

REPORT ON THE CONDUCT OF MR MILLIGAN, MLA

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE

JUNE 2021

REPORT 5

THE COMMITTEE

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RESOLUTION OF APPOINTMENT

The Standing Committee on Administration and Procedure Committee is established pursuant to Standing Order 16:

16. (a) A Standing Committee on Administration and Procedure is established at the commencement of each Assembly to:
 - (i) undertake self-referred inquiries or inquiries referred by the Assembly and, in addition, in the third year of an Assembly term the committee shall inquire into and report on the operation of the standing orders and continuing resolutions of the Assembly with a view to ensuring that the practices and procedures of the Assembly remain relevant and reflect best practice;
 - (ii) advise the Speaker on:
 - (A) Members' entitlements including facilities and services;
 - (B) the operation of the transcription service (Hansard);
 - (C) the availability to the public of Assembly documents;
 - (D) the operation of the Assembly library;
 - (iii) arrange the order of private Members' business and Assembly business; and
 - (iv) as required by continuing resolutions of the Assembly, consider, inquire and report on matters relating to citizen's right of reply, claims of parliamentary privilege, reports of the Commissioner for Standards and the Ethics and Integrity Adviser and the implementation of Latimer House Principles.
- (b) the Committee shall consist of:
 - (i) the Speaker;
 - (ii) the Government whip;
 - (iii) the Opposition whip; and
 - (iv) a representative of the crossbench (or if a single party, the whip of that party);
- (ba) Should a whip be unable to attend a meeting, the Party nominated deputy whip may attend in their place;
- (c) the Speaker shall be the Chair of the Committee; and
- (d) the Committee shall have the power to consider and make use of the evidence and records of the Standing Committee on Administration and Procedure appointed during the previous Assemblies.

TERMS OF REFERENCE

Continuing resolution 5AA

COMMISSIONER FOR STANDARDS

This resolution provides for the appointment of a Legislative Assembly Commissioner of Standards.

Resolution agreed by the Assembly

31 October 2013 (as amended 9 June 2016, 3 August 2017 and 22 August 2019)

COMMISSIONER FOR STANDARDS

That this Assembly requests the Speaker to appoint a Legislative Assembly Commissioner for Standards on the following terms:

- (1) The Speaker must, after each Assembly is elected or whenever the office becomes vacant, appoint a Commissioner for the life of that Assembly and the period of six months after each election. The appointment is for the term of the Assembly and the period of six months after the election at the conclusion of that term. The Speaker may decide not to seek expressions of interest if only one term has been served by the Commissioner.
- (2) Before appointing a Commissioner, the Speaker must consult with the Chief Minister, the Leader of the Opposition and Crossbench Members.
- (3) The Commissioner may be dismissed only following a resolution of the Legislative Assembly resolving to require the Speaker to end the Commissioner's appointment—
 - (a) for misbehaviour; or
 - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the Commissioner's functions.

However, a motion for such a resolution may only be debated after the Standing Committee on Administration and Procedure ('the Committee') has reported to the Assembly that it is satisfied that the Commissioner is unfit for the office or unable to fulfil the Commissioner's functions.

- (4) The functions of the Commissioner are to:
- (a) investigate complaints about Members lodged via the Clerk to the Commissioner;
 - (b) report to the Standing Committee on Administration and Procedure; and
- (4A) The Committee will inquire into and report on any report provided to it by the Commissioner pursuant to subparagraph 4(b) of this resolution.
- (5) Anyone may make a complaint to the Commissioner via the Clerk of the Legislative Assembly about a Member's compliance with the Members' Code of Conduct or the rules relating to the registration or declaration of interests. The Integrity Commissioner established pursuant to the [*Integrity Commission Act 2018*](#) may also refer matters to the Commissioner for Standards for consideration via the Clerk of the Legislative Assembly about matters the Integrity Commissioner considers should be referred. *(Amended 22 August 2019)*
- (6) If the Commissioner receives a complaint about a Member pursuant to paragraph (5) and the Commissioner believes on reasonable grounds that—
- (a) there is sufficient evidence as to justify investigating the matter; and
 - (b) the complaint is not frivolous, vexatious or only for political advantage;
- the Commissioner may investigate the matter and report to the Committee. If the Commissioner considers that the complaint is more properly the purview of the Integrity Commissioner, the Commissioner shall refer the matter to the Integrity Commissioner.
- (7) In exercising the functions of Commissioner the following must be observed:
- (a) The Commissioner must not make a report to the Committee if the Member about whom the complaint was made has agreed that he or she has failed to register or declare an interest if —
 - (i) in the Commissioner's opinion the interest involved is minor or the failure was inadvertent; and
 - (ii) the Member concerned has taken such action to rectify the failure as the Commissioner may have required within any procedure approved by the Committee for this purpose.

- (b) The Commissioner must not make a report to the Committee unless the Commissioner has—
 - (i) given a copy of the proposed report to the Member who is the subject of the complaint under investigation;
 - (ii) the Member has had a reasonable time to provide comments on the proposed report; and
 - (iii) the Commissioner has considered any comments provided by the Member.
- (c) The Commissioner must report by 31 August each year to the Speaker on the exercise of the functions of the Commissioner.

CODE OF CONDUCT FOR ALL MEMBERS OF THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

This resolution provides for a code of conduct for Members of the Legislative Assembly.

