

12.6 Code of Conduct

Report Reference	GC220823F12.6
Originating Officer	Manager Office of the Chief Executive – Kate McKenzie
Corporate Manager	Manager Office of the Chief Executive - Kate McKenzie
General Manager	Chief Executive Officer - Tony Harrison

CONFIDENTIAL MOTION

That pursuant to Section 90(2) and (3)(a) of the *Local Government Act 1999*, the Council orders that all persons present, with the exception of the following persons: Chief Executive Officer, Manager Office of the CEO, Unit Manager Governance and Council Support and Governance Officer, be excluded from the meeting as the Council receives and considers information relating to *Code of Conduct*, upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep consideration of the matter confidential given the information relates to the conduct of Council Members.

REPORT HISTORY

Report Reference	Report Title
GC220510F17.5	Code of Conduct
GC211012R14.1	Rescission Motion - Code of Conduct
GC210914F18.4	Code of Conduct (released)
GC210824Q15.2	Fraud and Corruption Matter – Investigation Status

REPORT OBJECTIVE

To consider the final report from the Local Government Governance Panel (Kaye Smith) relating to the Code of Conduct complaint for Councillor Hull.

EXECUTIVE SUMMARY

To provide context on the matter, a brief chronological summary is provided as follows:

- 24 August 2021 – question on notice received by Councillor Hull requesting further information relating to the investigation status of a fraud and corruption matter.
- 21 September 2021 – Council considered a Code of Conduct complaint against Councillor Hull regarding public comments made regarding the above matter. Council resolved that Councillor Hull breached the Code of Conduct. The resolution included an apology from Councillor Hull.
- Late September 2021 - Councillor Hull indicated that he would not be apologising for the matter.
- 12 October 2021 – Council considered a rescission motion and a further report advising that the resolution had not been fulfilled. Council resolved that Councillor Hull enact the Council resolution by 5pm Friday, 15 October 2021 and if the resolution is not enacted during this period, the matter is referred to the Ombudsman in accordance with the requirements of the Code of Conduct and section 263 of the Local Government Act 1999.
- 26 October 2021 – the matter was referred to the Ombudsman in accordance with the previous resolution as Councillor Hull did not issue the apology.
- 10 May 2022 – Council considered a further report which included the Ombudsman advice

noting that the Code of Conduct procedure has not been followed by the Council and therefore, the Ombudsman referred the matter back to Council for investigation. Council then resolved to refer the matter to the Local Government Governance Panel for investigation. The Panel is chaired by Ms Kaye Smith from EMA Legal.

- 23 August 2022 – Ms Smith completed her investigation of the complaint, and a copy of her final report is included at **Attachment 1** for Council consideration.

In summary, the report finds that on balance, Councillor Hull did not breach the Code in making the comments attributable to him in the media article. The report states “It would appear that elected members were not advised of the detail of the matter at the first opportunity, being the detail of Mr O’Hanlon’s prosecution and the matter of forged documents. In repeating his dissatisfaction with this as made clear in the meeting of Council, it is the Panel’s view that this is not conduct by Cr Hull that is a breach of the Code. “

Council must now consider the report and determine a way forward.

If Council upholds the view of the Panel, it will need to consider:

- Dismissing the complaint.
- Amending the Code of Conduct register on Councils website regarding the previous finding relating to this matter.
- Potentially issuing Councillor Hull an apology.
- Releasing this report and previous reports that are held in confidence. Permission has been sought and granted from the Ombudsman to release the report considered by Council at its meeting in May 2022 which was confidential. If council wishes to do so, it will need to include the following resolution and remove the confidential resolution to retain this document.

That Council revoke the confidential order relating to report, minutes and attachments of the following item - GC220510F17.5 Code of Conduct.

If council has reason not to accept the report, it will need to document within the resolution, the reasons why and articulate next steps. This would also require the matter to be retained in confidence with the following resolution:

In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report, Code of Conduct, any appendices, and the minutes arising from this report having been considered in confidence under Section 90(2) and (3)(a) of the Act, except when required to effect or comply with Council’s resolution(s) regarding this matter, be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council Meeting in December 2022.

