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COMPULSORY  
EXAMINATION

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

COMPULSORY EXAMINATION

OPERATION CAVILL

Reference: Operation E12/1191

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 15 FEBRUARY 2013

AT 9.35AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

ASSISTANT COMMISSIONER: I direct pursuant to section 112 of the Independent Commission Against Corruption Act that the evidence given by this witness, the contents of any exhibits tendered, the contents of any documents shown to the witness, any information that might enable the witness to be identified and the fact that the witness has given evidence today shall not be published or otherwise communicated to anyone. (break in recording) And most witnesses do avail themselves of it. Would you like me to make an order on those terms?

10 MR PETCH: Yes, I would, your Honour, thank you.

ASSISTANT COMMISSIONER: And I would point out that the only, this evidence is not protected if it's found that you've breached the act by providing false or misleading evidence, but otherwise it is protected. Do you understand the effect of that?

MR PETCH: I do, thank you, your Honour.

20 ASSISTANT COMMISSIONER: Pursuant to Section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by him during the course of his evidence at this compulsory examination are to be regarded as having been given or produced on objection and accordingly there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

30 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS COMPULSORY EXAMINATION ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

40 ASSISTANT COMMISSIONER: Mr Petch, you're required to promise to tell the truth by swearing on the bible or making an affirmation.

MR PETCH: I will do that, yes, yes. Do you have a bible, your Honour?

<IVAN JOHN PETCH, sworn

[09.39am]

ASSISTANT COMMISSIONER: Yes. Mr Petch, the subject matter of the investigation was outlined in a summons provided to you?---Yes.

And Mr Wong has been appointed as counsel assisting and he will now ask you some questions?---Thank you.

10 MR WONG: Thank you, Commissioner. Mr Petch, for the record could we have your full name, please?---It's Ivan John Petch.

Thanks. And, sir, you are currently the Mayor of the City Ryde Council?---I'm the Mayor of the City Ryde, correct.

And when did you become Mayor of the Council, sir?---I'm emeritus Mayor as well, yes.

20 All right. I'm sorry, when did you become Mayor of the Council?---Sorry?

When did you become Mayor of the Council?---I became re-elected Mayor in September 2012.

September 2012. And, sir, how long have you been a Councillor for the City of Ryde?---I am now in my 36<sup>th</sup> year of public life. Eight of those years I served in the State Parliament.

Yes?---So that makes it 28 years as a Councillor, eight years as an MP.

30 Now before, sir, you're attending today in response to a summons that was served on you in the past week?---I am.

And you read that summons carefully before you came in today?---Yes I did.

Did you seek any legal advice in relation to that summons?---I don't think I really need legal advice to assist you in your inquiries.

40 I note, sir, that you're unrepresented today. You have no concerns, you, you are happy to proceed about the investigation?---I am, I'm delighted to proceed.

Now you say you've not sought any legal advice about coming in today. Have you spoken to anyone else about coming in today?---Only my lawyer.

And who is your lawyer, sir?---Mr Bryan Belling.

And does Mr Belling generally provide legal advice in relation, in relation to a number of matters for you?---Sorry?

Is Mr Belling your general legal representative?---Well Mr Belling has advised me of what I should bring in terms of documents and I've done exactly that.

10 All right. Did he, did you have any discussion about coming in today with Mr Belling?---I had a discussion, yes.

Yes. And did he explain your rights and your obligations in relation to today's proceedings?---Well I don't think I thought there was such a significance to seek legal advice so in reality I'm here to assist the Commission in your inquiries.

Certainly. Now in relation to today's examination and investigation you're aware that the Commission is interested in the investigation of a complaint in relation to a Mr John Neish?---Yes indeed.

20 And you are, you're aware that, that it's of interest to this Commission as to whether that complaint was dealt with in accordance of - - -?---I am aware.

Now, Mr Neish is or was the General Manager of Ryde Council?---That is correct.

And he's no longer the manager of Ryde Council, sir, is that correct?---He technically is still the General Manager until 28 February, but he has been put on leave for the last two weeks, so - - -

30 Yes. And nonetheless is there currently an agreement in place between Council and Mr Neish that he should - - -?---There is.

- - - finish off on 28? And, and that agreement is embodied in a deed I understand?---That is correct.

And that deed has been signed by both Mr Neish and - - -?---Myself.

40 - - - and yourself. Now earlier this year, sir, were you, were you notified of this complaint regarding Mr Neish? Earlier this year, did you receive some sort of notification about the complaint against Mr Neish?---I only received, this particular, what we're dealing with today, I only received that you were interested in, in the last couple of weeks.

All right. When did you first become aware of this matter involving Mr Neish?---All right. If I could take you right back to the beginning or the genesis then I could take you on the journey then you'll understand the whole sequence in order.

Perhaps we might do that. So when did you first become aware?---About mid January, I had a message from one of our IT people who wanted to come up and have a talk to me.

Yes?---So I thought I would find an appropriate time, I had a lot of other pressing things to deal with and I certainly didn't see any urgency, I didn't know what he wanted to talk to me about at the time.

10 Can I ask who this IT person was?---The IT person was

Yes. Thank you?---I had inherited the former Mayor's computer.

20 Yes?---And on a search of the computer I found some interesting data that he failed to raise. Now that was relating to the engagement of a consultant to do his performance evaluation, and I did note that that consultant was not the lowest tenderer and furthermore I did note that Mr Neish had failed to declare that that person that was awarded the tender to do the evaluation was actually his former mentor from the Parramatta City Council.