25 August 2005 (amended 16 August 2006, 24 October 2013, 3 August 2017, 30 July 2019)

Resolution agreed by the Assembly

The Members of the Legislative Assembly for the Australian Capital Territory acknowledge that, in a parliamentary democracy they cannot command, but must constantly strive to earn and maintain, the respect and support of those who have elected them to their positions of honour and privilege as Members.

In committing to this Code of Conduct, Members undertake, to the community and to one another, that they shall not act in a manner inconsistent with their duties and obligations as Members and that the following principles shall guide their conduct as Members in all matters:

- (1) Members should at all times act with integrity, honesty and diligence.
- (2) Members should act only in the interests of, and with respect for, the people of the Australian Capital Territory and in conformity with all laws applicable in the Territory.
- (3) Members should uphold the separation of powers and the rule of law
- (4) Members should always act in the public interest, make decisions and choices on merit, and not seek to gain financial or other benefit for themselves, their family or friends.
- (5) Members should be reasonably accessible to the people of the electorate they have been elected to serve, and should represent their interests conscientiously.
- (6) Members should be transparent in, and accountable for, their decisions and actions and should submit themselves to appropriate scrutiny.
- (7) Members should make only proper use of those public resources to which they have access and should do so in a manner designed to make effective and efficient use of those resources.

- (8) Members should respect the dignity and privacy of individuals, and not disclose confidential information to which they have official access other than with consent or as required by law.
- (9) Members should observe proper standards of parliamentary conduct, and observe respect for differences and fairness in their political dealings.
- (10) Members should promote and support these principles by leadership and example, in order to maintain and support public trust and confidence in the integrity of the Assembly and the conduct by its Members of public business.

Consistent with the above principles, Members further undertake that they should:

- (11) Treat all people with courtesy, and respect the diversity of their backgrounds, experiences and views. In particular, Members should by their words and actions demonstrate, and by their example and leadership encourage and foster others to show, respect for the peaceful, temperate and lawful exercise by all members of the community of their shared and individual rights and entitlements, including freedom of religion, freedom of association and freedom of speech.
- (12) Actively seek to avoid or prevent any conflict of interest, or the perception of such a conflict, arising between their duties as a Member and their personal affairs and interests, take all reasonable steps to resolve any such conflict or perception of a conflict that does arise, and:
 - (a) comply with section 15 of the [Australian Capital Territory \(Self-Government\) Act 1988 \(Cwth\)](#);
 - (b) declare their private interests and ensure that their declaration is kept up to date as required by Continuing resolution 6 (as amended or replaced from time to time); and
 - (c) disclose in a manner appropriate to the circumstances any financial or non-financial interest that they may hold, or which they may be reasonably perceived to hold (other than as a member of the public or of a broad class of persons) which a reasonable observer, informed of that matter, might perceive as giving rise to a conflict of interest with the performance of the Member's duty as a Member.
- (13) Ensure that outside occupational or other pursuits do not unreasonably impact on their duties as a Member.

- (14) Not solicit to undertake, or undertake, any activity as a Member in return for the provision, promise or expectation of any improper benefit to the Member or to another person.
- (15) Take care to consider the rights and reputations of others before making use of their unique protection of parliamentary privilege consistent with the resolution of the Assembly 'Exercise of freedom of speech' agreed to on 4 May 1995 (as amended or replaced from time to time).
- (16) Not use information received by them as a Member that is not in the public domain in breach of any obligation of confidence applicable to their receipt of that information unless required by law, or improperly for the private benefit of themselves or another person.
- (17) In their capacity as an employer on behalf of the Territory under the [Legislative Assembly \(Members' Staff\) Act 1989](#):
 - (a) familiarise themselves and comply with the terms and conditions on which their personal staff are engaged and with all applicable policies and practices (including those related to occupational health and safety, discrimination, harassment and bullying, equal employment opportunity and use of information technology);
 - (b) not employ a family member as defined in that Act;
 - (c) take all reasonable steps to ensure, as far as practicable, their personal staff are mindful of the Member's commitment to this Code of Conduct, and assist the Member to comply with this Code of Conduct; and
 - (d) not seek to require or encourage their personal staff to engage in any conduct that may amount to a breach of any code of conduct applicable to those staff from time to time.
- (18) In all their dealings with staff of the Assembly and members of the ACT Public Service:
 - (a) extend professional courtesy and respect;
 - (b) act consistently with accepted workplace conduct standards; and
 - (c) recognise the unique position of impartiality and the obligations of public sector officials ,including members of the ACT Public Service.

- (19) Only make a complaint about the compliance of another Member with this Code of Conduct where they believe there are reasonable grounds to suspect non-compliance and not make any such complaint that is frivolous or vexatious or only for political advantage.
- (20) Cooperate fully with any official inquiry that may be commenced in connection with their compliance with this Code of Conduct, or that of another Member.
- (21) Within the first six months after an election for the Assembly, the Assembly shall reaffirm its commitment to the principles, obligations and aspirations of the code.
- (22) Where a new member who has not voted on the most recent reaffirmation required under clause (21) is elected to the Assembly, that member shall, before he or she makes an inaugural speech, or otherwise participated in parliamentary processes, affirm that he or she will abide by the code.
- (23) At the end of each Assembly the Code of Conduct shall be reviewed by a suitably qualified person, appointed by the Speaker, in consultation with the Standing Committee on Administration and Procedure.

