

Final Report

Full investigation pursuant to referral under section 24(2)(a) of the *Independent Commissioner Against Corruption Act 2012*

Public Authority	City of Onkaparinga
Public Officer	Mr Mark Dowd
Ombudsman reference	2018/09178
ICAC reference	2018/004480; 2019/001524
Date of referral	21 August 2018; 9 November 2018
Issues	<ol style="list-style-type: none">1. Whether Mr Mark Dowd committed misconduct in public administration by accepting a gift or benefit from an enterprise software company, TechnologyOne Ltd2. Whether Mr Mark Dowd committed misconduct and/or maladministration in public administration by omitting to declare a gift or benefit from TechnologyOne Ltd to the elected body of the City of Onkaparinga

Jurisdiction

These matters were 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 and maladministration in public administration within the meaning of that Act (the referrals).

Section 14B of the *Ombudsman Act 1972* provides:

14B—Referral of matter by OPI or ICAC

- (1) If a matter is referred to the Ombudsman under the ICAC Act, the matter—
 - (a) will be taken to relate to administrative acts for the purposes of this Act; and
 - (b) must be dealt with under this Act as if a complaint had been made under this Act and—
 - (i) if the matter was the subject of a complaint or report under the ICAC Act—as if the person who made the complaint or report under that Act was the complainant under this Act; or
 - (ii) if the matter was assessed under that Act after being identified by the Commissioner acting on the Commissioner’s own initiative or by the Commissioner or the Office in the course of performing functions under any Act—as if the Commissioner was the complainant under this Act.
- (2) In this section—

Commissioner means the person holding or acting in the office of the Independent Commissioner Against Corruption under the ICAC Act;

ICAC Act means *Independent Commissioner Against Corruption Act 2012*;

Office means the Office for Public Integrity under the ICAC Act.

Broadly speaking, the referrals concern the following allegations:

- that the Chief Executive Officer of the City of Onkaparinga, Mr Mark Dowd, received a gift or benefit from an enterprise software company, Technology One Ltd, in connection with his attendance at the 'Evolve' conference held in Brisbane between 18–21 October 2016
- that Mr Dowd accepted this gift or benefit in circumstances where it:
 - could reasonably have created a sense of obligation on his part; and/or
 - could reasonably have been perceived as intended to, or would reasonably have been likely to, influence him in carrying out his public duty
- that at the time Mr Dowd received this gift or benefit, Technology One Ltd was in, or was seeking to be in, a contractual relationship with the council
- that Mr Dowd did not disclose the fact or circumstances of his attendance at the Evolve conference to the council's elected body at a time when it was considering whether to enter into a commercial relationship with Technology One Ltd.

Investigation

My investigation has involved:

- assessing the information provided by two reporters
- seeking a response from Mr Dowd
- seeking a further response from Mr Dowd
- considering information supplied in the context of a previous investigation¹
- considering:
 - the ICAC Act
 - the Ombudsman Act
 - the *Local Government Act 1999*
 - the Code of Conduct for Council Employees
- preparing a provisional report and seeking a response from the parties
- considering Mr Dowd's response to the provisional report
- preparing this final report.

Standard of proof

The standard of proof I have applied in my investigation and 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, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.² It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ...³

¹ Ombudsman ref. 2017/08607.

² This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp. 449–450, per Mason CJ, Brennan, Deane and Gaudron JJ.

³ *Briginshaw v Briginshaw* at pp. 361–362, per Dixon J.

Responses to my provisional report

1. I provided my tentative views to Mr Dowd, the reporter and the council's mayor by way of my provisional report dated 25 July 2019.
2. Mr Dowd responded to my provisional report by letters dated 20 August 2019 and 26 August 2019. The first letter raised several objections to the processes observed by the investigation. I responded to those objections by subsequent letter to Mr Dowd.
3. Mr Dowd's second letter was directed toward the merits of my provisional views. Mr Dowd submitted that he did not agree with the tentative conclusions expressed in the provisional report. He provided lengthy submissions explaining his position.
4. While I have carefully considered Mr Dowd's position, I have not been persuaded to change my provisional views. I have set out and addressed some of Mr Dowd's submissions in the body of this report.
5. The reporter responded to advise that they had no further comment to make in relation to the matter.
6. The council's mayor did not formally respond to the provisional report.