If I could just step back for a moment?---Yes.

So this information came to you because of some files on the former Mayor's computer?---Yes, on the former Mayor's computer.

And assisted you in recovering those files. Is that the case?---  
Sorry?

30 And assisted you by recovering the files?---No, those files did not need to be recovered. They were still there. He had failed to delete them. So what I wanted to do, and I called up then to see if he could undelete other files which had been deleted because there may be more evidence that could come to my attention.

Right?---Now then took the opportunity to talk to me of what he originally wanted to talk to me about how Council had wasted \$300,000 on ET and it was a great concern to him.

40 So had some concerns about what was happening in, within his unit and how Council was - - -?---Well at that, well he was more concerned at that time with the, with the waste of money in the ET and I think he appeared to me to be a very straight forward person that called a spade a spade and if he saw an irregularity then he felt it had to be corrected and I applaud him for that. However, having assisted me by un-deleting all of the files which I still need to go through, he came up on Thursday 31 January and he put his finger to his lips like that and gave me this CD.

All right. Sir, if I could just, just step back a moment?---Yes.

Just to clarify what happened on that occasion. Now you, you'd come to the view that there were some files that were left on the Mayor's computer that indicated that something of concern to you?---Well I first saw an irregularity on an un-deleted file. I wanted to know how many other files where irregularities had been deleted.

Certainly, certainly. And so as a result of that you asked  
?---To un-delete them.

to - - -

10

To see if there was any further material on the computer. And did you explain to - - -?---He did a search and he provided me, he un-deleted all of those files.

And you told him that you were looking for any files that the former Mayor may have left on his computer that could assist in - - -?---Could you speak up a little more?

Sorry?---(not transcribable)

20

And my knowledge is, and did you explain to that you were looking for files that may be deleted that were, that belonged to the former Mayor that could shed some light on your concerns?---Well I didn't want to discuss with my concerns.

Yes?---I just simply asked him if he could assist me by un-deleting some deleted files.

30 Certainly?---And he said he would see what he could do and he did it for me.

All right. And that was the extent of your instructions to  
That was the extent of my instructions. ?---

ASSISTANT COMMISSIONER: Excuse me. Did the deleted files relate to the same issue, the engaging of the consultant? Or did they relate to other issues?---Commissioner, what I found on the original file, un-deleted, was some evidence to suggest malpractice.

40 Yes?---I wanted to find out if there were any further files that would assist me in that inquiry, internal inquiry and to do that I needed some files to be un-deleted so that I could see - - -

So you had no idea what was in the deleted files but you thought there may be something, that evidence of malpractice?---Exactly.

So you wanted them recovered. Yes, thank you. Yes, Mr Wong.

MR WONG: Thank you, Commissioner. Now you say that expressed some concerns to you also on that occasion. What, what was your response to his concerns?---I said I could understand what he was, where he was coming from. With Mr Neish, though, I didn't want to explain to him my concerns over Mr Neish, but the way Mr Neish had conducted himself left in my opinion a lot to be desired and I wasn't quite sure whether that time was the right time to confront Mr Neish with a malpractice in the, in the IT section.

10 Certainly, sir. But was on that occasion made aware that you did have some general, concerns generally about Mr Neish?---Not really. I find it's a lot easier to, to work and get your information before you start accusing people of anything.

Certainly. Now given was assisting you recover some, some files - - -?---Yes.

20 - - - that, that might be relevant to these concerns. Did you ask to do anything else? Did you ask to do anything else?---No, I didn't.

Now moving onto the 31 January I believe?---Yes. came up with this particular CD and I - - -

That's a - is that a copy of the CD that gave to you?---This is the original that he gave me and I've written on the front Neish porn so I'd know what it means.

30 Commissioner, might I, might we require, Commissioner - - -

THE WITNESS: Yes, I contend to that.

MR WONG: - - - the witness to produce that to the Commission.

THE WITNESS: I put all this stuff (not transcribable)

MR WONG: Now you say that's the original CD that gave you?---That is the original one that was given to me.

40 Now are there any other copies of that CD - - -?---I have a copy of it, yes, I've made a copy for myself.

I'm sorry, I did get that?---I made a copy for my own reference.

All right. So you still retain a, a copy of that CD?---I have a copy and also made a copy which I gave to my solicitor for him to authenticate through a forensic process and, and take his advice because having been given that disc on the 31<sup>st</sup> I took it home with me, I put it in the computer and I said to

myself what's this fellow all about giving me pornographic photographs, you know what sort of pervert does he think I am. It wasn't until I went into the line of the title line that I could see it was a thing with a slash, John Neish/internet/temporary files and all that which, and then I understood exactly where he was coming from. He was giving me the evidence of the downloaded material of John Neish.

Perhaps if we could step back to, to when you were given this CD earlier in the day?---Yes.

10

Could you tell us how that came about?---He just turned up, it was in the late afternoon actually.

This is ?---And he came up to my office and saw my PA and came in and his exact (not transcribable) he went - and said very quietly (not transcribable)

Right?---Had said very quietly you might find this interesting - - -

20 ASSISTANT COMMISSIONER: So he put his fingers to his lips - - -?  
---He put his finger tips - - -

- - - as if to say you know quiet?---That's exactly right, Commissioner.

