



CONFIDENTIAL ORDINARY COUNCIL MEETING

CONFIDENTIAL MATTERS

- 16.1 Gawler River Floodplain Management Authority (GRFMA) Board Independent
Chairperson3
- 16.2 Payment of Legal Fees (Attachments)8

Released 28 November 2018

**16.1 GAWLER RIVER FLOODPLAIN MANAGEMENT AUTHORITY (GRFMA) BOARD
INDEPENDENT CHAIRPERSON**

Contact Person: Mr Sam Green

Why is this matter confidential?

Subject to an order pursuant to Section 90 (3) (a) of the Local Government Act 1999, this matter is confidential because it contains information about an as yet unconfirmed preferred appointee to the GRFMA Board Independent Chairperson role.

A. COUNCIL/COMMITTEE TO MOVE MOTION TO GO INTO CONFIDENCE

No action – this motion passed in the open section.

B. THE BUSINESS MATTER**16.1 GAWLER RIVER FLOODPLAIN MANAGEMENT AUTHORITY (GRFMA) BOARD
INDEPENDENT CHAIRPERSON****Why is this matter before the Council or Committee?**

Matters which cannot be delegated to a Committee or Staff.

Purpose

To resolve on the GRFMA Board's appointment of an Independent Chairperson.

STAFF RECOMMENDATION

The GRFMA Board recommendation of Mr Ian Baldwin to be appointed as the GRFMA Board Independent Chairperson is endorsed by Council.

Council endorses the CEO to inform the GRFMA of the Council endorsement of the GRFMA recommendation to appoint Mr Ian Baldwin as the independent Chairperson.

Relevance to Strategic Plan

Strategy 5. Building our capabilities

Outcome 5.1 Highly performing organisation

Relevance to Public Consultation Policy

Council is not required to consult with the community on this matter in line with Councils Public Consultation Policy.

Background

This report covers the appointment of an Independent Chairperson to the GRFMA Board.

The Gawler River Flood Management Authority (GRFMA) is a regional subsidiary of the City of Playford, Town of Gawler, Adelaide Hills Council, The Barossa Council, Light Regional Council and District Council of Mallala, which carries out flood planning and mitigation for the Gawler River catchment, on behalf of all constituent Councils.

The GRFMA Board forms part of Council's corporate governance framework and is responsible for the administration of the affairs of GRFMA.

GRFMA's Charter was recently amended to provide for the appointment of an Independent Chairperson.

In light of the amendment to the Charter, the GRFMA Board has undertaken a recruitment process to find a suitable candidate to act as the Independent Chairperson for a term of two years.

The GRFMA instigated a recruitment process and the GRFMA Board has put forward their preferred candidate to the Constituent Councils for decision.

The appointment can take place after a similar resolution is passed by each of the Constituent Council supporting the GRFMA's Board's preferred candidate.

Analysis of Issues

The GRFMA Board has undertaken a recruitment process to seek a suitably qualified independent person to act as its Chairperson for a term of two years.

The Board has undertaken a robust recruitment process which resulted in five expressions of interest, with Mr Ian Baldwin being nominated by the Board based on expertise and capability.

Options

Option 1

The GRFMA Board recommendation of Mr Ian Baldwin to be appointed as the GRFMA Board Independent Chairperson is endorsed by Council.

Council endorses the CEO to inform the GRFMA of the Council endorsement of the GRFMA recommendation to appoint Mr Ian Baldwin as the independent Chairperson.

Option 2

Council resolves that it does not endorse the nomination of Mr. Ian Baldwin as the Independent Chairperson of the GRFMA Board and requests further consultation with the Board.

Analysis of Options

Option 1

This option also acknowledges the process undertaken by the GRFMA Board to seek and recommend a suitable independent person to act as its Chairperson within the guidelines of its Charter. The appointment of an Independent Chairperson reflects good practice for the governance and management of a regional subsidiary.

On the assumption that all Constituent Councils endorse the preferred candidate put forward by the GRFMA Board and informed GRFMA of this outcome, GRFMA will arrange for the finalisation of the recruitment process and appoint Mr. Ian Baldwin to the Board.

Option 2

This option indicates that Elected Members would like to request further discussion with the GRFMA Board in relation to the Independent Chairperson appointment process.

This will require further endorsement by each of the other Constituent Councils and will result in a significant delay to the appointment of an Independent Chairperson.