Background

1. At all material times Mr Dowd has been the Chief Executive Officer of the City of Onkaparinga (**the council**).
2. Technology One Ltd (**TechnologyOne**) is a company which provides enterprise software applications to public and private sector organisations. It was contracted to supply the council's records management system throughout the period relevant to the referrals.

The ICT reform project

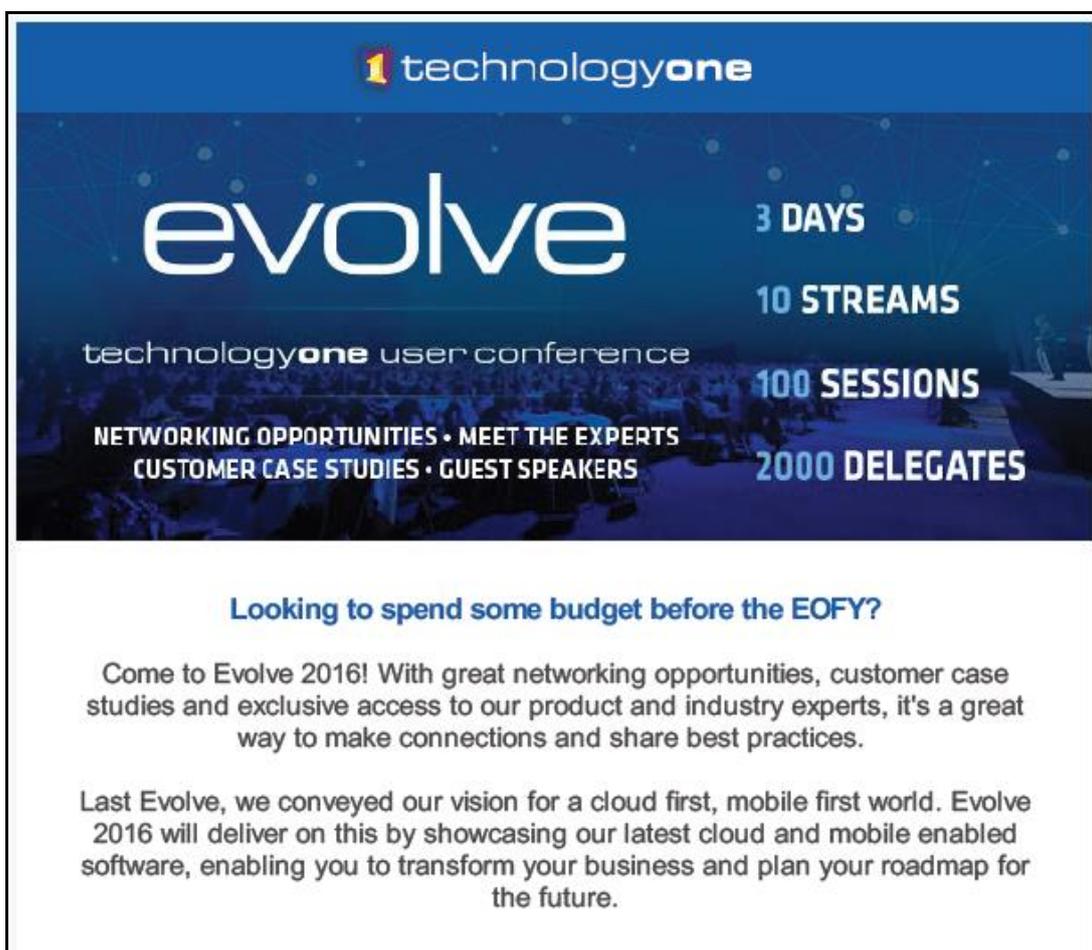
3. On 5 September 2014 the council received a report from a consultant which recommended that the council prepare a business case for replacing or upgrading its ICT systems.
4. Over the course of 2015 and 2016 the council proceeded to research and consider various options for ICT reform. One such option, identified by the council in as early as February 2015, was to replace its existing ICT systems with an 'all-in-one' local government enterprise software package of a kind marketed by TechnologyOne and another competing supplier.
5. On or around 16 November 2016 TechnologyOne supplied the council with a 'discussion paper' which promoted a TechnologyOne enterprise software package termed 'OneCouncil'.
6. The discussion paper was subsequently tabled before a meeting of the elected members on 16 May 2017 with a report which purported to assess the merits of the OneCouncil product as against a competing enterprise software package.
7. The report, which was co-authored by the council's Director Corporate and City Services and ICT and Finance Managers, proposed that the council approve an exemption to its Procurement Policy to authorise direct negotiations with

TechnologyOne for acquisition of the OneCouncil product. That proposal was adopted by resolution of the elected members at the 16 May 2017 meeting.