RECOMMENDATION

That Council:

1. **Notes the report from EMA Legal and Councillor Hull did not breach the Code of Conduct for Council Members.**
2. **Dismiss the complaint against Council Hull.**
3. **Amend the Code of Conduct register on Councils website regarding the previous finding relating to this matter.**

ATTACHMENTS

1. Final Report [12.6.1 - 11 pages]

Final Report

Investigation

Complainant/s:	Chief Executive Officer Mr Tony Harrison
Council member:	Councillor Bruce Hull
Council:	City of Marion
Issues:	Alleged breach of Part 2 – Code of Conduct for Elected Council Members
Dated:	12 August 2022

A. Introduction

The complainant alleges a breach of the Code of Conduct for Council Members (**the Code**)¹. The allegations are made against Councillor Hull (**Respondent**) in respect of alleged breaches of Part 2 of the Code, in particular clause 2.2.

The Governance Panel's function is to carry out an independent investigation of the allegations on behalf of Council, for consideration and, as appropriate, action.

An Initial Assessment recommended an investigation to clarify the factual course of events and apply the relevant provisions of the Code.

The Panel in its Initial Assessment confirmed that in finding an investigation *should* take place, did **not** indicate any view as to whether or not any of the alleged Code breaches were substantiated.

B. Investigation Process

The Panel has not undertaken any interviews for the purpose of this investigation. The investigation has involved:

- Assessing the information provided by the Complainant;
- Seeking a response from Councillor Hull;
- Considering all information provided to the investigation;

¹ made pursuant to section 63 of the *Local Government Act 1999*.

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- Preparing the Preliminary Report for distribution to the Complainant and Respondent for comment;
- Consideration by the Panel of responses to the Preliminary Report; and
- Preparation of this Final Report

C. Standard of Proof

The standard of proof applied is the balance of probabilities. It is important to recognise that findings are not the result of any arbitral or court process. They are the product of an inquisitorial process, and an assessment of the likelihood of whether a matter did or did not occur.

D. Relevant Law and aspects of the Code

1. Section 63 of the *Local Government Act 1999* requires Council members to observe the Code.
2. Part 2 of the Code of Conduct concerns behaviours, and the following extract is of relevance to this investigation:

General Behaviour

2.2 Act in a way that generates community trust and confidence in the Council.

Responsibilities of a Member of Council

2.5 Comply with all Council policies, Codes and Resolutions.

E. Documents

The documents received and considered as part of this investigation are as follows:

- Form 1 – Code of Conduct Complaint, completed CEO Mr Tony Harrison, 1 June 2022 (**Complaint**)
- Documentation provided by Council via email, 13 May 2022:
 - Extract of Confidential Agenda – Council General Meeting – 14 September 2021 – Item 18.4 – Code of Conduct including attachments:
 - 18.4.1 – Code of Conduct Attachment 1 [5 pages]
 - 18.4.2 - Code of Conduct of Council Members
 - Council Member Code of Conduct Procedure for Investigating Complaints
 - Extract of Confidential Agenda – Council General Meeting – 12 October 2021 – Item 7 – Adjourned Item – Code of Conduct including attachments:
 - 7.1.1 – Report and attachments

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- Attachment 1 – Notification to Councillor Hull 15 September 2021
- Attachment 2 – Councillor Hull email 15 September 2021
- Attachment 3 – Media article 18 September 2021
- Attachment 4 – Code of Conduct for Council Members
- Extract of Confidential Agenda – Council General Meeting – 10 May 2022 – Item 17.5 – Code of Conduct
 - Report and attachments
 - 17.5.1 - Letter from SA Ombudsman – 9 March 2022
 - 17.5.2 - Letter from SA Ombudsman – 30 March 2022
 - 17.5.3 - Council Member Code of Conduct Procedure for Investigating Complaints
- Email from Cr Hull to CEO Tony Harrison, 14 September 2021 with attached letter from Mr Colin James to Marion Councillors, 9 September 2021
- Email from Cr Hull to Governance Panel, 'Additional Evidence', 3 July 2022
- Email from Cr Hull to Governance Panel, 'Code of Conduct Complaint' with attachment, 5 July 2022
- Panel correspondence with Council and the Respondent

