

PUBLIC INTEREST DISCLOSURES PROCEDURE



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1 PURPOSE

The purpose of this procedure is to:

- Establish a procedure under which Council staff, Councillors and other Public Officials can make a public interest disclosure in accordance with the *Public Interest Disclosures Act 1994* (NSW) (PID Act) and Council's *Public Interest Disclosures Policy*
- Explain how reports made under this procedure will be received, assessed and managed by Council
- Ensure that staff, Councillors and other Public Officials are aware that such reports are recognised by law as public interest disclosures and of the legal protections afforded to them if they make a public interest disclosure in accordance with this procedure
- Provide guidance to ensure that staff receiving public interest disclosures maintain confidentiality concerning a public interest disclosure, as far as possible and appropriate
- Support the purpose and principles of the *Fraud and Corruption Prevention Policy*
- Ensure compliance with Council's obligations under the PID Act

2 SCOPE

This procedure applies to public interest disclosures made in accordance with Council's *Public Interest Disclosure Policy*. It applies to Public Officials as listed below:

- Council staff (whether permanent, temporary or casual)
- Councillors
- Consultants engaged by Council
- Individual contractors engaged by Council to provide services to or on behalf of Council
- Employees of contractors providing services to Council
- Other people who perform public official functions on behalf of Council whose conduct and activities may be investigated by an investigating authority, including volunteers

3 MAKING A REPORT

3.1 How to make a report within Council – internal reporting process

Public Officials can internally report wrongdoing in accordance with Council's Public Interest Disclosures Policy. A public interest disclosure can be made in writing or verbally. Making a report in writing is encouraged as this can help to avoid any confusion or misinterpretation.

If a report is made verbally, the person receiving the report must make a comprehensive record of the disclosure and ask the person making the disclosure to sign this record. The staff member should keep a copy of this record. If there is a concern about being seen making a report, a meeting at a discreet location away from the workplace can be arranged.

See further: Appendix B - Internal Reporting Form, also available on Council's intranet
 Appendix C – Internal Report – Checklist for reporter

3.1.1 Can a report be anonymous?

There will be some situations where people making a report may not want to be identified. Although these reports will still be dealt with by Council, it is best if people reporting incidents identify themselves. This allows Council to provide any necessary protection and support, as well as feedback about the outcome of any investigation. It is important to realise that an anonymous disclosure may not prevent a person making the report from being identified. If Council does not know who made a report, it is very difficult for any reprisal action to be prevented.

3.2 Who can receive a report within Council?

For a report to be a public interest disclosure, it needs to be made to a specified person in accordance with Council's Public Interest Disclosures Policy and the PID Act.

If wrongdoing is reported internally, for it to be a public interest disclosure, the following positions are the only persons who can receive the report:

- The General Manager

The General Manager can be contacted by ringing Tel: 9777 1010

- The Mayor (for disclosures concerning the General Manager only)

The Mayor can be contacted by ringing Tel: No 9777 1001

Disclosures Coordinators:

- Director Customer and Corporate

The Director Customer and Corporate can be contacted by ringing Tel: 9777 7556

- Governance, Risk and Corporate Planning Manager

The Governance Risk & Corporate Planning Manager can be contacted on Tel: 9777 7567

Disclosures Officers:

- Governance Officer
- Business Unit Managers

The Business Unit Managers and the Governance Officer can be contacted directly or by telephone.

If a report involves a Councillor, it should be made to the General Manager. If the report concerns the General Manager, it should be made to the Mayor.

3.3 Who can receive a report outside Council?

Public Officials are encouraged to report wrongdoing within Council through the internal reporting processes outlined above, however, there is the option of reporting externally to a specified investigating body under the PID Act.

In certain circumstances it may be preferable to make a report of wrongdoing to an investigating authority, for example, a report about either the General Manager or the Mayor.

A public interest disclosure can be made externally to:

- An investigating authority
- A Member of Parliament or a journalist (only in limited circumstances)

3.3.1 Investigating authorities

The PID Act lists investigating authorities for external reporting and the categories of wrongdoing each authority can deal with.