8. This was followed by a further report to the elected body on 4 September 2018, co-authored by Mr Dowd and the council's Director Corporate and City Services, Manager Corporate Information and Chief Financial Officer, which recommended that the council authorise the execution of a contract with TechnologyOne for purchase of the OneCouncil product. That proposal was also adopted by resolution of the elected members at the 4 September 2018 meeting.

The Evolve conference

9. Between 16 and 21 October 2016 TechnologyOne presented a user event known as the 'Evolve' conference in Brisbane, Queensland.



The image is a promotional graphic for the Evolve 2016 conference. At the top, the TechnologyOne logo is displayed in white on a blue background. Below the logo, the word "evolve" is written in a large, white, lowercase sans-serif font. To the right of "evolve", the text "3 DAYS", "10 STREAMS", "100 SESSIONS", and "2000 DELEGATES" is listed vertically in white, uppercase letters. Below "evolve", the text "technologyone user conference" is written in a smaller, white, lowercase font. Further down, the text "NETWORKING OPPORTUNITIES • MEET THE EXPERTS" and "CUSTOMER CASE STUDIES • GUEST SPEAKERS" is displayed in white, uppercase letters. At the bottom of the graphic, the text "Looking to spend some budget before the EOFY?" is written in blue, uppercase letters. Below this, the text "Come to Evolve 2016! With great networking opportunities, customer case studies and exclusive access to our product and industry experts, it's a great way to make connections and share best practices." is written in black, uppercase letters. Finally, the text "Last Evolve, we conveyed our vision for a cloud first, mobile first world. Evolve 2016 will deliver on this by showcasing our latest cloud and mobile enabled software, enabling you to transform your business and plan your roadmap for the future." is written in black, uppercase letters.

Image: Evolve conference promotional material

10. On 7 September 2016 a representative of TechnologyOne emailed Mr Dowd:

Dear Mark,

As a valued customer in this region, our Executive Chairman Adrian Di Marco is pleased to personally invite you to our executive stream on Wednesday 19th October, as part of Evolve 2016.

You will receive an official invitation in the mail shortly to join more than 100 Chief Executives for an exclusive networking and industry insights luncheon with Adrian at the Roof Terrace, Gallery of Modern Art. The executive stream is for one day however it would be our pleasure to have you as our guest during the entire three-day conference.

Your exclusive invitation provides:

- Executive luncheon 19th October 2016
- Full conference registration (19th to 21st Oct) valued AUD\$2000
- Return flights and transfers to Brisbane
- Three nights 4-5 star accommodation

Agenda

7.30am Guests arrive at Brisbane Convention & Exhibition Centre
 9.00am Keynote presented by TechnologyOne Executive Chairman, Adrian Di Marco
 11.00am Plenary keynote presentation
 12.00pm Depart for CEO Luncheon with Adrian via transfers to Gallery of Modern Art.
 1.00pm Executive luncheon commences
 3.15pm Lunch concludes, return to conference via transfers

Location

Conference: Brisbane Convention & Exhibition Centre

Lunch: Roof Terrace, Gallery of Modern Art

Date: Wednesday 19th October 2016

RSVP: By Friday 7th October

11. Later that same day Mr Dowd authorised the purchase of business class airfares to Queensland on condition that the council seek reimbursement from TechnologyOne for the cost of an economy ticket.
12. Those arrangements were then implemented by Mr Dowd's Executive Assistant following discussions with the council's travel agent and a representative of TechnologyOne.
13. On 13 September 2019 TechnologyOne confirmed Mr Dowd's registration to attend the conference. This included an invoice which relevantly provided:

Registration

Full Conference Delegate - Late Price	AUD
	\$2255.00
Complementary Ticket CEO - Discount	AUD \$-2255.00
	Subtotal AUD \$0.00

Functions

18 Oct 2016 06:00 PM Welcome Reception	Brisbane Convention & Exhibition Centre
20 Oct 2016 07:00 PM Gala Dinner	Brisbane Convention & Exhibition Centre
	Subtotal AUD \$0.00