30 MR WONG: Did you have a conversation when - - -?---No, I, I didn't, I don't think he wanted to have a conversation I think he wanted to provide me with the evidence and then take it from there. There is always a question in your mind that he's working in IT that he may indeed fabricated this file so that we would go off on a tangent to chasing Mr Neish and that is why the next day I made arrangements with Bryan Belling to sit with him, give him a copy of the CD so that he could get his experts to do a, a forensic examination of that CD to, to declare its authenticity and that is where Bryan Belling stood on the matter.

That it should be tested for - - -?---And I was waiting for his come back. Now oot a long weekend off and I wanted to speak to him on the Monday.

40 Monday being the - - -?---Which would be the first Monday, what, about the 3<sup>rd</sup> is it?

Well the 31 January is, is a - - -?---A Thursday.

- - - Thursday. The following Monday is the 4 February?---On the 4<sup>th</sup>. I asked my PA I said could you arrange for to come up she said he's still on his extended long weekend. So I said when he comes in tell me and I'd like to see him. He then on the Tuesday morning sent me an email.



That being 5 February?---On the - he sent me - - -

That being 5, 5 February? That being 5 February?---That's the 5 February, yes. Tuesday, the 5<sup>th</sup> of February at 9.01am. He sent me a copy of a complaint that he had sent to Corrine Matlawski who is in the HR section of the City Council the person that he reported it to.

All right. Sir, I might just - - -?---And I have a document here I'll tender it if I'm able to.

10

Certainly if, if, if we - - -?---And I'll read the document. "Hi Corrine, this is an official complaint of harbouring pornographic material - - -

ASSISTANT COMMISSIONER: Excuse me, we're aware of the document you don't need to read it - - -?---Fine.

- - - into the record, thank you?---Then I'll tender that document.

20

MR WONG: All right. Sir, if we could just step back a moment now and now this is the, this is the, this is the 5 February the Tuesday and you received the, the CD on the 31 January. Now just to be quite clear did I describe to you at all the contents of that CD - - -?---No, he didn't.

- - - when he gave it to you?---No, he did not.

Before Tuesday 5 February did he give you any indication of what was on the CD?---No, he did not.

30

ASSISTANT COMMISSIONER: So he said absolutely nothing?---He - - -

He just handed it and said nothing at all?---He said have a look at that you might find it very interesting.

Okay. So he said that.

40

MR WONG: Did, did suggestion where he placed his finger to his lips strike you as somewhat unusual?---Well there is also it's an, it's an assumption of Mayoral office is bugged and he didn't want to be on the record as far as the management in terms of reprisals.

And that was how you understood his suggestion?---Yes, exactly right.

ASSISTANT COMMISSIONER: Did you say it is bugged or it's thought it's bugged?---Sorry?

Did you say the office is bugged or there is a rumour that it's bugged?---No, I had a sweep taken by the fellow and he got a very sound from one section so I'm going to organise an official sweep of the whole office.

Yes, thank you. Mr Wong.

10 Now, you gave you no description of what was on this CD. You, you've mentioned that you conducted an examination of the CD yourself on the evening of 31 January?---I put the - just some preliminary, I must say I'm not no expert but as I said earlier my first reaction was one of shock as to why an IT person would be giving me a CD with porn on it but then of course it all fell into place when I saw the, the line, the, not the time line the, the, the, that the line of the sequences that goes along the top that's. that's -

20 - - - being related to Mr Neish?---Exactly.

30 And was there enough information from what you saw on the CD to identify when those, when that material had been accessed by Mr Neish?---What I did, I didn't make any conclusions at all. It looked compellingly obvious but once again I would like to be sure of the facts before I start making any accusations and that is why I gave the, a copy of that CD to Mr Bryan Belling the lawyer - - -

All right. Sir - - -

40 ASSISTANT COMMISSIONER: Did you know, did you know what computer the, the CD had been downloaded from?---Well apparently it left a fingerprint on the, on the mainframe, he's used it through the whole system.

Well - - ?---I'm not a technical person but - - .

No. Well what are you saying? Were you told what computer this CD had been downloaded from?---Oh, yes, yes.

Who told you that?---It's in the declaration of, the computer, it's got the number and it was registered to Mr John Neish.

Sorry, in what declaration?---The one that I've tendered and the - - -

Is this some sort of examination you've had done of it?---No. The, the original complaint, Commissioner, is the one that had made to his HR section and I didn't read it all.

10 You're referring to a previous complaint he'd made or, you mean the email?---The email he sent to me and a copy of that which is the copy (not transcribable)

I'm just asking you when you were first given the CD - - -?---Yes.

20 - - - by did you know what computer it had come from?---No, I knew nothing, your Honour, for the very simple reason we didn't have any discussion. All I was given was a CD and it was not until I took it home and put it in my computer that I then discovered that it was (not transcribable) with the name John Neish and the slashes and all the different folios and that is what alerted me and that is why I then spoke to Bryan Belling as to what the next course of action should be.

Yes, thank you. Yes, Mr Wong.

MR WONG: Thank you, Commissioner.

So just to, to clarify, to confirm the sequence of events, on the evening of 31 January you examined the CD?---Yes.

30 You came to the conclusion that there was some material relating to John Neish that could be quite adverse to him. Given the technicalities of that, that information you, you determined it was appropriate to seek advice from Mr Belling?---Yes.