F. Background

1. On 8 December 2020 by way of deputation to the Council Meeting, elected members were advised by a spokesperson from a local sporting club that former Council employee Mr O'Hanlon had falsified documents purported to be from that club.
2. On 8 December 2020 Cr Hull raised concerns at the Council Meeting that the elected members had not been advised of the termination of Mr O'Hanlon.
3. On 14 December 2020 former CEO Mr Adrian Skull emailed Cr Hull stating Mr Skull had informed elected members informally and verbally of the dismissal of Mr O'Hanlon, and that certain matters (in respect of a second and 'significant' investigation) could not be disclosed for reasons of confidentiality.
4. On 13 August 2021 Cr Hull submitted a Question on Notice to CEO Mr Tony Harrison requesting a status update with respect to Mr O'Hanlon's prosecution/conviction, in accordance with Council's Fraud and Corruption Policy.
5. On 17 August 2021 Cr Hull was asked by the CEO if he would prefer a personal update on the Mr O'Hanlon matter and Cr Hull responded by email to the Manager, Office of the CEO, saying '[a]ll Elected Members need to be formally advised about this outcome. As you would be aware, I have been consistent about this. A formal answer to my question would be appreciated please.'
6. On 19 August 2021 a response to the Question on Notice was uploaded to Council's website as part of the agenda for the 24 August 2021 Council Meeting.

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7. On 23 August 2021 an article by journalist Mr Colin James was published on AdelaideNow, and then published in The Advertiser on 24 August 2021. The article includes content attributable to Cr Hull.
8. At the 24 August 2021 Council Meeting a complaint was raised against Cr Hull for failing to act in a way that generates community trust and confidence in the Council when he provided information to Mr Colin James. Cr Hull was asked questions by Mayor Hanna at the Council meeting of 24 August 2021. Cr Hull stated, *'if you want to pursue me on this, do it properly, do a proper code of conduct process, not a kangaroo court hearing, here in this fashion'*.
9. On 14 September 2021 Council considered the complaint relating to Cr Hull to determine how to proceed in accordance with the Council Member Code of Conduct Procedure for Investigating Complaints (**Complaints Procedure**). Council resolved or noted at the Meeting:
 - 9.1. that Council administration informed Council of the termination of Mr O'Hanlon, and that Council administration was not obliged to inform elected members of the prosecution outcome (which was publicly available knowledge);
 - 9.2. that Cr Hull breached clause 2.2 of the Code; and
 - 9.3. to censure Cr Hull and request a written public apology from him.
10. On 15 September 2021 Cr Hull advised Mayor Hanna that he would not apologise and did not accept the censure.
11. On 18 September 2021 *The Advertiser* published a further article about the issue.
12. On 28 September 2021 Council considered the matter and resolved to defer it until a recission motion could be considered.
13. On 12 October 2021 the recission motion was lost and Council resolved that Cr Hull was required to apologise by 15 October 2021 or the matter was to be referred to the Ombudsman.
14. Cr Hull was advised of the outcome and confirmed he would not apologise.
15. On 26 October 2021 the matter was referred to SA Ombudsman, Mr Wayne Lines.
16. On 9 March 2022 the Ombudsman advised the CEO that it had 'significant concerns' about the process followed by Council. The Ombudsman stated it appeared Council did not undertake an investigation as required by the Complaints Procedure, that it was not in the public interest for the Ombudsman to undertake further enquiries or consider the complaint, and that the Ombudsman intended to end consideration of the complaint.
17. On 30 March 2022 the Ombudsman advised the CEO that he was not prepared to undertake an investigation of the complaint and would close that file.

On 13 May 2022 Council referred the matter to the Panel.