Summary

Registration	AUD \$0.00
Functions	AUD \$0.00
Subtotal	AUD \$0.00
Includes GST	AUD \$0.00
TOTAL	AUD \$0.00

AMOUNT OUTSTANDING

AUD \$0.00

14. On 20 September 2016 the council authorised payment in the amount of \$1,959.00 for the cost of Mr Dowd's business class travel to Brisbane.
15. On 22 September 2016 the following entry was made to the council's Employee Gifts and Benefits Register:

Date of registration	Name	Gift description	Value (approx.)	Received from / reason for	Gift accepted / refused
22/09/2016	Mark Dowd	Conference registration, flights and accommodation costs for Evolve 2016 CEO	\$2,000.00	Technology One	Accepted

16. On 27 September 2016 the council issued an invoice to TechnologyOne in the amount of \$538.00 for 'Cost of return economy flights to TechnologyOne conference in QLD'.
17. That amount was subsequently paid by TechnologyOne to the council on 21 October 2016, following Mr Dowd's attendance at the conference.

Nature of the allegations

18. It is alleged that Mr Dowd's acceptance of the conference registration, accommodation and partial reimbursement of his travel expenses from TechnologyOne was inappropriate because it:
- could reasonably have created a sense of obligation on his part
 - could reasonably have been perceived as intended to, or would reasonably have been likely to, influence him in carrying out his public duty.
19. It is also alleged that Mr Dowd's acceptance of TechnologyOne's offer was inappropriate because, at the relevant time, TechnologyOne was in, or was seeking to be in, a contractual relationship with the council.
20. It is also alleged that Mr Dowd should have, but did not, disclose the fact of his attendance at the Evolve conference at the partial expense of TechnologyOne to the council's elected body in the context of the 16 May 2017 and 4 September 2018 council meetings.

Mr Dowd's response

21. Mr Dowd responded to my investigation by letters dated 2 November 2018 and 22 March 2019.
22. Mr Dowd submitted, *inter alia*:

I did receive a conference registration, accommodation and economy class airfares to attend the Evolve conference from TechnologyOne.

The matter of attendance at the Evolve conference did arise during discussion on the agenda item in the Council meeting in May 2017 as well as a workshop on the TechnologyOne product with elected members. I recall specific discussion regarding the executive stream that I attended at the conference.

[...]

TechnologyOne engaged the local government sector through email notifications of 'early bird' Evolve Conference registrations. My attendance was at the invitation of TechnologyOne not at my request. Given the work that had been carried out by Council on information technology reform, my attendance was reasonable.

[...]

I consider that it was appropriate to accept the invitation of the conference registration and associated costs from TechnologyOne.

The Council was looking at technology solutions to assist it to improve its internal processes. The conference provided an opportunity to examine the TechnologyOne solution and from an executive perspective. The conference environment provided the ability to examine the technology from a holistic perspective as well as having the resources available to 'drill down' into specific areas of the software if required. Finally the conference provided an opportunity to speak with many of my peers across the country to understand the pros and cons that they have experienced through their purchase and installation. It is incumbent on me to understand as much as I can not only about the product but also the process, to minimise the costs and disruptions for the City of Onkaparinga.

It is also a relevant consideration that the cost associated with this research was available at little or no cost to ratepayers.

23. Mr Dowd acknowledged that, at the time of his attendance at the Evolve conference, TechnologyOne was in an existing contractual relationship with the council owing to its provision of the council's records management software.
24. Mr Dowd submitted that the council had been 'engaging and corresponding with TechnologyOne, in addition to other software providers, as part of its ICT Reform Project' since 2014. Mr Dowd denied that the payments made by TechnologyOne created a sense of obligation or otherwise influenced the recommendations made in respect of the ICT reform initiative.
25. In respect of the discussion paper received by the council in November 2016, Mr Dowd submitted:

The request for a Discussion Paper was a natural progression of the Council's research into a technology solution for the Council. The timing of the request for a Business Case did have a linkage to Evolve, but I again reiterate that this not be viewed as an issue given that I do not consider that there was any obligation or influence created as a consequence of my attendance at Evolve.

26. Mr Dowd referred to clause 2.20 of the Code, which at the relevant time identified circumstances in which council employees were permitted to accept hospitality provided by existing or prospective contractors, submitting (emphasis in original):

I was one of a number of CEO's and senior executives Australia-wide, who attended at the Evolve Conference, at the invitation of TechnologyOne.