For the purposes of which the following day you provided Mr Belling with a copy of the CD?---Yes.

Therefore retaining a copy in your own possession?---Yes, and that is the, that is original disc that you now have.

40 And that is the one that you've just produced to the Commission today now. Now, so there are two copies of the CD in existence, one of which is in your possession and now in the Commission's possession and one which is in Mr Belling's possession?---The three copies is the original - - -

Yes?--- - - - the one that I've given to Mr Belling and the one I retained myself.

And those are all the copies that are currently in existence at the moment?

---Sorry?

Are there only three copies in existence at the moment?---Yes.

Now, if I could take you forward to 5 February, this being the morning that you received the email from , now following the receipt of that email did you have any discussions with Council staff on that day?---Well, yes, I did. I knew that I had to move very quickly to protect : as a, as an informant and I sent a memorandum which I'll now tender to the  
10 General Manager advising him or directing him that in accordance with clause 6(b) and 12(a) of the Public Interest Disclosures Internal Reporting Policy or section 226 of the Local Government Act I had to ensure that no detrimental action was taken against

All right. Sir, I might just stop you there for, for a - on that?---(not transcribable) if I could tender that to the Commission.

That won't be necessary, Mr Petch, I understand a copy of that's been produced to the Commission. If we need to identify it I'll show it to you?  
20 ---Yeah, all right.

Now, apart from that memorandum did you have a discussion with a, with a Ms Melissa Attia, A-t-t-i-a?---Mr?

Ms Melissa Attia, A-t-t-i-a?---I don't, I don't know who that is.

All right. Perhaps if I might show you an email?---Right. Now I know who she is.

30 You're aware of her, right. Okay. And who is Ms Attia?---Well, I think she must be, I think she's the head of the, of that team in the HR section. She, she came up with I think Mr Newsome if I remember correctly.

And who is Mr Newsome?---Mr Newsome is the group manager of corporate affairs.

Right. And is he her manager or supervisor?---He is in charge of all the different departments within the Council itself.

40 So he is senior to Ms Attia?---Sorry?

So he's senior to Ms Attia?---Yeah, very much so, yes.

Now, if you - actually before I proceed - now before 5 February and after having received the CD on 31 January had you done anything with the complaint or the allegations apart from referring the CD to Mr Belling?  
---No, I, I, I took it to Mr Belling and Mr Belling sent a letter to the General Manager which I'm quite happy to tender.

No. And that was as far as the matter had proceeded by 5 February?  
---Sorry?

And that was as far as the, the matter had proceeded - - -?---That was on 5 February, that date of 5 February.

10 Now, if I could ask you to have a look at the email from, from about the third paragraph down, you'll see that Ms Attia discusses a meeting that she had with you in the following three paragraphs. Now, now in brief you'll see that Ms Attia says that you told her you'd been copied in on the email from, from , that, that you advised her the matter should be referred to you officially, that you had met with a little bit earlier about the concerns of him being chastised by his manager Mr Smith and that you told her that the matter should remain confidential. Now, is what Ms Attia writes here an accurate record of, of your meeting with her?---Well, if I can recap on the - forgive me for not remembering her name but - - -

20 Certainly?--- - - - there's a lot of people at Council and I don't know their names.

Certainly?---Ms - she came up and, and Roy Newsome came up and I was most concerned - - -

30 ASSISTANT COMMISSIONER: Excuse me, Mr Petch, you're really just being asked whether you, this is an accurate account of your conversation. Perhaps if you could just indicate any way in which you say it's not an accurate account. We don't need you to give the whole account again?  
---All right, Commissioner, okay. I think it's reasonably accurate.

MR WONG: Reasonably accurate. Is there anything that you would add to that that might have happened in that meeting?---I don't think so, no. The only thing I wish to add to it is I did emphasise that should have reported it to me as Mayor, the General Manager and I are the two reporting officers on behalf of the Council.

40 And so is that - - -?---Now the General Manager, if it was a complaint against the General Manager then I'm the only person to come to and not the HR section because it leaks like a sieve, everybody in the Council knows about it.

And so for to report it to you directly that would be, would that be in line with the Council's general complaints management position?  
---That would be probably in line with your policies as well.

Now, you've mentioned that you spoke to Ms Attia and Mr Newsome that day about these allegations. Did you speak with anyone else that day about these allegations against Mr Neish?---No, no.

No. Now, at some stage during that day do you recall Mr Newsome sending you some emails regarding the complaint?---Did Mr Newsome send me some emails regarding - - -

Yes, perhaps later evening, say around 7.00pm?---I'm not sure.

Perhaps if the - - -?---If you have one there you can remind me.

10 Perhaps if the witness might be shown an email?---I think this is probably the email preceding that one.

So you have a - - -?---This one here would have preceded this one.

All right?--- I think it could be an error in the day - - -

All right. Certainly?--- - - - because - - -

20 All right?--- - - - he's seeking for them both to meet me.

But so you do, you do recall receiving that email that was just handed to you?---I understand so, yes.

ASSISTANT COMMISSIONER: But it says as discussed with you today, it's clearly after the first meeting?---Yeah. Well, actually, Commissioner, they're a little bit out of coordination. Mr Newsome has sought a meeting with me to bring Melissa Attia and himself to discuss the complaint.

30 Yes?---And then that is a record of the complaint that they both discussed with me, so something's wrong with, possibly with the timing on the day.