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RECOMMENDATIONS

Recommendation 1

- 5.2 The Standing Committee on Administration and Procedure recommends that no further action be taken against Mr Milligan for a breach of Code of Conduct.**

Recommendation 2

- 5.3 The Standing Committee on Administration and Procedure as part of its major review of standing orders during this Assembly, will consider the need for some effective means of ensuring that Members are bound to not misuse information when they are no longer members.**

1 INTRODUCTION

- 1.1 Mr James Milligan was a member of the Legislative Assembly from 2016 to 2020. Mr Milligan was not re-elected at the 17 October 2020 election. However, on the resignation of Mr Alistair Coe, Mr Milligan was declared elected to fill the casual vacancy on 26 March 2021
- 1.2 On 1 May 2021 ABC News published a news report in which it was alleged that Mr Milligan, following the election, sent an email to contacts using addresses that may have been obtained through his work as an MLA.
- 1.3 The news report implied that Mr Milligan had breached privacy legislation and misused electoral roll information.
- 1.4 On Tuesday 11 May 2021, a notice of motion, lodged by Ms Joy Burch MLA was published on the Notice Paper calling on the Commissioner to investigate notwithstanding that Mr Milligan was not a member at the time the emails were alleged to have been sent.
- 1.5 On Thursday, 13 May 2021, Ms Burch advised the Assembly, during debate on the motion, that she have been informed that Mr Milligan had “self-referred” the matter to the Commissioner for Standards.
- 1.6 Following the passing of the motion, which called on Mr Milligan to make a statement to the Assembly, Mr Hanson, by leave presented a statement from Mr Milligan together with a copy of a draft advice from the Ethics and Integrity Advisor.
- 1.7 The Assembly passed a further motion on 13 May 2021 referring the matter to the Commissioner for Standards.
- 1.8 The Commissioner conducted an investigation into the matter and provided his report to the Standing Committee on Administration and Procedure on 7 June 2021.
- 1.9 A copy of the Commissioner’s report is attached at Appendix A.

2 CONDUCT OF THE COMMISSIONER'S INQUIRY

- 2.1 The Commissioner's investigation was conducted in accordance with the protocols adopted by the Standing Committee on Administration and Procedure on 24 March 2015 (revised August 2017 and August 2019). In his report to the Committee the Commissioner indicated that he received correspondence from Mr Milligan on 11 May 2021.
- 2.2 The Commissioner responded to Mr Milligan's correspondence on 12 May 2021 indicating that he was only able to investigate complaints of breaches of the code of conduct and that he had not received a complaint.
- 2.3 In his correspondence Mr Milligan asked the Commissioner to consider the motion before the Assembly. The Commissioner advised that he did not have the authority to examine or comment on the merits of any motion not embark on an investigation of conduct that was not the subject of a complaint.
- 2.4 Following the passing of the motion, move by Ms Burch, MLA, requesting that Mr Milligan advise the Assembly of matters surrounding the emails, a subsequent motion was passed formally referring the actions of Mr Milligan to the Commissioner for Standards as below:

That:

- (1) this Assembly notes the statement made by Mr Milligan relating to his correspondence to constituents, and that he has referred himself to the Commissioner for Standards; and
 - (2) Notwithstanding the provisions of continuing resolution 5AA, and noting that the actions of Mr Milligan occurred at a time when Mr Milligan was not an MLA but that he has subsequently been re-elected to the Assembly, to ensure that the Commissioner has coverage of this matter, this Assembly refers the actions of Mr Milligan in writing to constituents and seeking their support in his private business to the Assembly's Commission for Standards to ascertain whether the actions of Mr Milligan breached the code of conduct of Members.
- 2.5 The matter now having been formally referred, the Commissioner resumed correspondence with Mr Milligan requesting a statement of events and the answers to a number of specific questions.
 - 2.6 The Commissioner's investigation was limited by the lack of complaint outside the few press reports. Having considered all of the material he drafted a report which he sent to Mr Milligan on 30 May 2021 who "had nothing to add or amend".

3 THE COMMISSIONER'S FINDINGS

3.1 The Commissioner noted at Paragraph 14 of his report that

“There are passages in the email that are certainly consistent with these stated purposes. However, the email also suggests that “...if you have any projects or referrals that you think may benefit from affordable, efficient and expert business support, please do not hesitate to put them in touch with JM Publishing.” I find it difficult to accept that, in including this suggestion, Mr Milligan was wholly uninfluenced by any desire to solicit business. Of course, any former Member of the Assembly is legally entitled to conduct and promote a business. The issue with which I am presently concerned is whether in doing so he used email addresses derived from his constituent list.

3.2 The Commissioner also noted, in Paragraph 24, consideration of other means of protecting confidential information. ie “ One obvious issue raised by this complaint is the need for some effective means of ensuring that people who have been provided with confidential information whilst Members of the Assembly are bound not to misuse that information when they are no longer Members. This is an issue that will require consideration by the Standing Committee on Administration and Procedure and consultation with Members of the Assembly. I have written to the Clerk of the Assembly, offering some comments on the applicability of various provisions of the Electoral Act 1992 (ACT), the Information Privacy Act 2014 (ACT) and the Privacy Act 1988 (Commonwealth) and the relevance of other potential legal principles and remedies.”

