



OmbudsmanSA

Enquiries:
Telephone:
Ombudsman reference:
Agency reference:

Ms Imogen Tonkin
(08) 8226 8699
2022/00674
EF20/175 : ED22/13779

Mr Martyn Davis

By email: [REDACTED]

Dear Mr Davis

Your complaint about the District Council of Ceduna

I refer to the Deputy Ombudsman's letter dated 8 September 2022 regarding your complaint about the District Council of Ceduna (**the council**) under the *Ombudsman Act 1972*.

In his letter, the Deputy Ombudsman advised that he had assessed that it is not in the public interest¹ to take further action in relation to your complaint and explained how he arrived at that decision. He also invited you to contact my Office by 15 September 2022 if you thought you were able to identify an error in his assessment of the matter.

You contacted my Office by telephone on 13 September 2022, and by email on 15 September 2022 in response. With your consent, I also received a response from Cr Peter Codrington on 19 September 2022. In summary:

- you and Cr Codrington are both of the view that the hangar facility would have been big enough to store your aircraft without interfering with its current use for records storage
- you believe the council's statement that its former records storage facility is not fit for purpose is irrelevant in light of the council's recent decision to lease the hangar facility to another person
- the purpose of your complaint was to raise that the initial report provided to the council did not include all relevant information, and you believe that your application for a section 270 review was not heard in accordance with procedures
- you are of the view that it was clear that some elected members had decided to deny your section 270 review request prior to the council meeting
- you believe the Chief Executive Officer has been providing my Office with misleading information
- you state that you were not offered an opportunity to address the elected members during the January 2022 council meeting, and you did not consider that it was appropriate for you to address them during the inspection of the hangar facility
- you state that the assertion that the letter from the Ceduna Aboriginal Corporation was read at the January 2022 meeting is 'an outright lie', and you believe that 'an offence has been made by lying to the Ombudsmen [sic]'

¹ *Ombudsman Act 1972* s 12H(1)(c).

- you do not have an issue with the council's ultimate decision not to lease the hangar facility to you, but rather with the process by which that decision was made
- your intention in making your complaint was 'to get acknowledgement that the matter was handled poorly and there were numerous issues relating to integrity and poor judgement'.

I have reassessed my determination in light of the new information you provided in your response. In particular, I have made further enquiries with the council regarding its compliance with its Review of Decisions Policy.

In response to those enquiries, the council has advised that:

- although the council does not have any recording of the 19 January 2022 council meeting available to it, it is the clear recollection of several senior staff, as well as the Mayor, that an elected member advised the chamber of the existence of an email or letter from the Ceduna Aboriginal Corporation advising of the corporation's support for the establishment of the flying school
- council administration were not provided with a copy of the correspondence from the Ceduna Aboriginal Corporation prior to, during or after the 19 January 2022 council meeting
- it remains the council's view that:
 - you were provided with an opportunity to informally address the elected members during the site inspection and discussion at the hangar facility on the day of the council meeting
 - at the conclusion of debate during the council meeting, you were directly asked by the Mayor whether you wished to make any further submission or comment in relation to the matter, prior to putting the motion to a vote.

I also note your assertions that the council has provided incorrect or misleading information to my Office.

I have reviewed the recording of the 19 January 2022 council meeting provided to my Office by Cr Codrington, however, note that it is of poor quality, and it is therefore difficult to determine with certainty what is being said. As such, I am unable to reach any conclusion as to whether the council has provided my Office with incorrect or misleading information. In any case, I do not consider that the council has deliberately attempted to mislead my Office in its responses to my enquiries.

I remain of the view that it is not in the public interest for me to take further action in relation to your complaint. While you have provided new information, this new information is unlikely to achieve a different result, specifically:

- there is a lack of evidence available to suggest that the council has intentionally provided my Office with incorrect information
- although the information supplied by the Ceduna Aboriginal Corporation may not have been provided to the council, it appears that the council was provided with, at the very least, a general understanding that the Corporation was in support of the proposal
- it would not appear unreasonable for the councillors to have considered your application and formed a personal opinion prior to the January 2022 meeting.

I will now close my file.

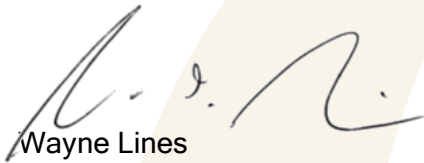
Confidentiality

As discussed in my previous letter to you, the Ombudsman Act imposes certain obligations on my Office and others, including complainants, officers and members of a council, to keep information about my assessments confidential.

While the Ombudsman Act restricts disclosure of information connected to a matter dealt with under the Act, I am able to authorise disclosure. Generally, I consider there is a public interest in disclosure of my decisions. Therefore, as I have closed your file, I authorise disclosure of this letter by the parties as they see fit.

I have sent a copy of this letter to the council.

Yours sincerely



Wayne Lines
SA OMBUDSMAN

19 October 2022

Cc Mr Geoffrey Moffatt
Chief Executive Officer
The District Council of Ceduna
By email