of running for a second term with one or more staff at the Yoga Studio said she said at the Hearing that she was not intending to speak with her employer before the formal Council vote, Cr Saunders did take away Cr Hargreaves’ ability to disclose her nomination publicly at a time of her choosing during the four days between the radio interview and the formal vote.
- 179. More significantly, Cr Saunders disclosed information that was simply not his to share publicly without Cr Hargreaves’ prior consent. As discussed above, I am satisfied the disclosure was a breach of the Communications Policy. Even though a breach of this policy is not in itself a breach of the Model Code, a breach can demonstrate disrespectful behaviour. Here, Cr Saunders disregarded the requirements of the Communications Policy, shared Cr Hargreaves’ position in relation to her candidacy for Mayor without her consent and took away her ability to

⁶ Document 74.

disclose her Mayoral candidacy at a time of her choosing. He showed no concern about the impact this disclosure may have on her. This is disrespectful behaviour and a breach clause 2(1) of the Model Code.

180. An internal arbitration process is confidential except for the arbiter's final determination and reasons which are made public by being tabled at a Council meeting. Cr Saunders was aware of this. However, the confidentiality of documentation that sits behind this Determination (and Statement of Reasons) does not absolve a Councillor of their responsibility to abide by the Model Code within the internal arbitration process. I have deep concerns about the way the Respondent spoke about Cr Hargreaves during this internal arbitration process.⁷ The words quoted above from Cr Saunders' witness statement show a high level of disrespect, are discourteous and at times demeaning. This is unacceptable behaviour for a Councillor. However, the behaviour of Cr Saunders within this internal arbitration process is not an allegation contained within the Application and therefore I make no finding in this respect.
181. I also have concerns about Cr Saunders' approach to the internal arbitration process because much of the content presented to me involved a series of allegations about Cr Hargreaves' behaviour, at times alleging misconduct, when the matter before me is an allegation of misconduct against Cr Saunders. Having said that, Cr Hargreaves' submissions also contained references to other allegedly inappropriate conduct of Cr Saunders which, again, was not before me. Both parties' submissions went well beyond maintaining their respective positions on the Allegations. I therefore put no weight on this aspect of the case.

F4. Findings of the Arbiter on breach of Clause 2(2)

182. The Arbiter makes no finding in relation to Clause 2(2) of the Model Code.

Submissions regarding Clause 2(2)

183. Clause 2(2) provides, relevantly, that a Councillor, as an individual in the workplace, must take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons by adhering to applicable systems and policies put in place by the CEO to manage risks to health and safety in the workplace.
184. The Applicant submitted that the Respondent breached Clause 2(2) because the Respondent's disclosure of the nomination and subsequent conduct has caused the Applicant reasonably foreseeable:
- a. stress, distress and psychological impact, including arising from the Respondent's:
 - i. disregard for her privacy and personal affairs;
 - ii. unequal treatment of personal information compared to other Councillors;
 - iii. dismissal of the impact when raised; and
 - b. ongoing stress from the resulting inability to confidently and effectively manage Councillor-only discussions, including circumstances where the Applicant was aware of risks associated with disclosure but could not appropriately communicate those risks without breaching confidentiality.
185. The Respondent denied the allegations and submitted he was not aware of her personal circumstances regarding her employment and the Yoga Studio.

⁷ Note that I am not referring to the Facilitated Discussion which I have set to one side and have not considered, as discussed above.

Reasons

186. The Applicant did not provide a copy of any relevant Council health and safety policy or procedures put in place by the CEO and as a result I am not aware of the relevant policies against which this allegation is to be judged. I therefore make no finding on this allegation.
187. However, I make the following comments in relation to the issue:
- a. For the reasons set out above, I am not satisfied the nominations were Personal Information and that there was unequal treatment of the Applicant. I accept that the Respondent had very little knowledge of the Applicant's personal, work and business affairs.
 - b. I have accepted the difficulty the Applicant faced performing her role as Mayor.
 - c. However, I have discussed above that the stress caused to the Applicant regarding the impact of having to deal with her employer and employees was at least partly caused by her own decisions not to discuss matters with relevant people before the nomination process began. As discussed above, Cr Hargreaves said she had not intended to speak with her employer until after the formal vote in any case.
 - d. I have expressed my concern about how the Respondent conducted himself within this internal arbitration process.

F5. Findings of the Arbiter on breach of Clause 3

188. The Arbiter finds that Cr Damon Saunders has not breached clause 3 of the Model Code.

Submissions regarding Clause 3

189. Clause 3 provides a Councillor must comply with relevant Council policies and procedures required for delivering good governance for the benefit and wellbeing of the municipal community including the Council's Governance Rules developed, adopted and kept in force under section 60 of the Act.
190. The Governance Rules were made under section 60 of the Act.
191. The Applicant submitted the Respondent was in breach of Clause 3 because, variously:
- a. The Governance Rules operate in conjunction with the Model Code and the Act.
 - b. Confidential Information is defined under the Act and the Governance Rules adopt the same definition.
 - c. The nomination was not authorised for public release and was "*personal information relating to her personal affairs*".
 - d. The Respondent failed to comply with the Communications Policy, including requirements relating to confidentiality and the appropriate handling of information.
192. The Respondent submitted he was not in breach of Clause 3 because, variously:
- a. The nominations were not Personal Information or Confidential Information for the reasons referred to above.
 - b. The Governance Rules do not deal with whether nominations are Confidential Information.
 - c. The Respondent had not breached the Communications Policy because he had not attributed a policy position to the Applicant and the nominations were not confidential.