MR WONG: Right. Certainly. But in any event on the face of this email that's just been handed to you, Mr Newsome proposes a number of actions? ---Yeah.

You'll see about half way down that page he numbers them points one to four?---What, what, the, yes, yes, I got, yes, I have, yes.

40 Now if I could - - -?---And I did stress on Melissa that we wanted to keep this confidential, primarily because the impact it could have on Mr Neish's family.

I see?---And we're not in the process of trying to create problems for - - -

And that would be - - -?---He might've done something wrong, but his family hasn't.

All right?---And I just wanted to - - -

So it would be quite, I guess understandably, embarrassing to be out in the public eye. That was your view, sir?---Sorry?

Your view was that it would be quite embarrassing for it to be in the public eye, these allegations as I understand it?---It's not embarrassing in the public eye, but it's the impact it will have on his family and that is (not transcribable)

- 10 All right. And so you would've been quite careful to ensure that Council staff were well aware that it was confidential?---And that is why I said to Melissa it should've come to me and not go to the HR section because she reports it to her immediate boss and then, and then Roy Newsome came up and I said how in the hell, he said, "Oh, nobody knows", I said, "Everybody knows", I said his boss come and ticked him off.

All right. So to the extent that you were able to do so you wanted that these allegations to be dealt with confidentially and properly?---Exactly.

- 20 Now if I could draw you to point four of Mr Newsome's email - - -?---Yeah.

- - - that's handed to you where he says, "Following our discussion, do you agree to refer the matter for review by the conduct reviewer?", can I ask you what was your understanding of your role in the complaint process at this time?---My role in the complaint process at that stage was to seek a person of the panel.

- 30 Yes?---Appoint a person who could then do an inquiry. On legal advice subsequent, I decided that I would hold off on that inquiry until other matters had been investigated, probably what you're doing here today.

Yes. And, sir, that approach was in line with the Council's policy on how complaints should be investigated. And, Mr Newsome had made you aware of that, of the specific requirements of Council policy on that day?---Did Mr Newsome make me aware of it?

Yes?---I don't recall him making me aware of any specific requirement.

- 40 Commissioner, if I may show the witness another email?---This was the same as what I already have here, is it? Except for the process.

In any event, sir, you acknowledge receiving that email that's just been handed to you?---Yeah.

And you accept that Mr Newsome had then forwarded you the complaints handling procedure from the Council's code of conduct?---Mr Newsome had - - -

Forwarded the complaint handling procedure and the code of conduct in that second email?---He had sent them to me.

Yes. And - - -?---I already have this in the, in its original form.

10 Certainly, certainly. And, sir, if I could take you to, to page 4 of that email that you've just been handed, and if I could take you down to point 10, would you agree that, that in the following two paragraphs are the procedures that relate to how you should be handling the complaint against Mr Neish?---Yes I do.

And did you understand from those paragraphs that your role, at least at that point, was to make an assessment of the complaint to decide whether it should be referred to the conduct review or Conduct Reviewal Committee?--Precisely.

And what did you understand the role of the Conduct Review Committee or reviewer to be once you referred it?---I do.

20 Did you understand what their role would be?---Their role is to investigate the complaint and, and, and contact Mr Neish.

Yes?---And advise us of the outcome.

So the Committee would make inquiries including speaking to Mr Neish perhaps, finding out the circumstances of the misconduct then form some recommendations which would be put before Councillors as to what should be done with it?---That's right.

30 Okay. And the Conduct Review Committee would be independent of Council. Is that correct?---Can you speak up?

And the Conduct Review Committee or reviewer should be independent of Council?---Yes it is.

40 Okay. Now just to be clear you'd spoken to Mr Belling about the complaint against Mr Neish. Was Mr Belling in any way appointed to be your conducted reviewer or member of the committee?---Yes, Mr Belling was appointed, not to do the conduct review.

No?---Mr Belling was appointed by Council because I was given delegated authority by the Council to appoint legal representation on behalf of the Council in terms of Mr Neish's employment and other matters and I appointed Mr Belling and at the next Council meeting I, I speculated it with the Council.

Yes?---With the resolution of Council.



Yes?---And in fact advised them that I had appointed Mr Belling.

Certainly in any event in the context of the investigation process, Mr Belling was not the conduct reviewer or - - -?---No, Mr Belling is certainly not the conduct reviewer.

Is it all simply to provide you with legal advice in relation to - - -?---  
Exactly.

10 - - - to the employment? Now as of the morning of 6 February which is the day following email - - -?---Yeah.

- - - had you come to any conclusions about what should happen with Mr Neish?---Following the meeting with Mr Newsome I was instructed the following day to put on hold - - -

Yes---? - - - any appointment of any person to conduct the review.

20 Yes?---Because I had become aware that ICAC had, were interested in this and I thought it would be far more prudent for you people to come down with a result before I started engaging in our own.

Certainly. So the, so no, no steps, no decisions had been made at that point because you were concerned about the possible interest of the ICAC?---  
That's exactly right.

And if the ICAC was not interested or that wasn't a concern you would've proceeded to make an assessment of the complaint for the purpose of - - -?  
---Exactly.

30 - - - confirming where this should be referred. Now, now you, you had refrained from taking any active steps but had you formed any assessment of the nature of complaint against Mr Neish?---The only assessment that I had was what I'd seen - - -

Yes---? - - - on the CD.