3.3 The Commissioner found as follows:

“Since I am unable to find that Mr Milligan inappropriately used information derived from his constituent list and the Thank You note was disseminated when he was not a Member of the Assembly, I recommend that the complaint be dismissed.”.

4 THE COMMITTEE'S CONSIDERATION OF THE COMMISSIONER'S REPORT

- 4.1 The Committee, in accordance with continuing resolution 5AA, has considered the report of the Commissioner for Standards relating to the alleged misuse of information by Mr Milligan.
- 4.2 The Committee, having agreed with the Commissioner's assessment recommends no further action be taken against Mr Milligan for a breach of Code of Conduct.
- 4.3 The Committee agrees with the Commissioner's recommendation. In its major review of standing orders during this Assembly, the Committee will consider the matter raised by the Commissioner in paragraph (24) i.e. the need for some effective means of ensuring that Members are bound to not misuse information when they are no longer members.
- 4.4 The Committee noted the Commissioner's report referred to dates of contact between himself and Mr Milligan.

"On 11 May 2021 Mr Milligan wrote to me concerning notice of a motion that was to be moved in the Legislative Assembly. And, he purported to refer the matter to me and asked me to consider the issues raised by the foreshadowed motion and to conduct an investigation if I thought that was warranted."

"I responded on 12 May 2021, pointing out that my current role as Commissioner for Standards was more limited than he may have appreciated and explaining that I was authorised only to investigate complaints that Members of the Legislative Assembly may have breached the Code of Conduct or the rules governing the registration or declaration of interests. No such complaint had been referred to me. I also explained that I had no authority to examine or comment upon the merits of any motion that may be moved in the Legislative Assembly or to embark upon an investigation into conduct that was not the subject of a complaint. I assured him that, if I did receive such a complaint, I would invite him to provide relevant information and present any arguments he may deem appropriate."

- 4.5 During the course of the 13 May debate on the motion seeking information from Mr Milligan and a subsequent motion referring Mr Milligan to the Commissioner for Standards neither Mr Milligan nor Mr Hanson acknowledged that the self-referral by Mr Milligan was not being investigated.
- 4.6 The Committee was informed on 21 June that Mr Milligan was not aware of the 12 May email from the Commissioner and said he had not received the email. This information prompted the Committee to ask the Clerk to investigate Mr Milligan's email account to verify whether he had

received the email or not. Information from the Information and Digital Services Branch of the Office of the Legislative Assembly provided to the Committee can be found at **Appendix B**.

- 4.7 Advice provided to Committee members on 22 June was that Mr Milligan's email account did receive the Commissioner's email however it was blocked by the Barracuda SPAM filtering system. The Information and Digital Services Branch can confirm Mr Milligan was sent daily SPAM filter notifications alerting him to the blocked email from 13 May onwards and, can provide evidence of the email within the Barracuda SPAM filtering system, we can assume that Mr Milligan didn't access the SPAM filter to whitelist the email, and it can be assumed that the member or one of his staff has been deleting the SPAM filter notifications from Mr Milligan mailbox.
- 4.8 The Committee noted a copy of the Commissioner's draft report was provided to Mr Milligan on 30 May and given the opportunity to comment and he responded on 3 June 2021, indicating that he had "nothing to add or amend". It would appear he did not notice the comment from the Commissioner that an email has been sent to him as a prompt to look for the blocked email sooner.

5 THE COMMITTEE'S RECOMMENDATION

- 5.1 The Committee, considered the Commissioner's report at its meetings on 21 June 2021 and 23 June 2021 and recommends as follows:

Recommendation 1

- 5.2 **The Standing Committee on Administration and Procedure recommends that no further action be taken against Mr Milligan for a breach of Code of Conduct.**

Recommendation 2

- 5.3 **The Standing Committee on Administration and Procedure as part of its major review of standing orders during this Assembly, will consider the need for some effective means of ensuring that Members are bound to not misuse information when they are no longer members.**

Joy Burch MLA

Chair

June 2021

APPENDIX A – REPORT OF THE COMMISSIONER FOR STANDARDS

Report into allegations concerning Mr James Milligan MLA

The self-referral by Mr Milligan

1. On 11 May 2021 Mr Milligan wrote to me concerning notice of a motion that was to be moved in the Legislative Assembly. The foreshadowed motion concerned media reports that, following the October 2020 election in which Mr Milligan lost his seat in the Assembly, he had sent emails to constituents seeking to promote his business. He was subsequently re-elected in a countback of votes to fill a casual vacancy caused by the resignation of former Liberal leader Alistair Coe MLA. In his letter to me, he made that point that the emails had been sent when he was no longer a Member of the Assembly and he expressed the view that he had not contravened any statutory provision or the *Code of Conduct for All Members of the Legislative Assembly for the Australian Capital Territory* ('the Code of Conduct'). Nonetheless, he purported to refer the matter to me and asked me to consider the issues raised by the foreshadowed motion and to conduct an investigation if I thought that was warranted.
2. I responded on 12 May 2021, pointing out that my current role as Commissioner for Standards was more limited than he may have appreciated and explaining that I was authorised only to investigate complaints that Members of the Legislative Assembly may have breached the Code of Conduct or the rules governing the registration or declaration of interests. No such complaint had been referred to me. I also explained that I had no authority to examine or comment upon the merits of any motion that may be moved in the Legislative Assembly or to embark upon an investigation into conduct that was not the subject of a complaint. I assured him that, if I did receive such a complaint, I would invite him to provide relevant information and present any arguments he may deem appropriate.