My attendance at the event was in the context of the performance of my duties as CEO. It presented me with the opportunity to network with CEO's and senior executives of a number of businesses and agencies in Australia, and to obtain relevant information in relation to the sufficiency, or otherwise, of the software from, which was timely with regards to the Project.

However, the benefit **did not**, and **could not**, on any reasonable interpretation, create a sense of obligation on my part and nor could it reasonably be perceived to be intended to, or would reasonably be likely to, influence me in carrying out my public duties. If the position were otherwise, I would have requested that the Council meet the costs associated with my attendance at the Evolve Conference

Relevant law/policies

27. Section 5(3) of the ICAC Act provides:

(3) *Misconduct in public administration* means—

- (a) contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or
- (b) other misconduct of a public officer while acting in his or her capacity as a public officer.

28. Section 5(4) of the ICAC Act provides:

(4) *Maladministration in public administration*—

- (a) means—
 - (i) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or
 - (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
- (b) includes conduct resulting from impropriety, incompetence or negligence; and
- (c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

29. During the period relevant to my investigation, section 99(1) of the Local Government Act provided:

99—Role of chief executive officer

- (1) The functions of the chief executive officer include—
 - (a) to ensure that the policies and lawful decisions of the council are implemented in a timely and efficient manner;
 - (b) to undertake responsibility for the day-to-day operations and affairs of the council;
 - (c) to provide advice and reports to the council on the exercise and performance of its powers and functions under this or any other Act;
 - (d) to co-ordinate proposals for consideration by the council for developing objectives, policies and programs for the area;
 - (e) to provide information to the council to assist the council to assess performance against its strategic management plans;
 - (f) to ensure that timely and accurate information about council policies and programs is regularly provided to the council's community, and to ensure that appropriate and prompt responses are given to specific requests for information made to the council;
 - (g) to ensure that the assets and resources of the council are properly managed and maintained;
 - (h) to ensure that records required under this or another Act are properly kept and maintained;
 - (i) to give effect to the principles of human resource management prescribed by this Act and to apply proper management practices;

- (j) to exercise, perform or discharge other powers, functions or duties conferred on the chief executive officer by or under this or other Acts, and to perform other functions lawfully directed by the council.

30. Section 110 of the Local Government Act provided:

110—Code of conduct for employees

- (1) The Governor may, by regulation, prescribe a code of conduct to be observed by the employees of all councils.
- (2) The Minister must consult with any registered industrial association that represents the interests of employees of councils before the regulation is made.
- (3) A code of conduct must not diminish a right or employment condition under an Act, award, industrial agreement or contract of employment.
- (4) Council employees must observe the code of conduct.
- (5) Contravention of or failure to comply with the code of conduct constitutes a ground for suspending, dismissing or taking other disciplinary action against the employee.

31. During the period relevant to my investigation the Code of Conduct for Council Employees (**the Code**) relevantly provided:

Council employees will:

[...]

- 2.6. Ensure that personal interests, including financial interests, do not influence or interfere with the performance of their role.

[...]

2.19. Council employees must not:

- 2.19.1. Seek gifts or benefits of any kind.
- 2.19.2. Accept any gift or benefit that may reasonably create a sense of obligation on their part or may be reasonably perceived to be intended to or would reasonably be likely to influence them in carrying out their public duty.
- 2.19.3. Accept any gift or benefit from any person who is in, or who seeks to be in, any contractual relationship with the Council.

2.20. Notwithstanding Code 2.19.3, Council employees may accept hospitality provided in the context of performing their duties, including:

- 2.20.1. Free or subsidised meals, beverages or refreshments of reasonable value provided in conjunction with:
 - 2.20.1.1. Council work related events such as training, education sessions, workshops and conferences; and
 - 2.20.1.2. Council functions or events; and
 - 2.20.1.3. Social functions organised by groups such as Council committees and community organisations.