Financial Implications

The Independent Chairperson will be entitled to a Sitting Fee, which will flow on to Council via GRFMA's budget. However the financial implication to Council will be minimal and dealt with via standard budget processes relating to GRFMA and its management.

Preferred Options and Justification

Option 1 is the preferred option. The process followed by the GRFMA Board in recruiting an independent member was robust and followed due process; and the proposed preferred Independent Chairperson is well known and respected. The proposed appointment is reasonable in nature and contributes to governance processes for the management and operation of GRFMA.

C. COUNCIL/COMMITTEE TO DECIDE HOW LONG ITEM 16.1 IS TO BE KEPT IN CONFIDENCE**Purpose**

To resolve how long agenda item 16.1 is to be kept confidential.

STAFF RECOMMENDATION

That pursuant to Section 90(2) and Section 91(7) of the Local Government Act 1999 the Council orders that the following aspects of Item be kept confidential:

- Report for Item 16.1 until the appointment of the Independent Chairperson is made public.
- Attachment(s) for Item 16.1 until the appointment of the Independent Chairperson is made public.
- Discussion for Item 16.1 until the appointment of the Independent Chairperson is made public.
- Decision for Item until the appointment of the Independent Chairperson is made public.

OptionsOption 1

That pursuant to Section 90(2) and Section 91(7) of the Local Government Act 1999 the Council orders that the following aspects of Item 16.1 be kept confidential:

- Report for Item 16.1 until the appointment of the Independent Chairperson is made public.
- Attachment(s) for Item 16.1 until the appointment of the Independent Chairperson is made public.
- Discussion for Item 16.1 until the appointment of the Independent Chairperson is made public.
- Decision for Item 16.1 until the appointment of the Independent Chairperson is made public.

Option 2

The Council/Committee determines a different timeframe for any "in confidence" aspects of agenda item 16.1 to remain in confidence.

Analysis of OptionsOption 1

This item is excluded from the public on the basis that it relates to Section 90 (3) (a) of the Local Government Act 1999.

The report contains information that will not be confirmed until an appointment is made and therefore should be confidential until the appointment of the Independent Chairperson is made public.

The attachment is recommended as retaining the same confidentiality timeframe as this is anticipated to be short and is administratively simple to manage. However, this attachment does not in itself contain confidential information.

Option 2

The Council may determine that certain or all aspects of agenda item 16.1 remain in confidence.

Council may wish to release the Attachment earlier, however the administrative management of this is somewhat onerous and the timeframe for confidentiality is short so the public benefit is considered low.

Released 28 November 2018

16.2 PAYMENT OF LEGAL FEES

Contact Person: Mr Sam Green

Why is this matter confidential?

Subject to an order pursuant to Section 90 (3) (a) of the Local Government Act 1999, this matter is confidential because it contains information relating to personal affairs of a person.

A. COUNCIL/COMMITTEE TO MOVE MOTION TO GO INTO CONFIDENCE

No action – this motion passed in the open section.

B. THE BUSINESS MATTER

16.2 PAYMENT OF LEGAL FEES

See Attachment No: 1. Invoice - Griffins Lawyers
2. Ombudsman's Findings

Why is this matter before the Council or Committee?

Matters which cannot be delegated to a Committee or Staff.

Purpose

To seek Council's endorsement to pay the legal fees incurred by Cr Musolino in responding to an Ombudsman's enquiry.

STAFF RECOMMENDATION

Option 1

That Council endorses the payment of legal fees as outlined in Attachment 1.

Option 2

That Council does not endorse the payment of the legal fees as outlined in Attachment 1.

Relevance to Strategic Plan

Strategy 5. Building our capabilities
Outcome 5.1 Highly performing organisation

Relevance to Public Consultation Policy

There is no requirement to consult with the public on this matter.

Background

A complaint was made to the Office of Public Integrity (the OPI) under the Independent Commissioner Against Corruption Act 2012 (ICAC Act). This matter was referred to the Ombudsman for investigation who accepted the referral.

As per Attachment 2, the investigation determined that there was no evidence of misconduct in public administration and Cr Musolino has requested both verbally and in writing, payment of the costs for legal advice in responding to this matter.

Analysis of Issues

Whilst staff are currently in the process of reviewing the Mayor and Councillors Support Policy and have made provision for legal fees, Council does not currently have a policy position on the payment of legal fees for a Council Member in responding to either an ICAC or Ombudsman enquiry.