The resolutions

3. On 13 May 2021 the Assembly passed the following motion:

That this Assembly:

(1) notes:

(a) media reports that a current Member of the Assembly, Mr Milligan MLA, is alleged to have contacted constituents in the period after the

October 2020 election seeking to promote his business; and

(b) that the Electoral Act provides penalties for the misuse of protected information, and that the Legislative Assembly's code of conduct for members states at paragraph (8) that members should respect the dignity and privacy of individuals, and not disclose confidential information to which they have official access other than with consent or as required by law;

(2) calls on Mr Milligan:

(a) upon the passage of this motion, to make a statement to the Assembly detailing how many emails were sent promoting his business, where and how did he obtain the email addresses, personal names and addresses, and how many responses he did receive, when he sent the emails/letters and how he had access to contact details, specifically, if any information was obtained through his actions as an MLA;

(b) to confirm how many responses he received that were a request for quote or tender for business and how many business transactions were agreed to, or completed, as a result of his communication;

(c) to advise the Assembly how his constituent list was used after the October 2020 election, and how did this use differ from his use of this list during his time as an MLA;

(d) to table the advice he sought and received from the Ethics and Integrity Adviser, as mentioned in the ABC news article of 1 May 2021;

(e) to table any advice he has sought regarding possible breaches of the Privacy Act, including principle 75 of the Privacy Act that "an organisation must not use or disclose personal information it holds for the purpose of direct marketing unless an exception applies"; and

(f) to provide information to the Assembly regarding his current business operations and if he is still obtaining, or is in receipt of, a benefit because of his correspondence; and

(3) upon receiving the statement by Mr Milligan outlining how the information from constituents was used, the Assembly could consider whether the matter should be referred to the Assembly's Commissioner for

Standards for investigation and report to the Standing Committee on Administration and Procedure, or whether any further action is required by the Assembly.

4. The Speaker also tabled a paper described as “Thank you note to constituents from James Milligan, Publisher, JM Publishing” (‘the Thank You note’) which had apparently been sent out with the relevant emails.
5. In response to the resolution, Mr Hanson MLA, by leave, presented a statement by Mr Milligan dated 13 May 2021, together with a copy of a draft advice from the Legislative Assembly’s Ethics and Integrity Advisor.
6. The Speaker suspended the sitting to read Mr Milligan’s statement which asserted that no emails were sent for the purposes of promoting his business and that his “constituent list” had never been used for business purposes.
7. After the resumption of sitting, the Assembly further resolved that:

(1) this Assembly notes the statement made by Mr Milligan relating to his correspondence to constituents, and that he has referred himself to the Commissioner for Standards; and

(2) Notwithstanding the provisions of continuing resolution 5AA, and noting that the actions of Mr Milligan occurred at a time when Mr Milligan was not an MLA but that he has subsequently been re-elected to the Assembly, to ensure that the Commissioner has coverage of this matter, this Assembly refers the actions of Mr Milligan in writing to constituents and seeking their support in his private business to the Assembly’s Commission for Standards to ascertain whether the actions of Mr Milligan breached the code of conduct of Members.

The referral

8. The matter was duly referred to me on 14 May 2021.
9. I wrote to Mr Milligan later that day confirming that the matter raised in his letter of 11 May 2021 had been formally referred to me by resolution of the Legislative Assembly and advising him that, given the second resolution, I now had authority to investigate the issues raised. I informed him that I had been briefed with a copies of the relevant resolutions, the Thank You note, his statement to the Assembly and the draft advice from the Ethics and Integrity Adviser. I told him that I would be grateful if he would provide me with a statement of exactly what occurred and asked him to address a number of specific questions. I sought a response within 14 days.

Mr Milligan’s response

10. Mr Milligan replied by letter dated 27 May, stating that he had received independent legal advice to the effect that on 30 October 2020, when the relevant emails were sent,

he was not a member of the Legislative Assembly. He had been advised that in accordance with section 10 of the *Australian Capital Territory (Self-Government) Act 1988* (ACT) his term in office ended on the polling day of the 2020 election which was 17 October 2020. He became a Member of the Assembly again 26 March 2021 when the count-back was declared (section 196 of the *Electoral Act 1992*). He maintained that, since he had not been a Member at the relevant time, he was not bound by the Code of Conduct. He expressed the view that the current process was misconceived and without basis, but said that, in the interest of being open and accountable to the Assembly and to his constituents, he had responded to my questions.