In relation to Council, these authorities are:

- Independent Commission Against Corruption (ICAC) - for corrupt conduct
- NSW Ombudsman - for maladministration
- Office of Local Government - for disclosures about local government agencies
- Information Commissioner - for disclosures about a government information contravention

The relevant authority can be contacted for advice about how to make a disclosure to them. Contact details for each investigating authority are provided at Appendix A of this Procedure.

Reporters should be aware that it is very likely the investigating authority will discuss the case with Council. Council will make every effort to assist and co-operate with investigating authorities to ensure that matters are dealt with appropriately and achieve satisfactory outcomes. Council will also provide appropriate support and assistance to people who report wrongdoing to an investigating authority.

3.3.2 Members of Parliament or Journalists

To have the protections of the PID Act, a report of wrongdoing to a Member of Parliament (MP) or a journalist must have already been made to one of the following:

- the General Manager or a person nominated in this policy and procedure
- an investigating authority in accordance with the PID Act.

In addition, Council or an investigating authority that received the report must have either:

- decided not to investigate the matter or not completed the investigation within six months of the original report
- investigated the matter but not recommended any action as a result
- not told the person who made the report, within six months of the report being made, whether the matter will be investigated.

Most importantly – to be protected under the PID Act – a person reporting wrongdoing to an MP or a journalist will need to be able to prove that they have reasonable grounds for believing that the disclosure is substantially true **and** that it is in fact substantially true.

If a report of wrongdoing is made to a person or an organisation that is not listed above, a reporter will not be protected under the PID Act. This may mean the reporter will be in breach of legal obligations or the *Code of Conduct* – by, for example, disclosing confidential information.

For more information about reporting wrongdoing outside Council, contact the Disclosures Coordinator or the NSW Ombudsman's Public Interest Disclosures Unit.

4 HANDLING OF PUBLIC INTEREST DISCLOSURES

4.1 Assessing reports

Council will promptly and thoroughly assess all reports to determine what action will be taken to deal with the report and whether or not it will be treated as a public interest disclosure.

The Disclosures Coordinators, in consultation with the General Manager where appropriate, assess reports on the information available and decide on action to be taken, including whether to refer the report for investigation, and how the investigation will be carried out.

See Further Appendix D – Internal report – Record of Initial Discussion with reporter

4.2 Feedback to people who report wrongdoing

People who report wrongdoing will be kept informed of what is happening in response to their report.

4.2.1 Acknowledgement of report

When a report is made, Council will contact the person making the report and provide the following within **2 working days** from the date of the report:

- An acknowledgement that the report has been received
- The timeframe for when they will receive further updates
- The name and contact details of the people who will provide updates

4.2.2 Letter advising assessment as PID

After a decision has been made about how the report will be dealt with, and within **10 working days** of the report, Council will provide the reporter with written advice as to:

- Whether the report has been assessed to be treated as a public interest disclosure
- Action that will be taken in response to the report
- Likely timeframes for any investigation or other action
- Internal or external resources available to access for support

If the report is being treated as a public interest disclosure, Council will also provide the reporter with a copy of Council's *Public Interest Disclosures Policy and Procedure*.

It should be noted that if the report is made under a statutory or legal obligation or incidental to the performance of a person's day to day functions, Council will not send a letter or a copy of the policy.

4.2.3 Progress Updates

While the report is being dealt with, such as by investigation or making other enquiries, Council will provide:

- Information about the progress of an investigation or other enquiries and the reasons for any delay
- Advice of any decision by Council not to proceed with the matter
- Advice if the identity of the reporter needs to be disclosed to investigate the matter, and an opportunity to talk about this

4.2.4 Feedback on finalisation of matter

Once the matter has been finalised, Council will notify a reporter of the action taken and / or action proposed to be taken in response to the report, as soon as possible after any investigation is complete, and **within 6 months** of the report being made.

Council will also advise the reporter whether they are likely to be required as a witness in any further matters, including criminal or disciplinary matters.

4.3 Maintaining confidentiality

Council appreciates that reporters may want their reports to remain confidential.

Where possible and appropriate, Council will take all necessary steps to maintain confidentiality of reporters' identities and the fact they have made a report of wrongdoing.

When a report is made, Council will assess the circumstances and discuss with the reporter as to whether it is possible to keep the reporter's identity confidential.