Yes?---To me that was compelling.

40 Yes?---But until I received forensic proof that that was not tampered with, that that was the actual material that was on the computer, I don't think it was fair of me to come to any conclusion.

And had Mr Belling had authenticated what was on the CD would you have referred it?---I haven't spoken to Mr Belling. I understand he has given that CD to his forensic person who's only just arrived back from the United States, and that he's looking at it as we speak.

Sir, just on the face of it though, if Mr Belling's forensic person had verified the authenticity of what was on the CD, would it have been your view that the matter should have been referred to the conduct reviewer?---Not necessarily. As I said earlier if the, if the issue is being investigated by ICAC then in my opinion ICAC takes a higher priority than a Council's review.

10 So, sir, can, can we understand you to say that you were being very careful in taking any steps in relation to this matter against Mr Neish - - -?  
---Absolutely.

- - - of the circumstances (not transcribable)

ASSISTANT COMMISSIONER: Sorry, did you say that the forensic person is looking at the disc at the moment?---So I believe it, Commissioner, yes.

20 Why is that being done in view of the fact that - - -?---I think - - -  
- - - Mr Neish is leaving?---Irrespective Mr Neish leaving or otherwise we have to be able to prove equivocally that that - - -

Sorry?---We have to prove without any shadow of a doubt that that came off Mr, Mr Neish's computer.

But why, for what purpose?---For what purpose?

Mmm?---For our code of conduct inquiry.

30 But if he's leaving you're not going to have a code of conduct inquiry are you?---Well he's only just left, Commissioner, and I, I do believe that in all things the law is not circumvented because the, the party has departed the shores, I believe - - -

Well it is, you can't take any disciplinary action against him. What's the point of finding it out?---Well I will take that on legal advice you know.

40 So what, you still think you might be able to take disciplinary action even though you've entered into - - -?---Yes.

- - - a deed for him to separate?---Yes.

But for what purpose? The most serious outcome of any disciplinary action would be termination of employment?---I, I think - - -

Isn't it a waste of money and time?---It's not so much a waste of money but I think it's an indication of the stance that Council has taken against Mr Neish.

So you want to do this so you can show that he was an undesirable person and you were right?---Yes, I think that has to be proven.

Yes, Mr Wong.

MR WONG: Thank you, Commissioner.

10 Now you had just been saying a little bit earlier in your evidence that you were - - -

ASSISTANT COMMISSIONER: Sorry. By the way I thought you said earlier that you decided to take no steps because the ICAC was investigating?---That's right.

Well obviously you are taking further investigative steps?---I put the investigative steps on hold while you do your investigation.

20 Well having it forensically examined is clearly a forensic, is an investigative step?---I should imagine Mr Belling would make those, those results available to you.

Well yes, that's not the point. It is an investigative step isn't it? So you haven't put your investigation on hold at all?---Well that investigative step was taken and instigated long before ICAC became involved and it was just taken when we, I was first given the, the, the, the CD and I understand that Mr Belling is seeking a test of that to, to test the authenticity of that CD.

30 No. You knew from 6 February that ICAC was involved and as I understand it this person's come back from overseas and wasn't available then. So you've ordered this testing after you knew the - - -?---I haven't - -

- - - ICAC was investigating?---I haven't cancelled it, your Honour.

Yeah. Yes. Yes, Mr Wong.

MR WONG: Thank you, Commissioner.

40 Now I just - to return to your evidence earlier. Now you were quite cautious about taking any active steps against Mr Neish because of the ICAC - - -?  
---Correct.

- - - investigation. And that was as of 6 February 2013. Now did, did you, had you formed any view though of how grave the misconduct was on the part of Mr Neish on the basis of what you'd seen?---If it was found and proved to be correct I would think that the use of Council resources to

download pornographic material off the internet is a very grave consequence.

And of course that was subject to Mr Belling verifying the authenticity of what you have on CD. Now, sir, were you aware of any details of when this pornography had been accessed by Mr Neish?---Was I aware of any? The, the details when Mr Neish may have accessed this pornography as, as contained on that CD?---All I have is what's contained on that CD.

- 10 Sir, were you aware that that the, that it appears that Mr Neish may have accessed that pornography. My apologies. Mr Petch, are you aware that, that it appears Mr Neish may have accessed that pornography on Monday 28 January?---I can't, I can't assess to that.

It's not something that you're aware of that's - - -?---No.

Now, sir, Monday 28 January is a public holiday. We suggest that whatever Mr Neish did he did not do it on Council premises. Are you aware of that? ---No, I'm not aware it.

20

That was not something . may have told you?---No.

That was something that was not evident to you from the CD that you'd received?---The only information I have relating to that issue is when I met with Mr Neish and signed the release for him to depart. He did say to me that he had some people from overseas and they had used his computer and all this sort of thing and I said, my exact words, I don't want to know, I said I don't want to go down that street because at the end of the day it's your computer you have the password to get into it and whatever happens after that is - - -

30

Just, just to, to clarify now as of 6 February had you discussed this allegation with Mr Neish in any detail?---Only, the only time I discussed that was when I signed the deed and my exact words to Mr Neish were I said I think you've been a fool, what you do in your private life is your personal business, if it had been me and I was going to download porn I would have gone over the road and bought a \$500 computer from Dick Smith and done it on my own machine.

- 40 Just to, to confirm the time frame what date did you sign the deed?---Sorry?