Reasons

193. By using the words "*A Councillor must comply with the following Council policies and procedures required for delivering good governance*" (emphasis added), Clause 3 provides a complete list of

the governance policies and procedures with which failure to comply is a ground for misconduct (also discussed above). The only possible relevant policy here is listed in paragraph (b), namely *“the Council’s Governance Rules developed, adopted and kept in force under section 60 of the Act”*.

194. Although the Governance Rules use the definition of Confidential Information as set out in the Act (refer section 2.2.2), the Governance Rules do not provide any guidance on the confidentiality or otherwise of nominations made in accordance with section 3.5 of the Governance Rules.
195. As a result, public disclosure of the nomination by the Respondent is not a breach of the Governance Rules.
196. The Communications Policy is not a policy or procedure made under section 60. It is not expressed to be so and does not deal with the types of matters referred to in section 60(1) or (2) of the Act. The Respondent’s breach of this policy is dealt with elsewhere.

F6. Findings of the Arbiter on breach of Clause 4

197. The Arbiter finds that Cr Damon Saunders has not breached clause 4 of the Model Code.

Submissions regarding Clause 4

198. The Applicant submitted that the Respondent was in breach of Clause 4 because, variously:
 - a. The Respondent did not act with integrity when publicly disclosing the nomination, did not exercise reasonable care and diligence in the handling of the nomination as confidential and in accordance with governance standards and thereby his actions diminished public trust and confidence in the integrity of local government.
 - b. The Respondent’s public disclosure of those running for Mayor and Deputy Mayor misled the public by omission because he referred to the remaining nominations as stated during the 5 November Meeting which did not reflect the ‘live’ list of nominations as at 6 November 2025 which included Cr Rinaldi as running for Mayor as well as Crs Hargreaves and Saunders, and Cr Saunders as running for Deputy Mayor as well as Crs Taylor and Rinaldi. Accordingly to the Applicant:

By selectively disclosing only part of the information, the Respondent created a misleading public narrative that there were only two nominations for each position.

This omission materially altered the public’s understanding of the circumstances and contributed to an inaccurate representation of the Mayoral election process.
 - c. The Respondent made Council information publicly available where such disclosure was contrary to the public interest because the information disclosed was personal information including information relating to the Applicant’s personal affairs, had not been authorised for public release and was obtained through internal Council processes. This fundamentally undermined Councillor-only time.
 - d. The disclosure was not in the public interest (for the reasons outlined above) and it was used to promote his own candidacy by putting the Applicant and her track record as Mayor in comparison to himself in a manner that resulted in personal advantage to the Respondent.
 - e. The public interest of transparency does not apply here because the nomination related to her personal affairs and arose out of Councillor-only discussions which were confidential. The requirement of transparency of the Mayor electoral process is met by

the election being conducted formally in Council Chambers in accordance with the Governance Rules.

199. The Respondent submitted that he was not in breach of Clause 4 because, variously:
- a. The nominations were not Personal Information or Confidential Information.
 - b. The public interest lay in their public availability.
 - c. The disclosure was not misleading because it accurately reflected the situation.

Reasons

200. I have set out above my reasons above for:
- a. not being persuaded that the nominations were Personal Information or Confidential Information;
 - b. being satisfied that although the nominations were Council information their public availability was not contrary to the public interest; and
 - c. being satisfied the public disclosure of the nominations did not mislead the public or bring discredit on the Council.

G. SANCTIONS

201. Pursuant to s147(2)(b) of the Act Cr Saunders is suspended for a period of two weeks commencing on the day after Determination (and Statement of Reasons) is tabled in accordance with s147(4) of the Act. For the purposes of s147(4) the Arbiter specifies that the tabling occur at the next full Council meeting after the Council receives a copy of this Determination.
202. Pursuant to s147(2)(a) of the Act the Arbiter directs Cr Saunders to make a verbal apology for the disrespect he showed to Cr Hargreaves by publicly disclosing her Mayoral nomination without her prior consent. The apology:
- a. must be spoken by him in person at the next full Council meeting following the Council meeting at which this Determination is tabled in accordance with paragraph 201 above; and
 - b. must be unreserved and reference that Cr Saunders has engaged in misconduct in breach of clause 2 of the Model Councillor Code of Conduct set out Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020* due to the disrespect he showed to Cr Hargreaves by publicly disclosing her Mayoral nomination without her prior consent.

