

## Councillor Emails

**ITEM 15.1** 13/07/2021  
**Council**

**Council Member**  
Councillor Martin

2018/04053  
Public

**Contact Officer:**  
Amanda Mcilroy, Chief  
Operating Officer, Corporate  
Services

## QUESTION ON NOTICE

### Councillor Martin will ask the following Question on Notice:

Could the Administration advise if the CEO or their delegate has the authority, separate to the direction of any integrity agency, to view the emails of City of Adelaide elected members between each other and to and from external parties on the City's Outlook email system and, if so,

1. What is the criteria used to determine such emails will be viewed?
2. With whom is the Administration permitted to share the emails it has viewed?
3. Are records of such viewings kept?
4. In the event this happens and that records are kept, in the term of the current Council, how many emails have been viewed and when and, if this happens and in the circumstance no records are kept, what is the estimated number of emails and occasions on which they have been viewed?
5. What is the total number of elected members whose emails have been viewed?

## REPLY

1. In accordance with statutory obligations, including under the *Independent Commissioner Against Corruption Act 2012 (SA)*, the *Work, Health and Safety Act 2012*, the *Local Government Act 1999 (SA)*, and the *City of Adelaide Act 1998 (SA)*, the CEO and nominated delegates have the authority to conduct investigations on the basis of allegations of potential breaches of these Acts.
2. The scope of such investigations can extend to official records kept by the City of Adelaide and may include emails of City of Adelaide elected members between each other and to and from external parties on the City's Outlook email system. Only authorised officers are permitted to conduct these preliminary investigations. Where there is evidence of conduct that could reasonably be suspected to constitute a breach of these Acts, including corruption, serious or systemic misconduct or maladministration, then a report is made to the relevant agency, consistent with the statutory reporting obligations of public officers. These reports may include official records kept by the City of Adelaide.
3. It is not the practice of the City of Adelaide's CEO or delegates to view the emails of City of Adelaide elected members between each other and to and from external parties on the City's Outlook email system except where it is required or authorised by law and in accordance with these statutory obligations.
4. City of Adelaide authorised officers maintain a confidential log of preliminary investigations conducted but not the detail of which official records may have been viewed.

5. In the term of the current Council, two preliminary investigations have been conducted into potential breaches of the *Local Government Act 1999* (SA) and both have been closed. Neither of these investigations focused on any specific Council Member.

### Contextual Information

6. Council is an 'agency' under the *State Records Act 1997* (SA). It is an obligation of Council to ensure the official records made by members, in giving effect to their roles and responsibilities under the *Local Government Act 1999*, are preserved for future reference, in compliance with the *State Records Act 1997*. This includes emails pertaining to Council business.
7. The *City of Adelaide Standing Orders June 2019* (Part 6 – Record Keeping and Access Rights) stipulate that:
  - 7.1 The *State Records Act 1997* (SA) places statutory obligations on the Corporation of the City of Adelaide to retain its official records for continuing administrative and legal purposes, and to dispose of them only in accordance with General Disposal Schedule 20, or an authority issued by State Records under the Act.
  - 7.2 The *Independent Commissioner Against Corruption Act 2012* (SA), *Freedom of Information Act 1991* (SA), the *Ombudsman Act 1972* (SA) and the *Evidence Act 1929* (SA), contain provisions in relation to access to official records and/or obligations to make such records available in legal proceedings.
  - 7.3 Council Members' written and electronic records that concern the Corporation of the City of Adelaide business, functions or activities are classified as 'official records' under the *State Records Act 1997* (SA) and must be retained. Council Members have an obligation to ensure the records created or used by them in the course of performing their official functions and duties are retained and incorporated in the Corporation of the City of Adelaide's records, including:
    - 7.3.1 Social media accounts and receipt or response to official business, which are to be forwarded to a City of Adelaide email address, or the relevant City of Adelaide social media account, tagged to enable the Council record keeping process to be utilised.
    - 7.3.2 The obligation for Council Members to retain records does not apply to those items that are personal or private, or documents which the Corporation of the City of Adelaide has itself created and stored such as Council agendas, minutes or briefing notes.
8. As outlined in an email from the Acting Chief Executive Officer to all Council Members on 12 March 2021:
  - 8.1 The use of private email accounts to conduct Council business is likely to lead to a breach of Council's obligations under the *State Records Act 1997*, as these records are unable to be captured and stored in the records management system. In addition, the destruction of any record by an elected member would be in breach of that Act. This includes personal emails that may have been used to transact Council business.
  - 8.2 This issue has been the subject of previous investigations, and adverse findings, by the Ombudsman. The Ombudsman has also found that in addition to its obligations under the *State Records Act 1997*, a council also has an obligation to provide access to records under legislation such as *Freedom of Information Act 1991*, for risk management and for legal processes such as disclosure and subpoenas. Other persons or bodies such as the Independent Commissioner Against Corruption, the Minister, the Courts or auditors may also require access to records.
  - 8.3 To ensure records are appropriately captured into the Council's records management system, members must use the corporate email account provided to transact Council business, which necessarily includes emails between members with regards to matters that will be the subject of Council's consideration.
  - 8.4 If this does not occur, it would be difficult, if not impossible, for Council to ensure the official records made by members, in giving effect to their roles and responsibilities under the *Local Government Act 1999*, are preserved for future reference, in compliance with the *State Records Act 1997*.
9. The *Independent Commissioner Against Corruption Act 2012* (SA) requires public officers, public authorities and inquiry agencies to report to the OPI any conduct they reasonably suspect involves corruption in public administration or serious or systemic misconduct or maladministration in public administration. Public officers, including police officers have no discretion about the type of corruption that should be reported. All corruption must be reported. This includes all theft, assault, fraud, and dishonesty offences. Public officers must also report any misconduct or maladministration they consider to be serious or systemic. The reporting obligations of public officers are outlined in the Commissioner's Directions and Guidelines.

