



Report

Full investigation - *Ombudsman Act 1972*

Public officer	Mr Colin Byles, Chief Executive Officer
Council	Northern Areas Council
Ombudsman reference	2022/00162
Date report received	10 January 2022
Issues	Whether Mr Byles engaged in misconduct in public administration by fabricating and backdating a letter to Goyder's Line Medical

Jurisdiction

The matter is within the jurisdiction of the Ombudsman under the *Ombudsman Act 1972*.

The original report about this matter to my Office attracted the protections of the *Public Interest Disclosure Act 2018*. I do not consider it is necessary to identify the reporter.

Investigation

My investigation has involved:

- assessing the information provided by the reporter
- seeking a response from Mr Byles
- considering the council's Employee Conduct Policy
- preparing this report.

Procedural fairness

A copy of the provisional report was provided to the reporter, the council, and Mr Byles.

The reporter and the council both informed my Office that they had no submissions to make in response to my provisional report.

In response to my provisional report, Mr Byles expressed his view that I had not given enough weight to his statement that his conduct was 'an error in judgement when under pressure'.

I have considered Mr Byles' response and have addressed his submissions where necessary in the body of this report. Ultimately, Mr Byles' response did not persuade me to alter my conclusion or recommendation. In particular, while I accept that Mr Byles may have felt under particular pressure due to previous findings of misconduct made against him, which may have affected his judgement, I do not consider that this provides justification for his actions or lessens their severity.

Background

1. On 10 November 2021, the Practice Coordinator of Goyder's Line Medical sent a letter to the Mayor and Mr Colin Byles, Chief Executive Officer of the council, raising concerns about the council's lack of support for their COVID-19 vaccination program.
2. At the council meeting held on 16 November 2021, the Mayor forwarded a copy of the letter from Goyder's Line Medical to all councillors and requested that Mr Byles respond to the letter stating that the matter would be considered at the next council meeting.
3. In December 2021, a statement from Goyder's Line Medical appeared in a local publication, the Jamestown Journal, that was critical of the council and its lack of support for the COVID-19 vaccination program.
4. On 2 December 2021, the Mayor contacted Mr Byles regarding the article. During that conversation, Mr Byles assured the Mayor that an acknowledgement letter had been sent to Goyder's Line Medical stating that the matter would be considered by the council at its next meeting.
5. After his conversation with Mr Byles on 2 December 2021, the Mayor contacted the Practice Coordinator of Goyder's Line Medical, who advised that an acknowledgement letter from the council was never received.
6. At the December 2021 council meeting, the Mayor requested that Mr Byles forward him a copy of the email he had sent to Goyder's Line Medical acknowledging receipt of their letter. In response, Mr Byles did not provide a forwarded email, but rather a PDF copy of a letter dated 16 November 2021.
7. Following enquiries made by my Office, Mr Byles provided the following response, admitting to the fabrication of the letter:

I was asked at the Council meeting whether a reply had been sent to the Goyder Medical Centre [sic] in reply to their letter of the 10 November 2021, I stated the letter had been sent and also was asked to forward a copy of the reply letter to the Mayor.

When I returned to my office after the Council meeting and went to forward a copy of the letter to the Mayor, I was astonished to find that I had not sent a reply, I must have thought I had replied.

I panicked and created a reply letter backdated to the 16 November 2021 and sent this to the Mayor.

I was concerned with all the issues that had occurred in the last 12 months and with the Mayor pressuring me since the time I was not offered a contract, I did not need any more problems. An error in judgement when under pressure.

I am now working with the Goyder Medical Centre [sic] on a number of issues and the working relationship with them is very good and addressing the issues is going very well.

8. The 'issues that had occurred in the last 12 months' to which Mr Byles refers in his response relate to findings of misconduct in relation to altering a document that were previously made against him as a result of an investigation carried out by Norman Waterhouse in 2021.
9. The Norman Waterhouse investigation found that Mr Byles' conduct may have been in breach of section 109(1) of the *Local Government Act 1999* which requires employees to act with honesty in the performance of their official duties at all times.
10. Norman Waterhouse considered that Mr Byles' conduct 'may be considered "misconduct" as defined pursuant to Section 5 of the *Independent Commissioner Against Corruption Act 2012* (SA) given that his conduct has contravened a Code of Conduct'. I note that the legislative scheme has since been amended, with misconduct now having the definition provided in section 4(1) of the Ombudsman Act.
11. On 25 October 2021, the council resolved to readvertise the CEO position 'to test the market'.
12. Mr Byles was allowed to reapply for the position, and in March 2022 he was reappointed for a further two years.

Relevant law/policies

13. Section 4(1) of the Ombudsman Act provides:
 - (1) **Misconduct in public administration** means an intentional and serious contravention of a code of conduct by a public officer while acting in their capacity as a public officer that constitutes a ground for disciplinary action against the officer.
14. The council's Employee Conduct Policy relevantly provides:

3. INTEGRITY, IMPARTIALITY AND GOOD DECISION MAKING

The principle of integrity, impartiality and good decision making underpins confidence in the dealings of local government, and assists the council in meeting its legislative obligations to the community, employees and council members. In keeping with this principle, all employees must:

1. act honestly, ethically, impartially, and with integrity, in the performance of their duties

...