If confidentiality cannot be maintained, Council will develop a plan to support and protect a reporter from risks of reprisal. The reporter will be involved in developing this plan.

People who report wrongdoing should only discuss their report with those responsible for dealing with it. This will include the Disclosures Coordinator and the General Manager, or in the case of a report about the General Manager, the Disclosures Coordinator and the Mayor. The fewer people who know about the report, before and after it is made, the more likely it is that Council can protect reporters from reprisals.

Any Council Official involved in the investigation or handling of a report, including witnesses, are also required to maintain confidentiality and not disclose information about the process or allegations to any person except for those people responsible for handling the report.

4.4 Conduct of Investigations

Any investigation initiated under these procedures is to be undertaken in accordance with Council's Investigations Procedure and is also to be guided by the NSW Ombudsman publication "*Investigating complaints - A manual for investigators*". The Manual features detailed instruction on how to implement the steps identified in the *Investigations Procedure*.

All disclosures will be investigated, but only to the extent necessary to determine whether or not the misconduct is proven. For example, a preliminary investigation may determine a matter raised in the disclosure is not a matter covered by the policy; therefore a formal investigation is not required. Although a review of the matter may occur under another process within Council.

In some matters it may be necessary to appoint an independent external investigator who is not connected with the matter.

Investigations shall:

- Be conducted in a fair and unbiased way
- Be completed as quickly as is reasonably practicable
- Ensure all relevant information, material and documentation is collected
- Have rules of evidence observed
- Be conducted in private with confidentiality maintained
- Allow legal or other representation to anyone in serious matters
- Be conducted in accordance with the adopted *Investigations Procedure*

For PID matters that are also *Code of Conduct* matters the investigation will occur in accordance with the *Procedures for the Administration of the Code of Conduct*.

On completion, the investigator should provide a report which includes:

- A finding of relevant facts
- A determination as to whether the misconduct is proven
- Recommendations, when requested to do so, to the most appropriate action to take in response to the finding and determination

4.5 Managing the risk of reprisal and workplace conflict

When a person reports wrongdoing under this procedure, Council will carry out a risk assessment to identify and assess the risk of detrimental action to the reporter or any workplace conflict or difficulties. The risk assessment will detail strategies and mitigating actions to be taken to manage risks.

4.6 How Council will respond to reprisals

Council will act to protect people who report wrongdoing from reprisals.

If a reporter believes that detrimental action has been or is being taken against them or someone else who has reported wrongdoing in reprisal for making a report, the matter should be reported to the Disclosures Coordinator or the General Manager immediately or in the case of an allegation of reprisal action by the General Manager, to the Mayor. All supervisors must similarly report any suspicions they have that reprisal action is occurring.

If the Disclosures Coordinator becomes aware of reprisal action against a person who has made a disclosure, they will:

- Ensure a senior and experienced member of staff, who has not been involved in dealing with the initial disclosure, will investigate the suspected reprisal
- Give the results of that investigation to the General Manager, or Mayor, for a decision
- If it has been established that reprisal action is occurring, take all steps possible to stop that activity and protect the person who made the disclosure
- Take appropriate disciplinary or criminal action against anyone proven to have taken or threatened any action in reprisal for making a disclosure

If reprisal action is determined to be occurring the General Manager may:

- Issue warnings to those alleged to have taken reprisal action
- Relocate staff members where possible within the current workplace
- Transfer staff members to another position for which they are qualified
- Grant leave of absence during the investigation of the disclosure

These actions will only occur after the General Manager has consulted with the person who made the disclosure. If the action results in the transfer or leave of absence of the person who made the disclosure, the Disclosures Coordinator will make it clear to other staff that this action was taken in consultation with the person and with management support – and it is not a punishment.

A person who has reported wrongdoing, who feels that any reprisal action is not being dealt with effectively, should contact the NSW Ombudsman or the ICAC.

4.7 Support for those reporting wrongdoing

Reporting wrongdoing can be an extremely traumatic and confronting experience, and people

doing so may need support and protection. Reporters will be provided with relevant professional support and advice, and can also seek support from Council's Public Interest Disclosure Protection Officer ('PID Protection Officer'). Council's People and Culture Manager performs this role, supporting and protecting reporters through the reporting process.