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G. Complainant's Concerns

Summary of Complainants' Grievances

1. In essence the Complainant's concerns are that:
 - 1.1. Cr Hull has failed to act in a way that generates community trust and confidence in Council by providing information to journalist Mr Colin James.
 - 1.2. Cr Hull's public comments about the matter were inaccurate when he referred to a lack of information provided to elected members in a timely manner.
2. The Complaint directs the Panel to the following comments attributable to Cr Hull:

'Councillor Hull is quoted in part in the newspaper article published on Monday 23 August:

"He had "great concern" that elected members were not advised about the situation involving Mr O'Hanlon "in a timely fashion by staff and that we were ultimately awkwardly advised by a community deputation at a council meeting".

At the General Council meeting on Tuesday 24 August 2021, in reference to quotations being provided to The Advertiser by Councillor Hull, he stated in the chamber:

"Mr Mayor, well may the public wonder whether they can have trust and confidence in this council, after the way we found out about this information and that's refuted that answer by the way....."
3. The Complaint does not indicate which parts of the Code the Complainant believes have been breached by Cr Hull. The Panel assumes the alleged breach is in respect of clause 2.2 of the Code and /or clause 2.6 of the Code, having regard to Council's resolution of 14 September 2021 noted below.

H. Whether Councillor Hull breached Part 2 of the Code of Conduct for Council Members

1. In its 14 September 2021 resolution, Council found that Cr Hull breached clause 2.2 of the Code, which requires elected members to:

Act in a way that generates community trust and confidence in the Council.
2. The Panel considers clause 2.6 of the Code also relevant to consider in respect of to the Complaint.

Clause 2.6: Comply with all Council policies, Codes and Resolutions.

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Respondent's Response

3. On 5 July 2022 Cr Hull provided a response to the Panel. He states Council's Fraud and Corruption Policy was not followed by Council staff on three occasions:
 - 1) when former CEO Mr Skull *'informally advised some Elected Members at the end of an Elected Members Forum, where many of us including myself had already departed. This advice apparently was about a theft matter involving a staff member. No details regarding the theft were provided. Only later did I learn that Mr O'Hanlon had stolen alcohol belonging to the community and Sports club at Edwardstown. There was no mention of any other offences. At the same time there was quite a lot of media coverage of the acrimonious negotiations between a number of the Edwardstown sporting clubs and Marion Council, where Mr O'Hanlon was our lead negotiator at the time. The irony is that we Elected Members would ultimately be advised by a spokesperson from one of the clubs about alleged falsified liquor licensing documents at a public Council Meeting, where they detailed their grievances with Council. I maintain that this is not an appropriate way for Elected Members to be told and this was the way in which all Elected Members found out about these fresh allegations.'*
 - 2) that at no time has Council been advised of Mr O'Hanlon's court appearance or the outcome.
 - 3) that *'despite the ICAC investigations concluding, there was no attempt by administration to brief Council of what had transpired with the offending in a timely manner.'*
4. Cr Hull states he asked on a number of occasions for Council to be fully advised about the three dot points above but that this did not occur.
5. Cr Hull states as a 'last resort' he placed the Question on Notice as a way of seeking information, and Council placed the question on the agenda, and answered the question publicly and not in confidence. He states that the fact the question was *'deemed by Governance as "appropriate Council business" endorses that this was a question I could ask and was in fact in the public interest. The way in which it was answered was also a Governance decision and beyond my control. I maintain that by submitting a question on notice to the administration does not constitute a breach of Councils Code of Conduct. Governance could have advised me that it wasn't appropriate, quoted the relevant meeting rules and neither the question nor the answer would have been published.'*
6. Cr Hull acknowledges he spoke with journalist Mr Colin James and says it was after Mr James contacted Cr Hull, and that Mr James *already* had information about Mr O'Hanlon's offence at that time, and Cr Hull was responding to questions of him by Mr James. This is supported by Mr James' letter to the elected members of 9 September 2021.
7. Cr Hull states that he answered some of Mr James' questions, that none of the information he gave Mr James was confidential, and that *'Mr James then wrote an*

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article using quotes he attributed to me. These quotes were not my words. I have never been asked to clarify this fact or asked to document what I said. I maintain that I did not say anything that wasn't true or in breach of Councils Code of Conduct.'