2.20.2. Invitations to and attendance at local social, cultural, or sporting events.

2.21. Where any Council employee receives a gift or benefit of more than a value published in the Government Gazette by the Minister from time to time, details of each gift or benefit must be recorded within a gifts and benefits register maintained and updated quarterly by the Council's Chief Executive Officer. This register must be made available for inspection at the principal office of the Council and on the Council website

Whether Mr Mark Dowd committed misconduct in public administration by accepting a gift or benefit from an enterprise software company, TechnologyOne Ltd

32. Mr Dowd has acknowledged that TechnologyOne supplied the following in connection with his attendance at the Evolve conference:
 - conference registration
 - accommodation
 - reimbursement of his travel costs to the value of economy class airfares.
33. I note that each of these items was declared on the council's Employee Gifts and Benefits Register as a gift or benefit received by Mr Dowd.
34. I am accordingly satisfied that Mr Dowd accepted a gift from TechnologyOne, being his registration at the conference, hotel accommodation and the partial reimbursement of the cost of his travel to Brisbane, as paid to the council.
35. During the period relevant to my investigation, clause 2.19.2 of the Code prohibited council employees from accepting any gift or benefit 'that may reasonably create a sense of obligation on their part'.
36. On considering the nature and circumstances of TechnologyOne's gift and Mr Dowd's position and duties within the council, I do not consider that Mr Dowd's conduct reasonably gave rise to such a sense of obligation.
37. Clause 2.19.2 also prohibited council employees from accepting any gift or benefit that 'may be reasonably perceived to be intended to or would reasonably be likely to influence them in carrying out their public duty.'
38. I have considered whether the gift provided by TechnologyOne could reasonably have been perceived as intended to influence the manner in which Mr Dowd carried out his public duty.
39. In considering this issue, I have had regard to the following:
 - at the time of Mr Dowd's attendance at the Evolve conference the council was in the process of determining the manner in which to proceed with its ICT reform initiative
 - in the context of this project, the council had been communicating with TechnologyOne as one of several potential software suppliers from as early as 2014
 - one option explicitly considered by the council's directors was to replace the council's existing IT systems with an 'all in one SA Local Government package' of the kind marketed by TechnologyOne
 - a report presented to the council on 16 May 2017 identified that TechnologyOne was one of just two 'local government specific software vendors for mid to large councils'.
40. I have also considered the nature and circumstances of TechnologyOne's gift, including the nature of the Evolve conference and itinerary (as disclosed in promotional materials) and the fact and nature of Mr Dowd's travel to and accommodation in Brisbane.
41. I have also had regard to Mr Dowd's responsibilities as Chief Executive Officer of the council, as identified in section 99(1) of the Local Government Act.

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42. Having carefully considered the matter, I am satisfied that a fair-minded lay observer could reasonably have perceived that the gift provided by TechnologyOne to Mr Dowd was intended to influence the manner in which he carried out his public duty.
43. In particular, I note that
- TechnologyOne could reasonably have expected that Mr Dowd had the authority to influence the direction, if not the outcome, of the council's software procurement initiatives, including but not limited to the ICT reform initiative
 - the substantial if not predominant purpose of the Evolve conference appears to have been to market TechnologyOne and its products to potential purchasers
 - TechnologyOne's offer included several apparent inducements, including 'three nights 4-5 star accommodation' in Brisbane, a 'gala dinner' and an 'executive luncheon' held on the roof terrace of the Gallery of Modern Art.
44. In his response to my provisional report, Mr Dowd expressed disagreement with the above conclusion. He submitted that it was 'predicated on what a reasonable, fair-minded layperson could reasonably have perceived to be the case, not the actual reality of the matter'.
45. Mr Dowd submitted that it was 'wholly unsatisfactory and wrong, at law, for a finding to be made [...] based on what someone else may have perceived to have been the case, in the absence of all of the relevant facts and circumstances.'
46. In this regard, Mr Dowd submitted that the hypothetical, fair-minded observer should be imputed to have an awareness of the following:
- that the fact of Mr Dowd's attendance at the Evolve conference was disclosed to the council's elected body at the 16 May 2017 meeting
 - that it ultimately fell upon the council's elected body to determine the outcome of the ICT reform initiative
 - that the council's decisions concerning the project were informed by many reports prepared by external consultants and other council officers
 - that Mr Dowd did not prepare any reports concerning the project following his acceptance of the gift provided by TechnologyOne.⁴
47. I make it clear that, in considering the perceptions that were reasonably available to the hypothetical, fair-minded observer, I have attributed to that individual a general knowledge of the ICT reform initiative (such as it was in September 2016), the extent of the Chief Executive Officer's procurement authority and the fact that it would ultimately fall upon the council's elected body to determine whether to purchase any significant product marketed by TechnologyOne.
48. In my view, Mr Dowd's position is immediately problematic because it seeks to impute to the fair-minded observer a knowledge of events which took place after the conduct at issue.
49. In any case, I do not consider that knowledge of all of the matters identified by Mr Dowd would have precluded the hypothetical observer from forming the necessary perception.
50. Again, it should be emphasised that it was not necessary for the hypothetical observer to have concluded that provision of the gift was likely to influence Mr Dowd or the direction of the ICT reform initiative more generally; under clause 2.19.2, the relevant perception need only concern TechnologyOne's intention in providing the gift.