4.8 Support for the subject of a report

Council is committed to ensuring Council staff, Councillors or other Council Officials who are the subject of a report of wrongdoing are treated fairly and reasonably and receive natural justice.

Council Officials who are the subject of a report will be advised of the allegations against them at an appropriate time and before any adverse finding is made. At this time persons the subject of a report will be:

- Advised of the details of the allegations
- Told of their rights and obligations under Council's policies and procedures
- Kept informed during any investigation
- Given the opportunity to respond to any allegation made against them
- Told the outcome of any investigation, including any decision made about whether or not further action will be taken

5 RELATED LEGISLATION AND DOCUMENTS

5.1 Legislation

Public Interest Disclosures Act 1994
Independent Commission Against Corruption Act 1988
Local Government Act 1993
Local Government (General) Regulation 2005
Crimes Act 1900

5.2 Policies and Procedures

Code of Conduct 2019
Procedures for the Administration of the Code of Conduct 2019
Public Interest Disclosures Policy 2019
Fraud and Corruption Prevention Policy 2019
Fraud and Corruption Prevention Plan 2019
Investigations Procedure 2018

5.3 Other Information

NSW Ombudsman's Public Interest Disclosure Guidelines 2013
NSW Ombudsman publication "*Investigating complaints - A manual for investigators*" 2004

6 FEEDBACK

Officers may provide feedback about this document by emailing Council's Governance, Risk & Corporate Manager.

7 APPROVAL AND REVIEW DETAILS

Approval and Review	Details
Directorate	Corporate & Customer
Owner & Administrator	Governance Risk and Corporate Planning Manager
Approval Date	13 May 2019
Administration Reference	ECM Doc ID Number: 5446834
Loaded on Intranet/Internet	Yes
Next Review Date	01/05/2021 or earlier, if required

Approval and Amendment History	Details
Original Approval Authority & Date	Council, 9 September 2013
Amendment Authority and Date	Council, 13 May 2019
Notes	This procedure supports Council's Public Interest Disclosures Policy.

8 APPENDIX

8.1 Appendix A – Investigating Authorities

For disclosures about corrupt conduct:

Independent Commission Against Corruption (ICAC)

Email: icac@icac.nsw.gov.au

Web: www.icac.nsw.gov.au

For disclosures about maladministration:

NSW Ombudsman

Email: nswombo@ombo.nsw.gov.au

Web: www.ombo.nsw.gov.au

For disclosures about breaches of the GIPA Act:

Information Commissioner

Email: oiinfo@oic.nsw.gov.au

Web: www.oic.nsw.gov.au

For disclosures about police misconduct:

Police Integrity Commission

Email: contactus@pic.nsw.gov.au

Web: www.pic.nsw.gov.au

For disclosures about council:

Office of Local Government

Email: olg@olg.nsw.gov.au

Web: www.dlg.nsw.gov.au

8.2 Appendix B – Internal Report Form

This document needs to be completed and submitted to a Nominated Disclosures Officer
(See Public Interest Disclosures Policy and Procedure for further details)

Details of Reporter (an anonymous report can be made by leaving this section blank)		
Name:		
Position:		
Division/Unit:		Preferred method of contact
Telephone:		<input type="checkbox"/>
Email:		<input type="checkbox"/>
Postal Address:		<input type="checkbox"/>
Details of the matter being reported		
Description of the wrongdoing being reported - <i>What happened? Where did this happen? When did this happen? Is it still happening?</i> <i>(Attach additional page if required)</i>		
Name and position of people involved		
How did you become aware of this?		
List and/or attach any additional relevant information or supporting evidence		
Name and position of other people that may have additional information relating to this matter		
<i>I have made this report voluntarily and I honestly believe that the matter I am reporting shows or tends to show wrongdoing has occurred.</i>		
Signature - Reporter	Date	

8.3 Appendix C – Internal Report Checklist for Reporter

Confirmation of information provided to individual reporting wrongdoing

Please confirm that the following information was raised with you by the nominated disclosure office during the initial discussion about your report of wrongdoing:

- Explanation of the internal reporting and public interest disclosure process and procedures.
- The name and contact details of the PID Co-ordinator
- Explanation of the role and responsibility of the PID Co-ordinator
- That an acknowledgement will be sent to you within XX days along with a copy of relevant policies and procedures
- That the assessment will be completed in XX days and the determination advised within XX days
- That the organisation is required to provide you with details of what action has been taken or will be taken in relation to this report within six months.
- That the organisation will take appropriate steps to keep your identity confidential and that they may be reasons where this is not possible.
- The importance of you maintaining confidentiality regarding this report and not discussing with other people.
- That the organisation will implement appropriate strategies to protect you from reprisal action that may result from making the report and will respond to any reprisal action that may occur.
- The contact details for the employee assistance program.
- The option of requesting a support person.
- Your preferred method of contact.

Name of reporter: _____

Signature: _____

Date: _____

8.4 Appendix D – Internal Report - Record of Initial Discussion with Reporter

Date report received by nominated disclosure officer		<input type="checkbox"/> Verbal report	<input type="checkbox"/> Written report
Confidentiality			
Who else know that the report is being made?			
Is the reporter concerned their identity will become known? Why?			
Is the reporter concerned that they may suffer reprisal action for making the report? From Whom?			
What professional relationship does the reporter have with the subject?			
Previous reporting			
Has this matter been reported to another person within your organisation or to another organisation?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, who was it reported to, when was it reported, what action was/is being taken?			
Is the reporter currently/previously been the subject of	<input type="checkbox"/> Yes <input type="checkbox"/> No		
<input type="checkbox"/> Performance issues	<input type="checkbox"/> Yes <input type="checkbox"/> No		
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Yes <input type="checkbox"/> No		
<input type="checkbox"/> Criminal investigation in relation to the subject matter	<input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, record details			
Support			
If the reporter wants a support person - who did they request?			
What does the reporter expect from this process?			
<input type="checkbox"/>	The contact details of the PID Co-ordinator and an explanation of their role and responsibilities in this process		
<input type="checkbox"/>	An acknowledgement will be sent within [XX] days along with a copy of the relevant policy		
<input type="checkbox"/>	Within [XX] days the PID Co-ordinator will complete an assessment of the report to ensure it meets the criteria of a PID and will contact the reporter in [XX] days to advise the determinations		
<input type="checkbox"/>	Within six months the organisation has to provide the reporter with details of what action has been taken or will be taken in relation to their report		
<input type="checkbox"/>	The reporter should contact the PID Co-ordinator if they have any questions or concerns during the process.		
<input type="checkbox"/>	The organisation will take all appropriate steps to keep the identity of the reporter confidential - provide reasons where this may not be possible.		
<input type="checkbox"/>	Advised reporter of the importance of maintaining confidentiality about this report and the process.		
<input type="checkbox"/>	The organisation will implement appropriate strategies to protect the reporter from detrimental action in reprisal for making the report and respond to any occurrence of this type of behaviour		
<input type="checkbox"/>	If the reporter believes detrimental action is being taken against them they need to advise the PID Co-ordinator, Principal Officer or support person asap.		
<input type="checkbox"/>	Provided employee assistance program contact details		
<input type="checkbox"/>	If verbal report - copy of PID form provided to reporter		
Signature - Nominated Disclosure Officer			Date

Initial assessment:

<p>What is the category of wrongdoing?</p> <p><input type="checkbox"/> Corrupt Conduct</p> <p><input type="checkbox"/> Maladministration</p> <p><input type="checkbox"/> Serious & Substantial Waste</p> <p><input type="checkbox"/> Contravention of the GIPA Act</p>	<p><input type="checkbox"/> Contravention of the pecuniary interest of LGA</p> <p><input type="checkbox"/> Grievance</p> <p><input type="checkbox"/> Other</p>
<p>Reporter is a public official</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Matter reported is about the conduct of a public official or public authority</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>The reporter has an honest belief on reasonable grounds that the information they have reported shows or tends to show the alleged conduct</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>The report does not principally involve questioning the merits of government policy</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>There is no reason to conclude that the report was made solely or substantially with the motive of avoiding dismissal or other disciplinary action</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Signature - Nominated Disclosure Officer</p>	<p>Date</p>