Reasons

203. I have considered the Applicant's submissions on appropriate sanctions should a finding of misconduct be made. Most of these relied on the nominations being Personal Information.
204. Although invited to do so, the Respondent made no submissions on appropriate sanctions should a finding of misconduct be made.
205. I consider a public apology and a suspension of two weeks to be commensurate with the level of misconduct and provide sufficient time for the Respondent to reflect on his behaviour in breach of clause 2(1) of the Model Code.
206. I have decided not to impose sanctions under s147(e) on Cr Saunders. Although he was correct in his conclusion that the nominations were not Confidential Information, I consider that the entire Councillor group needs more training on confidentiality specifically as it relates the matters raised in this arbitration including:
- a. the scope of Personal Information, Confidential Information, and Council information;
 - b. the Communications Policy as it relates to Councillor media interactions;

- c. the correct use of email labels.
207. As indicated above, I consider one of the fundamental causes of this situation is that the Council's policies and procedures lack any detail or guidance about the confidentiality of the Mayoral election process and how Councillor's work together more generally. This internal arbitration process has demonstrated that there is no shared understanding between the Councillor group on the limits of confidentiality and little grasp of the nuances involved in handling sensitive, confidential and personal information. Further, Councillors had very different understandings of the use of sensitivity labels on emails.
208. I recommend that the CEO put in place training for all Councillors to address these deficiencies. Ideally, the training would involve shorter sessions, active learning and take place over a period of months to allow Councillors to absorb the information.
209. I do not consider a sanction under s147(2)(g) to be warranted in this case.

Dr Meredith Gibbs

Legal Member

Date: 26 June 2026

ANNEXURE A – AGREED FACTS

	Issue	Arbiter's comment	Agreed fact/position
1.	The date and time set by the CEO for nominations for Mayor and Deputy Mayor to be received was 12.00pm Friday, 31 October 2025	Both parties agreed	Yes
2.	Cr Hargreaves' nomination for Mayor was provided to the CEO on Friday, 24/10/2025 3:17pm	Both parties agreed	Yes
3.	Cr Taylor's nomination for Deputy Mayor was provided to the CEO on Friday, 24/10/2025 3:56pm	Cr Saunders stated that he did not have access to this information. At the Directions Hearing he indicated that he was willing to accept this as an agreed fact.	Yes
4.	The CEO advised Councillors of the Mayoral and Deputy Mayoral nominations by an email dated Friday, 31 October 2025 12:25 PM.	Both parties agreed. Cr Hargreaves provided a copy of the email.	Yes
5.	The persons nominated for Mayor and Deputy Mayor were: Mayor: Cr Hargreaves, Cr Saunders, Cr Rinaldi Deputy Mayor: Cr Taylor, Cr Saunders, Cr Rinaldi	Both parties agreed	Yes
6.	In the Application, the term "confidential information" is used by the Applicant in the general governance sense, referring to information discussed in Councillor-only time and subject to confidentiality expectations within that setting. While the Applicant considers the information may also fall within the definition of personal information under the Local Government Act 2020, she is not asking the Arbiter to determine a statutory breach, but rather to consider the conduct under the Model Code.	Clarification sought and received from the Applicant	Yes
7.	The status of City of Ballarat Councillor Communications and Information Policy.	Both parties initially agreed that this Policy should be considered as a policy made under section 46 of the LGA (Refer Clause 2(3) of Model Rules). Note	No. The parties can provide any submissions they wish on this issue as part of

		that after the Directions Hearing, Cr Hargreaves indicated that the Policy should be considered as a policy made under section 60 of the LGA (Refer Clause 3(b)).	their written and oral submissions.
8.	Whether the facilitated discussion held under the Internal Resolution Procedures was held on a 'without prejudice' or confidential basis.	Both parties agreed the facilitated discussion was conducted on a confidential basis under the Internal Resolution Procedures. Cr Saunders submitted that the discussion should have been 'without prejudice'.	Not necessary to determine at this stage.

ANNEXURE B – DEFINITION OF CONFIDENTIAL INFORMATION

The Act provides at section 3(1):

confidential information means the following information—

- (a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released;
- (b) security information, being information that if released is likely to endanger the security of Council property or the safety of any person;
- (c) land use planning information, being information that if prematurely released is likely to encourage speculation in land values;
- (d) law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person;
- (e) legal privileged information, being information to which legal professional privilege or client legal privilege applies;
- (f) personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;
- (g) private commercial information, being information provided by a business, commercial or financial undertaking that—
 - (i) relates to trade secrets; or
 - (ii) if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage;
- (h) confidential meeting information, being the records of meetings closed to the public under section 66(2)(a);
- (i) internal arbitration information, being information specified in section 145;
- (j) Councillor Conduct Panel confidential information, being information specified in section 169;
- (k) information prescribed by the regulations to be confidential information for the purposes of this definition;
- (l) information that was confidential information for the purposes of section 77 of the Local Government Act 1989;