Staff time in receiving and preparing this reply	To prepare this reply in response to the question on notice took approximately 5 hours.
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# Grote Street Towers

**ITEM 15.2** 13/07/2021  
**Council**

**Council Member**  
Councillor Martin

2015/00903  
Public

**Contact Officer:**  
Klinton Devenish, Director,  
Services, Infrastructure &  
Operations

## QUESTION ON NOTICE

**Councillor Martin will ask the following Question on Notice:**

'Noting that SCAP has approved the construction of a 33 level tower on the site of the old La Boheme which the Advertiser reported will "face" Council's Central Market Arcade Redevelopment (CMAR), could the Administration advise whether:

1. There are any heritage issues arising from the new proposal and, if so, how it is proposed Council could or should deal with them?
2. What competitive considerations Council faces given that the newly approved facing tower could obscure some views and also provide a similar offering of commercial and residential units, together with car parking?
3. Whether it is in Council's interest to assist the competing development by agreeing to any acquisition of land in Council hands and what action/s are recommended?'

## REPLY

1. During the assessment process both Heritage South Australia and Council's Heritage Advisor provided comments on the proposal, in relation to the adjacent heritage places. Together with comments from the Government Architect, this resulted in changes to the lower-level façade treatment, particularly introducing a brick podium element to provide an improved relationship with the adjacent heritage places as well as the Central Market Arcade Redevelopment (CMAR).
2. There are no perceived competitive considerations relating to the Central Market Arcade Redevelopment as a result of this tower development.
3. The CMAR is a transformational project, it was envisaged that this redevelopment would act as a catalyst supporting further investment within the market district. In this regard, projects such as the tower proposal on the old La Boheme site will support activation, demand and foot traffic within the market district.
4. If an application was made to acquire Council land this would be brought to Council and no action is required at this time.

Staff time in receiving and preparing this reply	To prepare this reply in response to the question on notice took approximately 4.5 hours.
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# Legal Costs Culture Investigation

**ITEM 15.3** 13/07/2021  
**Council**

**Council Member**  
Councillor Martin

2018/04053  
Public

**Contact Officer:**  
Clare Mockler, Acting Chief  
Executive Officer

## QUESTION ON NOTICE

**Councillor Martin will ask the following Question on Notice:**

'Could the Administration advise what were the total costs of the Independent Culture Investigation and Reporting conducted by EMA Legal and any and all other legal costs incurred by the Administration on behalf of elected members, members of staff or the Executive as a consequence of or related to that Investigation and Reporting?'

## REPLY

1. A report will be presented at the 10 August 2021 meeting of Council that will address the Council resolution of 14 April 2020:

*That Council:*

1. *Recognises the valuable role the City of Adelaide administration plays in supporting Council Members.*
  2. *Expresses concern about the impact the conduct and behaviours of some Council Members may have on the health and wellbeing of the Administration.*
  3. *Request an urgent independent investigation to determine the extent of any impact and provide recommendations where appropriate.*
2. This report will include a summary of the total legal costs incurred to date by the Corporation of the City of Adelaide in relation to this matter.

Staff time in receiving and preparing this reply	To prepare this reply in response to the question on notice took approximately 4 hours.
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