11. A copy of his letter which sets out my questions and his answers to them is enclosed. In essence, he maintains that the emails were sent to people whose addresses had been derived from seven contact lists that he had maintained or compiled over many years in business and politics. The emails were sent from the address: james@jamesmilligan.com.au. He conceded that some of the intended recipients were former constituents, though explains that many were people with whom he had a personal or business relationship outside of his role as an MLA. He explains that:

Given many of the recipient's email addresses have been collected and compiled by me over many years, it is difficult to specify how they were each obtained, but generally through the following:

- a. persons signing up to my online newsletter;*
- b. flyers;*
- c. filling in surveys;*
- d. attending community events such as BBQ and Hot Chocolates;*
- e. casual catch ups;*
- f. friends;*
- g. meeting people in person;*
- h. volunteers;*
- i. donors;*
- j. list of liberal party financial members; and*
- k. business connections and associates.*

12. Apart from a list of Liberal Party financial members that he received as a member of the party, he maintained that he did not draw upon sources of information available to him as a Member of the Assembly and assured me that:

I did not, either directly or indirectly, use any information contained in or related to any constituent lists or lists of persons on the electoral roll, including a certified extract of electors or a certified list of electors.

13. In response to a question about whether the reference to JM Publishing was included in the email with a view to soliciting business, he said that:

It was never my intention to promote or solicit business for JM Publishing. Rather,

I intended to thank my network, including my donors, volunteers and supporters for their support during my term and the election. The reference to JM Publishing was so that people had means of contacting me if they wanted to reach out or keep in touch. Further, I wanted my network to know that even though I had lost my seat, I was not beaten. I wanted people to know that I was mentally strong and resilient and I would be back at work the following Monday as a small business owner supporting my community.

14. There are passages in the email that are certainly consistent with these stated purposes. However, the email also suggests that "...if you have any projects or referrals that you think may benefit from affordable, efficient and expert business support, please do not hesitate to put them in touch with JM Publishing." I find it difficult to accept that, in including this suggestion, Mr Milligan was wholly uninfluenced by any desire to solicit business. Of course, any former Member of the Assembly is legally entitled to conduct and promote a business. The issue with which I am presently concerned is whether in doing so he used email addresses derived from his constituent list.

The limited nature of the investigation

15. Whilst the relevant allegation had been the subject of a number of press reports, there had apparently been no letters of complaint to the Assembly and I was able to identify only one recipient who suggested that his email address had actually been obtained from Mr Milligan's constituent list. Mr Greg Tannahill was reported as saying:

I thought that's a bit odd because this was a constituent mailing list for his work as an MLA, and this is James Milligan attempting to make a buck off it

It would have been reasonable to say, 'I'm leaving office and here's this link where you can find out what I'm up to now', and just give you a link and you can go and chase it if you want to.

[But] It's the same platform, it was the same list of people ... for the purpose of talking to them about his MLA work ... [and] that same platform was now flogging a private business.

(<https://thenewdaily.com.au/news/state/act/2021/05/01/james-milligan-email-constituents/>)

16. I was unable to find a telephone number for Mr Tannahill, but located him on Facebook and he responded by email to a confidential message. I should mention that he quite properly disclosed that he is a friend of my son, Tim Crispin, who is a Canberra barrister, and that he had also previously worked in the ACT courts system,

though we had not met personally.

17. Mr Tannahill explained that he was “99 certain” that Mr Milligan had obtained his email address from some other person as he could not recall contacting him and could find no record of ever having sent him an email. Whilst I had hoped that contact with Mr Tannahill might lead to the identification of other recipients of the Thank You note, he said that he did not know anyone else who had received such an email and mentioned that his partner, who was also a Yerrabi constituent, had not. He had received earlier emails from Mr Milligan, but they had been “entirely appropriate emails for an MLA to send to his constituents”. Whilst not a member or supporter of the Liberal Party, Mr Tannahill had sent emails to other members of the Canberra Liberals relating to issues such as the Marriage Equality vote, and may also have provided his email address in responding to an online survey run by the Canberra Liberals. He had also made submissions to committees of the ACT Legislative Assembly. He assumed that his email address had been entered into a Canberra Liberals database and then provided by the Liberals to James Milligan for the purpose of contacting his constituents. His objection was to Mr Milligan “(a) continuing to use that list after he was no longer an MLA, and (b) using it to advertise his private business”.
18. Since Mr Milligan maintains that the email addresses to which the Thank You note were sent were derived from one or more of seven contact lists, including one from the Yerrabi Branch of the Liberal Party, there is no obvious inconsistency between his account and that of Mr Tannahill concerning their possible source. Mr Tannahill’s assumption that email addresses obtained from such a source would have been incorporated into Mr Milligan’s constituency list seems reasonable, but Mr Milligan’s denial of having drawn the relevant email addresses from that list should not be lightly dismissed.
19. Of course, there may be ethical issues concerning the use of contact details obtained from political parties for purposes other than those likely to have been within the contemplation of the people who provided them, but they are not issues with which I am presently concerned.

The memorandum of advice from the Ethics and Integrity Advisor

20. The draft advice given by the Ethics and Integrity Advisor concerned a proposal by Mr Milligan to have his company arrange for the printing of material that he required from time to time whilst he was still a Member of the Assembly. He suggested that the cost would have been met from his Communications Allowance but that there would have been savings due to trade discounts available to the company. The advice was unrelated to the use of constituent lists or to the solicitation of clients for the business after he ceased to be a Member of the Assembly.