The Code of Conduct for Council Members Complaints Handling Procedure Annexure B – Natural Justice, Clause 3 details;

A Council Member who engages legal or other professional advisors, to assist them in responding to a complaint under the Code may have costs up to \$2,500 met by Council. Further costs may be met by resolution of Council.

Furthermore, minor Conflict of Interest advice sought for Council Members is currently absorbed through the Legal Services contractual arrangement and budgeted for in the Annual Business Plan process.

Options

Option 1

That Council endorses the payment of legal fees as outlined in Attachment 1.

Option 2

That Council does not endorse the payment of the legal fees as outlined in Attachment 1.

Analysis of Options

Option 1

This option will ensure the payment of the legal fees outline in Attachment 1 at Councils expense.

Option 2

This option will resolve that the legal fees are not paid at Councils expense and staff will formally advise Cr Musolino in writing.

Financial Implications

The financial implications of this matter are \$2,484.90 and are outlined in Attachment 1.

Preferred Options and Justification

Staff do not have a preferred option on this matter.

Released 28 November 2018



OUR REF itr:85236

INVOICE NO: B020867

Date: 30 September 2015

City of Playford Council
PO Box 474
Martin Road
VIRGINIA SA 5120

TAX INVOICE**Dino Musolino**

Period of work: 03 September 2015 to 24 September 2015

Professional Fees	\$2,259.00
Subtotal	\$2,259.00
GST applied	\$225.90
Total of this invoice	\$2,484.90
Total Now Due and Owing	\$2,484.90

Detailed information supporting this tax invoice is attached.

Thank you for your instructions.

With compliments

GRIFFINS LAWYERS

IAN RICE

Direct email: irice@griffins.com.au

Direct line: (08) 8113 5124

E & O E

TERMS 14 DAYS NET

If you do not pay our bills within 14 days of delivery, interest on the amount of that bill will be charged to you once our accounts have remained unpaid for thirty (30) days. The rate of interest we will charge you if you do not pay our bills within 14 days of delivery is a benchmark rate equal to the Cash Rate Target of the Reserve Bank of Australia, plus 2% (which is presently 4%). If this is a final invoice in relation to this matter unless you notify us otherwise payment of this invoice will constitute your authority for us to close the file relating to this matter and to destroy the file and all other materials in our possession relating to the file after 7 years from the date the file is closed. During that 7 year period, your file will be stored at our offsite storage facility at no expense to you. A charge will be made if you require us to recover the file at any time.

ACCOUNT DETAILS**Professional Fees****Date Description**

03/09/15 Telephone attendance on D Musolino
03/09/15 Perusal and consideration of documents from Mr Musolino
03/09/15 Consideration of legislative provisions
03/09/15 Drafting of letter to Mr Watson, Council
03/09/15 Drafting of letter to D Musolino (no charge)
04/09/15 Attend conference in office with D Musolino
08/09/15 Telephone attendance on Ombudsman x 2
14/09/15 Drafting of Statutory Declaration
15/09/15 Telephone attendance on Mr Musolino
15/09/15 Drafting of email to Mr Musolino
15/09/15 Attendance to witness Stat Dec
15/09/15 Attendance settle Stat Dec of D Musolino
16/09/15 Drafting of letter to Ombudsman and amending letter Mr Watson
16/09/15 Telephone attendance on Mr Watson
23/09/15 Perusal and consideration of letter from Mr Watson (no charge)
24/09/15 Perusal and consideration of letter from City of Playford (no charge)
*** Professional Fees

\$2,259.00

Total Professional Fees, Administrative Services & Disbursements subject to GST:

\$2,259.00

Total GST

\$225.90

Subtotal

\$2,484.90

Total of this invoice

\$2,484.90

Griffins Lawyers

85236

Page 3

Mr Dino Musolino

Ombudsman's Complaint - Carparking

Invoice No: B020867

REMITTANCE ADVICE

Invoice Date: 30 September 2015
Due Date: 14 October 2015
Our Ref: ITR:85236:B020867
Payor: Mr Dino Musolino
Tax Invoice B020867

Please choose a payment method and return this advice to our office.

1. ☐ CHEQUE

Please return this advice with your cheque payable to Griffins Lawyers for **\$2,484.90**

Griffins Lawyers
GPO Box 2077
ADELAIDE SA 5001

Please quote reference ITR : 85236 : Invoice No. B020867

2. ☐ BANK TRANSFER

Please fax this advice to +61 8 (08) 8410 1920 or email accounts@griffins.com.au stating the invoice number and the amount paid.