⁴ Although largely immaterial, I note that Mr Dowd appears to be mistaken on this issue. Mr Dowd is identified as co-author of the report that was presented to the elected body on 4 September 2018 recommending that he be delegated the authority to execute the contract with TechnologyOne.

51. I am satisfied that Mr Dowd's conduct in accepting the gift from TechnologyOne contravened clause 2.19.2 of the Code and was, accordingly, contrary to section 110(4) of the Local Government Act.
52. I emphasise that the impropriety in Mr Dowd's attendance at the conference stems from his doing so at the expense of TechnologyOne. There was, in my view, no impediment to Mr Dowd attending the conference and researching TechnologyOne's product at the expense of the council.
53. I have already observed that I am not satisfied that the gift actually gave rise to a sense of obligation on Mr Dowd's part. In the circumstances, I do not consider it necessary or justifiable that I determine whether TechnologyOne's gift was reasonably likely to have influenced the manner in which Mr Dowd performed his responsibilities to the council.
54. It is also alleged that Mr Dowd's acceptance of TechnologyOne's gift was inappropriate because, at the relevant time, TechnologyOne was in, or was seeking to be in, a contractual relationship with the council.
55. I note that Mr Dowd has acknowledged that at time of the Evolve conference TechnologyOne was in a contractual relationship with the council arising from its provision of the records management software used by the council.
56. At the time, clause 2.19.3 of the Code prohibited council employees from accepting 'any gift or benefit from any person who is in, or who seeks to be in, any contractual relationship with the Council.'
57. Clause 2.20 qualified clause 2.19.3 by clarifying that council employees were nevertheless permitted to accept 'hospitality provided in the context of their duties.'
58. Clauses 2.20.1 and 2.20.2 identified two specific examples of acceptable hospitality:
 - free or subsidised meals, beverages or refreshments of reasonable value provided in conjunction with council business
 - invitations to and attendance at local social, cultural, or sporting events.
59. I do not think it can reasonably be argued that that TechnologyOne's gift to Mr Dowd fell into either of these categories of hospitality.
60. It is apparent that the examples provided in clauses 2.20.1 and 2.20.2 were not intended to be exhaustive of the type of hospitality that could reasonably be accepted by council employees.
61. Nevertheless, having regard to the nature and value of TechnologyOne's offer and the specific examples identified in clauses 2.20.1 and 2.20.2, I consider that it is at least arguable that the gift accepted by Mr Dowd was not in keeping with the purpose of the hospitality exception.
62. However, on balance, and noting that I have already concluded that the acceptance of the gift was improper for other reasons, I do not consider it necessary or justifiable that I determine whether Mr Dowd's conduct separately contravened clause 2.19.3 of the Code.

Opinion

It is my final view that by accepting a gift or benefit from TechnologyOne Ltd in circumstances where that gift could reasonably have been perceived as intended to influence him in carrying

out his public duty, Mr Mark Dowd contravened clause 2.19.2 of the Code of Conduct for Council Employees, thereby committing misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act.

It is also my final view that Mr Dowd's contravention of clause 2.19.2 of the Code of Conduct for Council Employees was contrary to section 110(4) of the Local Government Act and, accordingly, appears contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

I note that it appears that the council would likely have met the cost of Mr Dowd's attendance at the Evolve conference if not for the fact of TechnologyOne's gift.⁵ In these circumstances, and noting that the negotiations with TechnologyOne appear to have concluded, I am not inclined to recommend that either Mr Dowd or the council reimburse TechnologyOne for the value of the gift.

In the circumstances, I recommend that the council issue a reprimand to Mr Dowd for his misconduct in public administration.