8. Cr Hull states that statements attributable to him in the Complaint are from the transcript of a public Council meeting, and that he did not expressly provide the quotes mentioned in the article to Mr James or to any media outlet.
9. Cr Hull raises concerns with the means by which Council determined he had breached the Code, including the 'cross examination' by the Mayor at the Council meeting of 24 August 2021.

Findings

10. In light of the evidence provided to the investigation, the Panel considers below the relevant Code provisions and indicates its findings. Before doing so, the following additional matters are noted.
11. The Panel does not make any finding or observation about whether Council staff or 'Governance' have acted properly or improperly, or in compliance with policies or procedures. The response from Councillor Hull raises these issues, and they are only repeated for context.
12. The Panel has no evidence or reason to disbelieve that the letter from Mr James is in fact a letter generated by Mr James. It has been accepted as a record prepared by Mr James, which reflects Mr James' recollection and views on the matter.
13. The Panel makes no finding or observation about the allegation made by Cr Hull of 'cross examination' by the Mayor referenced in the material from the Respondent referred to the Panel.

Responses to the Preliminary Report

14. The Complainant and Respondent were provided with the opportunity to respond to the Preliminary Report by 8 August 2022.
15. Cr Hull availed himself of the opportunity, to simply express his appreciation of the Panel's assessment and findings, and to advise that he had nothing further to add.
16. The Panel did not receive a response from CEO Mr Harrison by 8 August 2022.
17. On 9 August 2022 Mr Harrison spoke to the Panel Manager by telephone about the Preliminary Report. He advised he would consider his position and whether to provide a response to the Preliminary Report.

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18. On 11 August 2022 the Office of the CEO advised they would not be providing a submission in respect of the Preliminary Report.

Clause 2.2: Act in a way that generates community trust and confidence in the Council.

19. The Code holds elected members to a standard of conduct and behaviour that accords with community expectations.
20. Generate means to '*bring into existence; give rise to*'. Trust means to have confidence or '*reliance on the integrity, justice etc. of a person*'. Confidence means '*belief in the trustworthiness or reliability of a person or thing*'.²
21. The Panel has applied an objective reasonable person test when assessing the concept of what is required to *generate community trust and confidence*.
22. Having considered the documents, the Panel finds on balance that:
- in or around December 2020 the former CEO Mr Skull verbally advised elected members that a staff member had been terminated for theft. It is however, unclear which specific elected members received the verbal briefing.
 - the organisation had an awareness through the former CEO on 8 December 2020 (at the time of the community deputation) of the second SAPOL investigation, but for reasons of confidentiality the former CEO did not provide these details to elected members at that time.
 - on 14 December 2020 the former CEO provided elected members with limited information via email.
 - Cr Hull's Question on Notice in August 2021 was made in circumstances where Cr Hull was apparently concerned with the level of (limited) information that had been provided to the elected members.
23. In response to Cr Hull's Question on Notice the current CEO Mr Harrison advised the elected members of the charges laid against Mr O'Hanlon and his guilty plea. The Minutes of 24 August 2021 state members were notified that the matter was referred to SAPOL and was being investigated.
24. The Council Minutes of 12 October 2021 state that '*contrary to recent public statements*' Council administration had advised the elected members of Mr O'Hanlon's prosecution, and that Council was not obliged to inform the elected members of the prosecution outcome.
25. Based on the documents before the Panel, it appears the elected members were not advised of the prosecution of Mr O'Hanlon until a response was posted on 19 August 2021 to Cr Hull's Question on Notice and uploaded as part of the agenda for the 24 August 2021 Council Meeting. Prior to that time, it appears elected members had only been advised by Council administration that Mr O'Hanlon had been terminated for theft, that SAPOL had '*launched a significant investigation into another matter*' and the details for this were confidential.

² Macquarie Essential Dictionary.