Transfer Amount: **\$2,484.90**

Bank: Westpac

BSB: 035 006
Account: 283 443
Account Name: GMG Legal Services Pty Ltd
t/a Griffins Lawyers

Please quote reference ITR : 85236 : Invoice No. B020867

3. ☐ CREDIT CARD

Please fax this advice with credit card details to +61 8 (08) 8410 1920

Card Number: _____

Expiry Date: _____

Amount Due: **\$2,484.90**

Please circle one:
Visa or MasterCard

Name on Card: _____

Signature: _____

Please quote reference ITR : 85236 : Invoice No. B020867

Mr Dino Musolino
PO Box 474
Martin Road
VIRGINIA SA 5120

Account Ref 85236
Partner GMG
Controller GMG
Solicitor ITR

Trust Account Statement as at 2/10/2015

RE: OMBUDSMAN'S COMPLAINT - CARPARKING

Date	Type	Ref	Payee/Payer Details	Debit	Credit	Balance
Balance of Trust Account						\$0.00



Fact Sheet: Your Right to Challenge Legal Costs

(Legal Practitioners Regulations 2014 - Schedule 1)

This Fact Sheet has been prepared by the Law Society of South Australia and is made available to you in accordance with the relevant provisions of the *Legal Practitioners Act 1981*.

You have the following rights if you do not agree with, or are not happy with, a bill that you receive from a law practice:

1. Requesting an itemised bill

If you have received a lump sum bill and you want more information on what you have been charged for and the rates that apply, you have the right to request an itemised bill of costs (at no charge to you).

An itemised bill of costs is a bill that separately lists each task or item of work performed by the law practice and attributes a separate charge to each task or item. Under clause 34 of Schedule 3 to the *Legal Practitioners Act 1981* you have a right to require the law practice to provide you with an itemised bill of costs within 21 days of your request.

The law practice is not permitted to take recovery action against you in relation to an itemised bill until 30 days have passed after providing the itemised bill.

2. Discussing your concerns with the law practice

It is always open to you to approach the law practice and discuss your concerns regarding a bill. If you think the bill is too high, it is open to you to ask the law practice to reduce it. The costs agreement you signed when you engaged the law practice should specify who you can see to do this. This should usually be your first step, as it may be the quickest and cheapest way to resolve matters.

3. Having the law practice's costs adjudicated

You may apply to the Supreme Court under clause 37(1) of Schedule 3 of the *Legal Practitioners Act 1981* for an adjudication of the billed costs.

- (a) You need to make this application within 6 months of receiving the bill however you may be able to apply for an extension of time for this under clause 37(5) of Schedule 3 to the *Legal Practitioners Act 1981*.

- (b) The form for making the application is Form 54 of the Supreme Court Rules. You will need to attach to it the bill or bills you are seeking to have adjudicated.
- (c) If such an application is made, the Court will probably go through the bill on an item by item basis, allowing or disallowing each item. If a properly itemised bill has not been provided to you by the law practice, the Court may order it to do so. You will probably have to tell the Court, either in writing or verbally, which charges you do not agree with and why.
4. Applying to set aside the costs agreement with the law practice

If you do not want the costs you have to pay to a law practice calculated on the basis of a costs agreement that you signed, you can apply to have the costs agreement set aside under section 30 of Schedule 3 to the *Legal Practitioner's Act 1981*. The Supreme Court has the power to set aside a costs agreement if it finds that it is not fair and reasonable.

If the costs agreement is set aside by the Supreme Court, the costs you will have to pay to the law practice, if any, will be calculated based on the Supreme Court scale of costs. A copy of the Supreme Court scale is available on the Law Society of South Australia website, www.lawsocietysa.asn.au. You may wish to obtain independent legal advice when considering this option.

5. Making a complaint to the Legal Profession Conduct Commission (if you believe there has been overcharging)

If you believe that you have been overcharged by a law practice, then you may complain to the Commissioner. The Commissioner **must** investigate your complaint if it is made within 2 years of the final bill about which you are complaining being delivered to you. The Commissioner **may** investigate your complaint if it is made outside of that 2 year period (but is not obliged to do so). However, there are some circumstances in which the Commissioner might determine not to investigate your complaint, no matter when it is made – for example, if it is frivolous, if the bill complained of is already the subject of civil proceedings between you and your lawyer, or if it is not otherwise in the public interest for the Commissioner to deal with it.