The application of the Code of Conduct

21. In my opinion, the legal advice Mr Milligan received was correct. During the period

between 17 October 2020 and 26 March 2021, he was not a Member of the Legislative Assembly. Hestates that the emails were sent on 30 October 2020. That is consistent with Mr Tannahill's account and other press reports that suggest they were sent after he ceased to be a Member (<https://www.abc.net.au/news/2021-05-01/james-milligan-electoral-roll-list-email-promote-business/100109364>; and <https://www.abc.net.au/news/2021-05-01/james-milligan-electoral-roll-list-email-promote-business/100109364>). Since the Code of Conduct applies only to Members of the Assembly, it seems clear that he was not then bound by it.

22. As he observes, there is nothing in the Code of Conduct that purports to impose any obligations on former Members. Of course, a breach of the Code of Conduct might be established if someone who was still a Member were to extract information from his or her constituent list in anticipation of not being re-elected and with the intention of subsequently using it for extraneous purposes such as promoting a business. However, it has not been suggested that Mr Milligan acted in such a manner.

A draft report

23. A draft copy of this report was provided to Mr Milligan on 30 May and he was given the offer opportunity to comment on it before it was re-edited and submitted to the Standing Committee on Administration and Procedure. He responded on 3 June 2021, indicating that he had "nothing to add or amend".

Consideration of other means of protecting confidential information

24. One obvious issue raised by this complaint is the need for some effective means of ensuring that people who have been provided with confidential information whilst Members of the Assembly are bound not to misuse that information when they are no longer Members. This is an issue that will require consideration by the Standing Committee on Administration and Procedure and consultation with Members of the Assembly. I have written to the Clerk of the Assembly, offering some comments on the applicability of various provisions of the *Electoral Act 1992* (ACT), the *Information Privacy Act 2014* (ACT) and the *Privacy Act 1988* (Commonwealth) and the relevance of other potential legal principles and remedies.

Recommendation

25. Since I am unable to find that Mr Milligan inappropriately used information derived from his constituent list and the Thank You note was disseminated when he was not a Member of the Assembly, I recommend that the complaint be dismissed.

K J Crispin QC
Commissioner for
Standards
4 June 2021

27 May 2021

Hon Dr Ken Crispin QC,
Commissioner for Standards, PO Box 3117
ACT Legislative Assembly Turoos Head NSW
2537 k.crispin@bigpond.com

▪ **RE: “Thank you” email dated 30 October 2021**

Dear Ken,

I refer to your letter dated 14 May 2021.

**TERM IN
OFFICE**

I have received independent legal advice in relation to this matter, which I am happy to table if required. However, the effect of the advice is that on 30 October 2020, being the date that the relevant email was sent, I was not a member of the Legislative Assembly. I am advised that in accordance with section 10 of the *Australian Capital Territory (Self- Government) Act 1988* (ACT) my term in office ended on the polling day of the 2020 election being 17 October 2020. My term in office then recommenced on the day the count-back was declared (section 196 of the *Electoral Act 1992* (ACT), being 26 March 2021. Consequently, during the period 17 October 2020 until 26 March 2021, I was not a member of the Legislative Assembly.

Therefore, on 30 October 2020, I was not bound by either the Code of Conduct For All Members Of The Legislative Assembly For The Australian Capital Territory (**‘the Member’s Code’**) or the Legislative Assembly Code of Conduct (**‘the Legislative Assembly Code’**). Further, I am advised that there is nothing in the Member’s Code or the Legislative Assembly Code that imposes any obligations on former members of the Legislative Assembly.

As a consequence, I consider this entire process to be misconceived and without basis. However, in the interest of being open and accountable to the Assembly and my constituents, I have responded to your questions below.

RESPONSE TO YOUR QUESTIONS

1. To whom was the document headed “Thank you” sent?

The document was sent via one (1) email to recipients derived from the following seven (7) contact lists that I had maintained or compiled over my many years in business and politics:

List	Who
Thank you - Yerrabi Branch	Members of the Liberal party

Thank you - eNewsletter List	Individuals who had signed up to my newsletter via my website, at coffee stands or just from conversations I had at the shops or other everyday interactions.
Thank you - Business List	Business and LinkedIn contacts that I have compiled informally over the years
Thank you - Milligan Volunteers	Predominately friends and family, as well as some Liberal party members
Thank you - Sport	An informal list I compiled over the years
Thank you - Donors	An informal list of business, Liberal party and personal contacts
Thank you - Indigenous	An informal list I compiled over the years

2. In each case, was it sent by email?

Yes, the email was sent by email using the 'Moosend' software from the email address: james@jamesmilligan.com.au

3. If not, how was it communicated to the intended recipients?

N/A

4. Were some or all of the intended recipients former constituents?

Yes. However, many of the recipients were persons whom I had a personal or business relationship with outside of my role as an MLA.

5. If so, how were their email addresses or other contact details obtained?

Given many of the recipient's email addresses have been collected and compiled by me over many years, it is difficult to specify how they were each obtained, but generally through the following:

- a) meeting people in person;
- b) persons signing up to my online newsletter;
- c) flyers;
- d) filling in surveys;
- e) attending community events such as BBQ and Hot Chocolates;
- f) casual catch ups;
- g) friends;
- h) volunteers;
- i) donors;
- j) list of liberal party financial members; and
- k) business connections and associates.

6. Without limiting the generality of paragraph 5, were some or all of the email addresses or other contact details used to disseminate or send the document headed "Thank you" obtained from your constituent list or other sources of information available to you as a Member of the Assembly, albeit initially for other purposes.