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26. Based on the information before the Panel, the elected members including Cr Hull, had not been provided with updated information and specifically, of Mr O'Hanlon's prosecution, between December 2020 and August 2021.
27. To the extent however that the information given to elected members up to August 2021 was seen by Cr Hull as being limited, it likely was. The information to elected members did not extend to advice of a prosecution until *after* Cr Hull's Question on Notice. That advice was publicly available following the post to the Question on Notice on 19 August 2021 as referred to in paragraph 23 above.
28. The Panel finds on balance that the comments to the media attributable to Cr Hull were not inaccurate. Whether Cr Hull made all of these comments is presently uncertain.
29. The Panel refers to the following excerpt from the AdelaideNow/The Advertiser article '*Marion councillors not told about prosecution of council manager over forged documents*':

Mr Hull said he had "great concern" that elected members were not advised about the situation involving Mr O'Hanlon "in a timely fashion by staff and that we were ultimately awkwardly advised by a community deputation at a council meeting".

"Not all elected members were there when we were supposedly told by Mr Skull about the investigation last December, some had already left or had not even attended the meeting," he said. "I am particularly concerned that now this former staff member has been to court and convicted, council still has not been advised of this by our administration six months later."
30. It would appear on balance that some of these details publicised in the article were not derived from information in the public domain, namely that:
 - a. elected members were not advised 'in a timely fashion' about the situation involving Mr O'Hanlon;
 - b. not all elected members were present when told by the former CEO about the investigation; and
 - c. the elected members had not been advised by Council administration 'six months later' that Mr O'Hanlon had been to court and convicted. It is unclear if the six months refers to the period since the December 2020 update, or since Council administration became aware of the court proceedings and outcome, which, if it is the latter, may be five months not the six as stated.
31. Otherwise, those details were public, including by reference to the Complainant's response to the Question on Notice, published on Council's website on 19 August 2021.
32. On balance, the Panel's finding is Cr Hull did not breach the Code in making the comments attributable to him in the media article. It would appear that elected members were not advised of the detail of the matter at the first opportunity, being the detail of Mr O'Hanlon's prosecution and the matter of forged documents. In repeating his dissatisfaction with this as made clear in the meeting of Council, it is the Panel's view that this is not conduct by Cr Hull that is a breach of the Code.

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33. The Panel's finding is that in making the comments to the media Cr Hull *may have* brought certain matters to the community's attention of which they were previously unaware (being the quality of information in communications between Council administration and the elected members) however this act did not detract from community trust and confidence in Council. That finding is made having regard to the level of factual accuracy in the media report at that time and given the timeline of events. At that time, the information shared with Council in late 2020 did not include the fact of Mr O'Hanlon's prosecution, or the extent of his offending which included acts of forgery and dealing dishonestly with documents. Prior to late August 2020¹ elected members knew only of 'a *significant investigation into another matter*' the details of which were confidential.

Clause 2.6: Comply with all Council policies, Codes and Resolutions.

34. Cr Hull did not comply with the Council resolution of 14 September 2021.
35. In the Ombudsman's preliminary investigation of Cr Spooner³, the Ombudsman stated:

'As I have stated in other reports, it is essential that council members comply with council resolutions, regardless of whether they agree with the outcome of a particular investigation. It is part of a council member's role to uphold the principles underpinning the Code of Conduct and to comply with council resolutions, regardless of their personal views. A failure to do so may undermine community trust and confidence in the council.'

36. Generally speaking, elected members are required to follow Council resolutions whether or not they agree with them.
37. However, at the time Council made the resolution requiring Cr Hull's apology, the complaint against Cr Hull had not been properly managed in accordance with the Complaints Procedure.
38. As the finding that Cr Hull breached the Code did not follow an investigation in accordance with Council's Complaint Procedure, Council's resolution to request that Cr Hull make an apology⁴ was without proper foundation and premature.
39. The Panel's finding is that Cr Hull did not breach clause 2.6 of the Code when he declined to apologise.

Conclusion

40. The Panel finds there was no breach of the Code by Cr Hull in respect of the Complaint.

³ District Council of Peterborough [2020] SAOmbRp5 at 13.

⁴ In accordance with clause 2.25 of the Code of Conduct for Council Members.

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Recommendation

Having concluded on balance that Cr Hull did not breach the Code, the Panel recommends that the Complaint be dismissed and no further action is taken.



Kaye Smith
Panel Manager – Governance Panel

Dated: 12 August 2022