The Commissioner can require a fee to be paid before investigating an overcharging complaint, but he does not currently do so.

Once a complaint is received, the first step the Commissioner will normally take will be to see if, through a conciliation process, the bill complained of can be sorted out by agreement between the parties.

If conciliation isn't successful, then the Commissioner will go through the process of determining what he thinks is a fair and reasonable amount for the legal fees to have been. If that amount is less than the amount charged, then the Commissioner may recommend

that the law practice reduce the bill (or, if you have already paid it, that it refund some or all of it to you). The Commissioner's recommendation is not binding on you or a law practice – but at the very least, it should be persuasive.

If either you or the law practice don't accept the Commissioner's recommendation, then:

- if the amount in dispute is more than \$10,000, the Commissioner is unlikely to be able to do anything further (although there are still some steps that are potentially open to the Commissioner in that situation);
- if the amount in dispute is \$10,000 or less, the Commissioner may make a determination as to whether or not there has been overcharging and, if so, the amount that has been overcharged – and that determination is binding on both you and the law practice.

You can find out more about what happens if you complain to the Commissioner about overcharging by going to the Commissioner's website at www.lpcc.sa.gov.au and clicking on the overcharging section.

If you would like further advice in relation to your rights with respect to costs you can do the following:

- Go to the Legal Profession Conduct Commissioner's website at www.lpcc.sa.gov.au.
- Contact the Legal Services Commission Legal Help Line on 1300 366 424.

Obtain independent legal advice. For details of legal practitioners who specialise in costs, community & specialist legal services that may be able to provide you with free advice, contact the Law Society on 82290200.



Enquiries: Ms Sarah Fairhead Hall
Telephone: 08 8226 8699
Ombudsman reference: 2015/06433
ICAC reference: 2015/000545

Cr Dino Musolino
3 Martin Road
VIRGINIA SA 5120

Dear Cr Musolino

Investigation – referral – section 24(2)(a) of *Independent Commissioner Against Corruption Act 2012* (ICAC Act) – Cr Musolino

I refer to my email dated 31 August 2015 about the referral to my Office from the Commissioner.

I have determined to take no further action in relation to this matter. I enclose my No Further Action report.

Please note that there are strict confidentiality obligations related to ICAC investigations. Section 54 prohibits disclosure of certain information. It provides:

54—Confidentiality

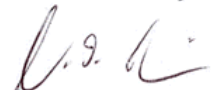
- (1) A person must not, directly or indirectly, disclose information obtained in the course of the administration of this Act in connection with a matter that forms or is the subject of a complaint, report, assessment, investigation, referral or evaluation under this Act except—
 - (a) for the purposes of the administration or enforcement of this Act; or
 - (ab) for the purposes of referring a matter in accordance with this Act to a law enforcement agency, inquiry agency, public authority or public officer; or
 - (b) for the purposes of a criminal proceeding or a proceeding for the imposition of a penalty; or
 - (c) for the performance of the functions of the Commissioner under another Act; or
 - (ca) in accordance with an authorisation of the Commissioner given in accordance with the regulations; or
 - (d) as otherwise required or authorised by this Act.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (2) Any disclosed information connected with a matter that is the subject of a complaint, report, assessment, investigation, referral or evaluation under this Act will be taken to be disclosed

Please find the authorisation enclosed.

Yours sincerely



Wayne Lines
SA OMBUDSMAN

25 November 2015

Encl (x2)

Released 28 November 2018



Authorisations pursuant to section 54 and section 56 of the *Independent Commissioner Against Corruption Act 2012*

To: Cr Dino Musolino

I inform you in writing, under delegation from the Commissioner, pursuant to section 54 of the *Independent Commissioner Against Corruption Act 2012* that you are not required to keep the information in the final report of the Ombudsman, dated 21 September 2015 confidential.

I authorise you, under delegation from the Commissioner, pursuant to section 56 of the *Independent Commissioner Against Corruption Act 2012* to publish the final report of the Ombudsman dated 21 September 2015.

Wayne Lines
SA OMBUDSMAN

25 November 2015



NO FURTHER ACTION REPORT

Referral pursuant to section 24(2)(a) *Independent Commissioner Against Corruption Act 2012* (ICAC Act) - decision to take no further action under section 37(2)

Public Officer	Cr Dino Musolino
Ombudsman reference	2015/06433
ICAC reference	2015/000545
Date of referral	29 June 2015
Issue/s to be assessed	Whether Cr Dino Musolino committed misconduct by requesting that the Council waive his daughter's parking fine

Jurisdiction

This matter was referred to the Ombudsman by the Commissioner pursuant to section 24(2)(a) of the *Independent Commissioner Against Corruption Act 2012* (the ICAC Act), as raising potential issues of misconduct in public administration within the meaning of that Act (the referral).