Except for a list of liberal party financial members that I received as a member of the party, no. I refer to the sources of the email addresses at point 5, above.

I did not, either directly or indirectly, use any information contained in or related to any constituent lists or lists of persons on the electoral roll, including a certified extract of electors or a certified list of electors.

7. Did you send any other emails or other written communications to constituents after the election but before you resumed office as a Member of the Assembly?

Yes. As a member of my community and as a director of JM Publishing, I sent emails and/or written communications to constituents between 17 October 2020 and 26 March 2021. It would be an absurdity if I did not.

However, in doing so, I did not use any information contained in or related to any constituent lists or lists of persons on the electoral roll, including a certified extract of electors or a certified list of electors.

8. If so, please provide copies and in each case supply particulars of the kind sought in paragraphs 1- 6 inclusive.

N/A.

Further, I note that it is not practically possible or reasonable for me to provide all emails and written communications between 17 October 2020 and 26 March 2021 with constituents.

9. Did you or JM Publishing receive any orders or requests for quotations from constituents who had received a copy of the document headed "Thank you" or other communication from you of the kind described in paragraph 6?

Chabad ACT, who received the relevant email on 30 October 2020 engaged JM Publishing between the period 17 October 2020 and 26 March 2021.

However, such work was not solicited by the email on 30 October 2020 because Chabad ACT were previous relationship with this organisation long before entering into politics and regularly provided them with services.

10. Did you or JM Publishing directly or indirectly obtain any financial benefit from transactions with constituents who had received copies of the document headed "Thank you" other emails or other written communications to constituents during the period after the election but before you resumed office as a Member of the Assembly?

Financial information relation to JM Publishing is confidential and not subject to being disclosed.

I refer to my answers to question 9 and note that any business dealings with JM Publishing during the period 17 October 2020 and 26 March 2021 were solely based on the extensive efforts I made to resume contact with former business relationships. This included revamping my business website and social media presence, making regular phone calls to business contacts, visiting local businesses and catching up with my network for coffee and face to face meetings.

11. What was the purpose of sending the document headed “Thank you” and/or other emails to constituents during such period?

To thank my network, including my donors, volunteers and supporters for their support during my term and the election.

As can be inferred from the email, I plainly never intended to affect the voting at the 2024 election.

12. Do you accept that the reference to JM Publishing was included with a view to soliciting business? If not, why not?

It was never my intention to promote or solicit business for JM Publishing. Rather, I intended to thank my network, including my donors, volunteers and supporters for their support during my term and the election. The reference to JM Publishing was so that people had means of contacting me if they wanted to reach out or keep in touch. Further, I wanted my network to know that even though I had lost my seat, I was not beaten. I wanted people to know that I was mentally strong and resilient and I would be back at work the following Monday as a small business owner supporting my community.

Next steps

I look forward to assisting you in any further enquires but entrust this matter is now completed.

Kind Regards,

James Milligan

27 May 2021

APPENDIX B—REPORT FROM OLA INFORMATION AND DIGITAL SERVICES BRANCH

The following is a brief on Mr Milligan's blocked emails situation.

Today*, at approximately 12pm, Mr Hanson rang the Assembly IT Support Officer (AITSO) requesting assistance to locate an email in Mr Milligan's mailbox, specifically, an email from k.crispin@XXX.XXX dated 12 May 2021. The AITSO attended Mr Milligan's office to investigate where both Mr Milligan and Mr Hanson were in attendance.

The AITSO searched the **James Milligan** mailbox and could not find the email nor could he find any other system notifications alerting the member that the email had been blocked by the Barracuda SPAM filtering system.

The AITSO then searched the Barracuda SPAM filter system to confirm that the K.Crispin email was blocked and quarantined by the system.

The DD&TS IT Security Team checked and can confirm the member was sent daily SPAM filter notifications alerting him to the blocked email from 13 May onwards (I have copies of the SPAM filter notifications that were sent to Mr Milligan on the 13th and 14th of May, which include a list of around 25 emails that were block by the SPAM filter at the time).

It is important to note the following with regards Mr Milligan's mailbox setup:

1. Mr Milligan has consolidated his personal (James Milligan) and public (MILLIGAN) mailboxes into one mailbox, namely the **James Milligan** mailbox
2. All emails sent to james.milligan@parliament.act.gov.au and MILLIGAN@parliament.act.gov.au end up in the James Milligan mailbox
3. Mr Milligan's staff have access to the James Milligan mailbox
4. The Barracuda SPAM filter system ceased operation on 24 May when it was replaced by the Microsoft Exchange Online Protection SPAM filter
5. The Barracuda SPAM filtering system was configured to retain blocked emails for up to one month after which they are deleted. However, as the K.Crispin email was blocked on 12 May, it was not deleted on the 24th and still exists in the system today.

Assumptions:

1. As DD&TS can provide evidence of the email within the Barracuda SPAM filtering system, we can assume that Mr Milligan didn't access the SPAM filter to whitelist the email
2. As DD&TS can provide evidence of the SPAM filter notifications sent to the member from 13 May 2021 onwards, we can assume that the member or one of his staff has been deleting the SPAM filter notifications from Mr Milligan mailbox.

I trust you will let me know if you require further clarification on the above.

Regards, Val Szychowska
Assembly IT Manager

[* Monday, 21 June 2021]