6. REPORTING AN ALLEGED BREACH

All employees must comply with the Policy or report any alleged breaches

...

An employee who is found to have breached the Policy will be subject to counselling and/or other disciplinary action (including termination) in accordance with the law.

Whether Mr Byles engaged in misconduct in public administration by fabricating and backdating a letter to Goyder's Line Medical

15. In light of Mr Byles' submissions to my Office in which he admitted to the alleged conduct, I am satisfied that Mr Byles did, in fact, fabricate and backdate the letter to Goyder's Line Medical.
16. I will now consider whether Mr Byles' conduct amounts to misconduct in public administration as defined in section 4(1) of the Ombudsman Act.
17. The Employee Conduct Policy 'operates in addition to the provisions contained in the *Code of Conduct for Council Employees...* and may be enforced in accordance with its terms and together with any relevant council policy concerning discipline, performance management or termination of employment having regard to the particular circumstances of any alleged breach'.¹ As such, I consider that the Employee Conduct Policy is a code of conduct which Mr Byles is required to comply with in the performance of his duties.
18. Clause 6 of the Employee Conduct Policy clearly provides that a breach of the policy constitutes a ground for disciplinary action.
19. Clause 3.1 of the Employee Conduct Policy requires council employees to 'act honestly, ethically, impartially, and with integrity, in the performance of their duties'.
20. I consider that by fabricating and backdating a letter in order to create the impression that he had sent it when originally requested, Mr Byles did not act honestly, ethically or with integrity in the performance of his duties. As such, I am of the view that Mr Byles' conduct was a contravention of clause 3.1 of the Employee Conduct Policy.
21. In his response to my Office, Mr Byles has provided insight to his motivations at the time of his conduct. In particular, he states:

I was concerned with all the issues that had occurred in the last 12 months and with the Mayor pressuring me since the time I was not offered a contract, I did not need any more problems. An error in judgement when under pressure.
22. I am of the view that Mr Byles made a considered decision to fabricate and backdate the letter in order to deceive the Mayor into believing the letter was sent when originally requested. As such, I consider that his conduct was intentional.
23. In his response to my provisional report, Mr Byles expressed his view that I had not given enough weight to his statement quoted above, stating:

I was under a lot of pressure and I made a bad judgement call which I believe should have be [sic] taken into account in your findings - bad judgement under pressure leads to illogical actions.
24. I consider that the requirement for employees to act honestly is fundamental to the proper functioning of councils. I note that, in addition to its inclusion within the council's Employee Conduct Policy, the requirement for council employees to act honestly in the performance of official duties is included as a 'general duty' within section 109(1) of the Local Government Act.

¹ Clause 1 of the Northern Areas Council Employee Conduct Policy.

25. It is undeniable that an intentional and deliberate decision to fabricate a document in order to deceive an elected member of a council is a serious breach of the requirement to act honestly in the performance of official duties. It is especially so when such conduct is carried out by a person in Mr Byles' position of Chief Executive Officer. Such conduct undermines trust in the council, sets a poor example for staff and raises questions about his fitness for the role.
26. I do not consider that the severity of this conduct is lessened in circumstances where Mr Byles was under pressure due to findings of misconduct previously made against him. To the contrary, I consider that the severity of Mr Byles' actions is increased in circumstances where he has engaged in similar conduct to avoid any further disciplinary action from the council.
27. To his credit, Mr Byles admitted his conduct when first questioned about it by me, but that candour does not ameliorate the seriousness of his actions.

Opinion

In light of the above, my final view is that by fabricating and backdating the letter to Goyder's Line Medical, Mr Byles committed misconduct for the purposes of section 4(1) of the Ombudsman Act by an intentional and serious contravention of clause 3.1 of the council's Employee Conduct Policy.

To remedy this error, I recommend under section 25(2) of the Ombudsman Act that the council take disciplinary action against Mr Byles.

Final comment

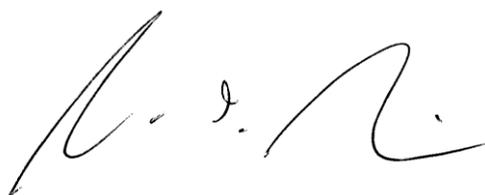
I now report Mr Byles' misconduct to the principal officer of the council, as required by section 18(5) of the Ombudsman Act.

In accordance with section 25(4) of the Ombudsman Act, I request that the council report to me by **21 September 2022** on what steps have been taken to give effect to my recommendation above; including:

- details of the actions that have been commenced or completed
- relevant dates of the actions taken to implement the recommendation.

In the event that no action has been taken, reason(s) for the inaction should be provided to the Ombudsman.

I have also sent a copy of my report to the Minister for Local Government as required by section 25(3) of the *Ombudsman Act 1972*.

A handwritten signature in black ink, appearing to read 'Wayne Lines', with a stylized flourish at the end.

Wayne Lines
SA OMBUDSMAN

21 June 2022