The referral arose out of a complaint made to the Office for Public Integrity (the OPI).

Action taken

Using my powers under the *Ombudsman Act 1972*, I have conducted an investigation of the issues in response to the referral by:

- assessing the information provided by the OPI
- obtaining a statutory declaration from Cr Musolino, Ward Councillor of the City of Salisbury dated 15 September 2015
- obtaining information from Mr Sam Green, General Manager City Services by telephone call on 24 August 2015
- interviewing Mr Andrew Nesbitt on 17 August 2015
- considering the Code of Conduct for Council Members (the Code), the ICAC Act and the Ombudsman Act
- preparing this No Further Action Report.

Standard of proof

The standard of proof I have applied in my investigation and this report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336 (*Briginshaw*), I have considered the nature of the complaint and the allegations made and the consequences

2. Mr Green told my investigation that:
 - a. Cr Musolino rang Mr Green and complained that the inspectors who issued parking fines were being too harsh, and cited Ms Zigara's case as an example. Cr Musolino then raised other issues with Mr Green that was unrelated to this case.
 - b. It was common for Cr Musolino to ring him and discuss matters where he thought the Council's service delivery was lacking.
 - c. It was either during that phonecall or a subsequent phonecall that Mr Green discovered that Ms Zigara was related to Cr Musolino.
 - d. he advised Cr Musolino to inform Ms Zigara that she could seek a review of the issue of the parking fine according to Council policy by writing to the Council.
 - e. following the phone call with Cr Musolino he spoke with Mr Nesbitt as the manager of the inspectors to inform him that he could expect a request for review in relation to Ms Zigara's parking fine.
 - f. he and Mr Nesbitt had worked together for many years and they were trying to teach the inspectors to be more educative and not punitive.
3. Cr Musolino told my investigation that:
 - a. Ms Zigara is his daughter.
 - b. he did contact Mr Green in relation to the issuing of parking fines in the Council area in general and this conversation included discussion about the parking fine that had been issued to Ms Zigara.
 - c. he told Mr Green in this telephone conversation that Ms Zigara was his daughter.
 - d. At no time did he ask for the fine to be waived.
 - e. he contacted Mr Green as per his responsibilities as an elected member to raise an issue of concern. The issue of parking inspectors issuing fines rather than warnings had been an ongoing topic of conversation amongst elected members over many months.
 - f. Mr Green informed him that his daughter would need to write to the Council and request for the fine to be waived and the reason why, which he then informed his daughter of.
 - g. he did not speak to any other Council staff about his concerns about parking inspectors as highlighted by the fine issued to his daughter because Mr Green was the manager of the parking inspectors and there was no need to speak with anyone else.
 - h. his daughter sent an email to Council requesting the fine be 'withdrawn' because she was not aware that each shopping centre had different pram permits and he enclosed a copy of this email.
 - i. his daughter never received a response from the Council in relation to her email request that the fine be withdrawn.
 - j. he was unaware the fine had been waived until correspondence from my Office.
 - k. the approach to Mr Green was not made because his daughter received a parking fine but because the circumstances in which the fine was issued needed to be addressed and this example highlighted the need for change.

My assessment of the referral

Whether Cr Dino Musolino committed misconduct by requesting that the Council waive his daughter's parking fine

1. I received the OPI's notice of intention to refer on 16 June 2015 asking my Office to assess the conduct of Mr Andrew Nesbitt, the Councils Acting General Manager for his conduct in relation to waiving a parking fine incurred by a relative of Cr Dino Musolino.
2. I wrote to the Commissioner on 26 June 2015 informing him that I was prepared to accept the matter as referred but that I also considered that Cr Musolino ought to be