Whether Mr Mark Dowd committed misconduct and/or maladministration in public administration by omitting to declare a gift or benefit from TechnologyOne to the elected body of the City of Onkaparinga

63. It is alleged that Mr Dowd should have, but did not, declare the fact of his attendance at the Evolve conference to the council's elected members in the course of the council's consideration of whether to enter into a further contractual relationship with TechnologyOne in the context of the ICT reform initiative.
64. Section 120(1) of the Local Government Act provides that the Chief Executive Officer of a council must disclose to the council any 'interest in a matter in relation to which he or she is required or authorised to act in the course of official duties'. Section 120(1) is an offence provision and it is not within my jurisdiction to determine whether a criminal offence has been committed.
65. In the absence of an equivalent provision within the Code, I have considered whether Mr Dowd's conduct amounted to 'other misconduct' for the purposes of section 5(3)(b) of the ICAC Act.
66. I consider that public officers have a general duty to avoid conflicts between their personal interests and the greater public interest and to be proactive in disclosing information that may give rise to an actual or perceived conflict of interest in respect of their public duties.
67. For the reasons that follow, I am not satisfied that either the fact of Mr Dowd's attendance at the Evolve conference or the gift provided by TechnologyOne gave rise to an interest that needed to be disclosed to the elected members.
68. Mr Dowd had already attended the Evolve conference at the time of the 16 May 2017 and 4 September 2018 meetings. There was no potential for any benefit relating to his attendance at the conference to be withdrawn depending on the outcome of the council's consideration of the OneCouncil product.
69. I also do not consider that it has been demonstrated that Mr Dowd had a reasonable expectation of receiving a further benefit from TechnologyOne in the event that the

⁵ Records supplied to my investigation establish that the council paid for its Director Corporate and City Services to attend the conference.

council decided to enter into exclusive negotiations with TechnologyOne or to subsequently purchase the OneCouncil product.

70. As I have already observed, a reasonable fair-minded observer could have concluded that TechnologyOne's gift to Mr Dowd was intended to influence the performance of his public duty; however, in the absence of a reasonable expectation of further gifts or benefits from TechnologyOne it does not necessarily follow that Mr Dowd had a pecuniary or personal interest in the outcome of the ICT reform initiative.
71. I note that TechnologyOne's gift was disclosed in the council's Employee Gifts and Benefits Register. Mr Dowd has submitted that there was also some discussion of the Evolve conference during the 17 May 2017 council meeting.
72. I consider that it would also have been prudent for the fact of TechnologyOne's gift to have been disclosed in the reports that were presented to the elected body.
73. In the circumstances, however, I do not consider that an issue of misconduct arises from Mr Dowd's alleged failure to disclose the fact or circumstances of his attendance at the Evolve conference at the meetings in question.
74. On the evidence before me, I also do not consider that an issue of maladministration in public administration reasonably arises from Mr Dowd's conduct.

Opinion

It is my final view that Mr Mark Dowd did not commit misconduct in public administration for the purposes of section 5(3)(b) of the ICAC Act by omitting to declare to the council an interest arising from his attendance at the Evolve conference.

Summary and recommendation

In light of the above, my final views are as follows:

1. By accepting a gift or benefit from TechnologyOne Ltd in circumstances where that gift could reasonably have been perceived as intended to influence him in carrying out his public duty, Mr Mark Dowd contravened clause 2.19.2 of the Code of Conduct for Council Employees, thereby committing misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act.
2. Mr Mark Dowd's contravention of clause 2.19.2 of the Code of Conduct for Council Employees was contrary to section 110(4) of the Local Government Act and, accordingly, appears contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.
3. By omitting to declare a gift or benefit from TechnologyOne to the elected body of the City of Onkaparinga, Mr Mark Dowd did not commit misconduct or maladministration in public administration.

I make the following recommendation under section 25(2)(f) of the Ombudsman Act:

1. That the City of Onkaparinga issue a reprimand to Mr Dowd for his misconduct in public administration.

Final comment

I now report Mr Dowd's misconduct to the principal officer of the council, as required by section 18(5) of the Ombudsman Act.

In accordance with section 25(4) of the Ombudsman Act, I request that the principal officer of the council report to me by **30 November 2019** on what steps have been taken to give effect to my recommendation above, including:

- details of the actions that have been commenced or completed
- relevant dates of the actions taken to implement the recommendation.

In the event that no action has been taken, reason(s) for the inaction should be provided to the Ombudsman.

I have also sent a copy of my report to the Minister for Transport, Infrastructure and Local Government, as required by section 25(3) of the Ombudsman Act.



Wayne Lines
SA OMBUDSMAN

30 August 2019