When did you sign the deed?---I'm trying to think of the date, I have everything with me but the date I signed the deed. I can make a phone call.

Okay, all right?---I can find the information (not transcribable)

We'll leave that. Now, sir, I had put to you a few minutes ago that the indications were Mr Neish had accessed this pornography on a public

holiday and away from Council premises, would that have affected your assessment of how grave the misconduct was?---No, not at all.

No, not at all. Now, sir, had Mr Belling given you any advice up 'til 6 February about how this complaint should be dealt with?---All I have was a copy of a letter here dated 5 February from Mr Belling to Mr Jeffrey Lawrence and relating all the, everything that literally took place on (not transcribable)

- 10 Now, sir, the, the effect of that letter that, that Mr Belling sent to a Mr Lawrence from the ICAC was to set out concerns in relation to, the protection of . ?---Yes.

And it was to inform the, the Commission of what the Council was proposing to do, do with the complain at that stage?---Yes.

Yes. Which was essentially to engage an IT expert and forensic, sir. Is that, is that the case?---(No audible reply)

- 20 And was that the extent of what Mr Belling had advised should be done at that point?---Yes.

So Mr Belling obviously had not formed any conclusions as to what should happen with Mr Neish? At point in time, no.

Provided no advice as to what should happen to Mr Neish?---No. I think when you talk about justice you let Justice take its natural course and until a determination has been made to the guilt of Mr Neish or otherwise - - -

- 30 And its natural course in this instance would be as set out in the council's policy - - -?---Exactly.

- - - and the appointment of a conduct review committee if it came to it?  
---Yes.

I should confirm, sir, the, the guidelines - these were going to be applied in relation to Mr Neish weren't they?---The guidelines?

- 40 The guidelines that we've looked at paragraphs 10, the formation of a conduct review committee. These were, these guidelines were going to be applied in relation to the investigation?---They have, they have been applied and under section 4 for me to make a determination. I haven't made that determination.

MR WONG: All right. Certainly. There was, there was no reason to - for these not to apply then?---Yeah.

Now, sir, it's the case that some time last year you and a number of other Councillors moved a resolution to have Mr Neish terminated, is that correct?---That is correct.

Now, prior the third, just prior to 31 January were you still of the view that Mr Neish should be terminated from Council?---I think that was about 29 July.

10 Dating, that was the date of the original resolution to terminate Mr Neish?  
---That was the original resolution.

Were you still of that view as of say 30 January, 2013?---Yes, yes, I am. I am of that view.

And, sir, isn't it the case that but for an undertaking that was given by Council in the New South Wales Supreme Court, except for that undertaking Mr Neish would have been terminated by now?---Exactly.

20 Now, given that you were of that view, sir, did you consider that it might give rise to a conflict of interest or an apparently conflict of interest for you to be dealing with this complaint against Mr Neish?---That is advice I've taken from Mr Belling, he doesn't feel there is a conflict of interest.

Mr Belling doesn't. And can you tell the Commission why if in fact Mr Belling gave you the detail, can you tell the Commission why Mr Belling did not consider it to be a conflict of interest?---I can't recall the exact terminology but he believes that there was no conflict of interest in this.

30 All right. So perhaps I might put it this way. Now, was Mr Belling aware of the, the Council's complaint handling procedures?---I should imagine Mr Belling would be aware of it.

Now, was he specifically aware do you know that your role, at least at this stage, was to determine whether or not it should be referred to a conduct reviewer?---I think, you know, it gets into that murky area where there's only one person that can actually make that determination and that's the Mayor.

40 Certainly.

ASSISTANT COMMISSIONER: Was that the basis of his advice, that - -  
-?---Sorry?

Was that the basis of his advice, that if you were the only person who could do it under the policy, you know, whether you had a conflict of interest or not you should do it?---I don't that was the advice he gave me, your Honour, I can't really recall the specific advice but I could certainly say that

every move I've made I have dotted my i's and crossed my t's and I've done it all on legal advice. In other words I haven't been gung-ho at anything.

Yes, but you - - ?---And if there was any doubt as to a conflict of interest Mr Belling would have alerted me.

You did say though there some reference to there was only person who could do it?---There was?

10 There was only person who could, could act under the policy?---That's right.

Is that something that Mr Belling said to you or is that just your own view?  
---No, that's my - that's my own view.

Thank you. Yes, Mr Wong.

MR WONG: Thank you, Commissioner.

20 Now it is the case that you had no concerns about a conflict of interest yourself?---(No Audible Reply)

Now would that have been because looking at the policy and your role at this stage you were not making any substantive decisions in relation to Mr Neish, your, your only purpose at this point was to decide whether it should go for further investigation?---Exactly.

30 Right. And if you had been playing a more substantive role such as deciding a penalty you would have had concerns about a conflict?---I would have taken advice on that.

All right. So you were comfortably satisfied at that point because of steps you had, the step you had, the stage you had reached did not involve any sanctions or any steps against Mr Neish, that you could still be involved?  
---Can you just - - -

40 My apologies. So you were, you were comfortable at that stage because whatever you were required to do under the policy did not involve any substantive steps or any sanctions against Mr Neish, that it was, it was okay, it was all right for you to continue to be involved at least at that point?  
---I still can't really - - -

All right. My point is - - ?---But I want to answer the question but I want to make sure I understand what I'm answering.

My apologies, I'll see if I can make that a little clearer.