- investigated concurrently for misconduct in public administration. The Commissioner agreed with this assessment.
3. The Commissioner informed me by letter on 29 June 2015 that the matter was referred to my Office for investigation pursuant to section 24(2)(a) of the ICAC Act as potential misconduct in public administration and that both Mr Nesbitt and Cr Musolino's conduct should be investigated. Mr Andrew Nesbitt's conduct is the subject of another report but the evidence obtained by Mr Nesbitt and Mr Green has proved useful here as it confirmed the evidence of Cr Musolino.
 4. Failure by an elected member to comply with the Code constitutes misconduct, pursuant to section 5(3)(a) of the ICAC Act. The allegation against Cr Musolino could be construed as a possible breach of clauses 3.1, 3.5, 3.7.1, 3.13 and 3.15 of the Code:

Member duties

Council members must:

3.1 Act honestly at all times in the performance and discharge of their official functions and duties;

3.5 Not attempt to improperly direct a member of Council staff to act in their capacity as a Local Government employee for an unauthorized purpose;

Gifts and benefits

3.7 Council members must not:

3.7.1 Seek gifts or benefits of any kind;

Conflict of interest

3.13 Council members must be committed to making decisions without bias and in the best interests of the whole community and comply with the relevant conflict of interest provisions of the Local Government Act 1999.

Misuse of Council resources

3.15 Council members must not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments made where appropriate.

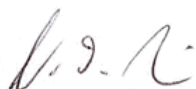
5. Given the evidence of Cr Musolino, Mr Nesbitt and Mr Green I do not consider that Cr Musolino acted contrary to the above mentioned clauses of the Code. I consider it reasonable for Cr Musolino to use Ms Zigara's parking fine as an example to Mr Green of parking inspectors issuing tickets in an inflexible manner. I am satisfied that Cr Musolino did not request that the ticket be waived, and that that request came from Ms Zigara.
6. Therefore, due to the nature of the complaint, the allegations made against Cr Musolino, the lack of evidence to support the allegation and the consequences of an investigation finding misconduct on the part of Cr Musolino I am not satisfied on a Briginshaw standard of proof that Cr Musolino acted inappropriately.

Conclusion

In light of the above, my opinion is that Cr Musolino did not commit misconduct in public administration within the meaning of section 5(3) of the ICAC Act and did not act in a manner that was unlawful within the meaning of section 25(1)(a) of the Ombudsman Act.

Outcome of my investigation

In light of my assessment above and on the basis of the evidence available, it appears that there is no evidence of misconduct in public administration within the meaning of section 5(3) of the ICAC Act or in a way that is unlawful, unreasonable or wrong within the meaning of the Ombudsman Act. Accordingly, I have determined that no further action in relation to the referral by my Office is necessary or justifiable.



Wayne Lines
SA OMBUDSMAN
21 September 2015

Released 28 November 2018

C. COUNCIL/COMMITTEE TO DECIDE HOW LONG ITEM 16.2 IS TO BE KEPT IN CONFIDENCE**Purpose**

To resolve how long agenda item 16.2 is to be kept confidential.

STAFF RECOMMENDATION

That pursuant to Section 90(2) and Section 91(7) of the Local Government Act 1999 the Council orders that the following aspects of Item 16.2 be kept confidential:

- Report for Item 16.2 until the public release of the Ombudsman's findings.
- Attachment(s) for Item 16.2 until the public release of the Ombudsman's findings.
- Discussion for Item 16.2 until next annual review.
- Decision for Item 16.2 until next annual review.

OptionsOption 1

That pursuant to Section 90(2) and Section 91(7) of the Local Government Act 1999 the Council orders that the following aspects of Item 16.2 be kept confidential:

- Report for Item 16.2 until the public release of the Ombudsman's findings.
- Attachment(s) for Item 16.2 until the public release of the Ombudsman's findings.
- Discussion for Item 16.2 until next annual review.
- Decision for Item 16.2 until next annual review.

Option 2

The Council/Committee determines the "in confidence" aspects and timeframe of agenda item 16.2 to remain in confidence.

Analysis of OptionsOption 1

This item is excluded from the public on the basis that it relates to Section 90 (3) (a) of the Local Government Act 1999.

This option may presents risks in terms of potential damage to image and reputation to both Council and the parties named in the Ombudsman's report. This option endeavours to mitigate those risks by protecting the anonymity of the parties for a set time period before the information becomes publicly available.

Option 2

This option allows Council to determine the "in confidence" aspects and timeframe of agenda item 16.2 to remain in confidence.

This option may also present risks in terms of potential damage to image and reputation to both Council and the parties named in the Ombudsman's report, although the risks may be similar to that identified above, they are not able to be fully understood until Council determines the "in confidence" aspects and timeframe of agenda item 16.2 to remain in confidence.