ASSISTANT COMMISSIONER: I think he's already answered that, Mr Wong, earlier when he said - - -

MR WONG: Thank you, Commissioner. So, sir, just to finally confirm by 6 February there had been - had there been any decision taken that Mr Neish should be dismissed?---By 6 February there was no decision taken about Mr - by any date until Mr Neish came up and wanted to discuss his termination with me.

- 10 Had there been any view reached either by yourself or, or any other member of Council as at 6 February whether or not Mr Neish should be dismissed on the basis of this complaint?---Well, let me say this, I haven't propagated a complaint. As far as I'm concerned nobody knew about it officially.

All right?---There was no reason to discuss it with anybody.

- No, sir, I'm not implying otherwise. All right. Now just to be, be absolutely clear because you, as you understand the circumstances of what's been happening with Mr Neish and, and other matters, did you see this  
20 complaint of pornography use by Mr Neish or access to be an excuse to dismiss or possibly to dismiss Mr Neish from the Council's employment?  
---Absolutely.

Sorry, absolutely?---Absolutely, of course I did.

As an - oh, perhaps I've - - -?---Not because he was downloading porn, that's his prerogative but it's a distinct breach of Council's, policy to use Council equipment to access pornography.

- 30 And it would solely be on the basis that he had been breaching Council's policies that you would consider this to be grounds for dismissal?---Yes.

Now, so you did not consider this complaint to be a means of embarrassing Mr Neish into resigning?---I'm not - - -

Did you, did you consider that this complaint might be used as a way to embarrass Mr Neish into resigning from Council?---No, I was not using it as a way of embarrassing Mr Neish at all.

- 40 All right?---There are many other factors that Mr Neish has to take into consideration, this is only one.

So on your view, sir, this complaint of pornography should be dealt with on its own and separately from any other matter involving Mr, Mr Neish and Council?---Can you - - -

Okay. All right?---Very slowly.



Sorry, my apologies. So, sir, it was your view that this complaint of pornography and how it should be dealt, should be dealt with in isolation from anything else that was going on?---Exactly.

And it would of course be, and it would be your view that it would be improper if it was used for any ulterior motive?---There was no ulterior motive whatsoever.

10 I don't mean to insinuate there is, sir, I'm just, just confirming that that's the case. Sir, just now you've kept a copy of the CD in your possession. Can I ask why you've done that?---Yes, if I need to prove that, provide it for evidence elsewhere.

Sir, apart from Mr Belling have you sought legal advice from anyone else in relation to this matter against Mr Neish?---No, only Mr Belling on this particular one.

All right?---I do have another lawyer because of a different issue.

20 And who is this other lawyer, sir?---The other lawyer is Stefano Laface, L-a-f-a-c-e.

L-a-f?---A-c-e.

Now, Mr Laface, is he someone that you regularly seek advice from as well?---Only relating to the action that a former Mayor instigated against the Councillors.

30 All right. So he's instructed to act for Council in that matter?---He's, he's representing the Councillors who have been nominated and injunctions have been placed on. That's his role. Mr Belling is representing Council.

Commissioner, that is my examination.

ASSISTANT COMMISSIONER: Can I just ask you, did you make the copies of the disc yourself or did you ask someone to do it?---Oh, I made them myself.

40 Oh, right, so you know how to do that?---I know how to do that.

Well, you're a step ahead of me. So, so you had the original and you've made two copies?---You have the original.

Yes?---I have a copy and Mr Belling has a copy.

Well, that's what I'm saying and you've made two copies and that's all?  
---That's all.

Thank you. Yes. That concludes your examination now and I will excuse you. I'd just remind you about the terms of the non-publication order. You are not allowed to discuss with anybody, including Mr Belling or anybody else, any of the evidence given her or the exhibits which, by the way reminds me we need to tender the emails, I'll just do that now.

MR WONG: My apologies, Commissioner.

10 ASSISTANT COMMISSIONER: Yes. The email from Melissa Attia to Roy Newsome dated 5 February will be Exhibit C2.

**#EXHIBIT C4 - EMAIL FROM MELISSA ATTIA TO ROY  
NEWSOME DATED 5 FEBRUARY 2013**

ASSISTANT COMMISSIONER: The email from Newsome to Mr Petch at 7.19pm on 5 February will be Exhibit C3.

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**#EXHIBIT C5 - EMAIL FROM ROY NEWSOME TO IVAN PETCH  
DATED 5 FEBRUARY 7:19PM**

ASSISTANT COMMISSIONER: The email from Newsome to Mr Petch at 7.23pm on 5 February will be Exhibit C4.

30 **#EXHIBIT C6 - EMAIL FROM ROY NEWSOME TO IVAN PETCH  
DATED 5 FEBRUARY 7:23PM**

ASSISTANT COMMISSIONER: So as I was saying, you're not allowed to discuss the exhibits, the fact you've been here or the evidence you've given with anybody and that includes friends, relatives and your legal advisers because they have not been present. Do you understand the effect of that order?---I understand it, Commissioner, I understand where you're coming from.

40

And it is a criminal offence to breach that non-publication order?---Yes.

Thank you. Well, this examination is now adjourned and you're excused.  
Thank you.

**THE WITNESS EXCUSED**

**[10.42am]**

AT 10.42 AM THE MATTER WAS ADJOURNED ACCORDINGLY  
[10.42AM]