



# COUNCIL POLICY

## Public Interest Disclosure

<b>Policy Number:</b>	PO171		
<b>Strategic Plan Objective</b>	Goal 5 – Responsible Governance		
<b>Policy Owner:</b>	Chief Executive Officer	<b>Record Number:</b>	19/84646
<b>Responsible Officer:</b>	Governance Officer	<b>Minute Reference:</b>	243/2019
<b>Date Adopted:</b>	09/10/2019	<b>Next Review Date:</b>	2022

### 1 POLICY OBJECTIVES

This policy aims to ensure that Council:

- Properly fulfils its responsibilities under the Public Interest Disclosure Act 2018 (PID Act);
- Encourages and facilitates Disclosures of Public Interest Information in accordance with the objects and requirements of the PID Act ;
- Ensures there is appropriate oversight of Public Interest Information disclosures about corruption, misconduct and maladministration in public administration;
- Provides appropriate protection for those who make Disclosures in accordance with the PID Act;
- Acknowledges the need to appropriately support Informants, Responsible Officer(s) and, as appropriate, those Public Officers affected by any appropriate Disclosure.

### 2 SCOPE

This policy applies to appropriate Disclosures of Public Interest Information that are made in accordance with the PID Act by Public Officers including Elected Members, officers and Employees of the Council, and by members of the public.

### 3 DEFINITIONS

Definitions are provided in Attachment 1.

### 4 POLICY STATEMENT

Council is committed to:

- Upholding the principles of transparency and accountability in its administrative and management practices;
- The protection of informants who make Public Interest Information Disclosures;
- The genuine and efficient consideration and action in relation to information provided in a Public Interest Information Disclosure.

Council will:

- Refer, as necessary, appropriate Disclosures to another Relevant Authority;

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- Where the Disclosure relates to Corruption, or serious or systemic Misconduct or Maladministration in public administration, report the Disclosure directly to the Office for Public Integrity (OPI) in accordance with the Directions and Guidelines and the requirements of the Independent Commissioner Against Corruption Act 2012 (ICAC Act);
- Otherwise manage appropriate Disclosures in a manner which promotes fair and objective treatment of those involved;
- Rectify any substantiated wrongdoing to the extent practicable.

This policy is intended to complement the reporting framework under the Independent Commissioner Against Corruption Act 2012 (ICAC Act) and Council's existing systems and policies, including:

- PO148 Fraud and Corruption Prevention Policy;
- PO015 Code of Conduct for Council Employees;
- PO123 Code of Conduct for Council Members;
- PO037 Internal Review of Council Decisions Policy.

### **4.1 Confidentiality**

The identity of an Informant will be maintained as confidential in accordance with the PID Act.

A recipient of an appropriate Disclosure may only divulge the identity of an Informant where:

- The recipient believes on reasonable grounds that it is necessary to divulge the identity of the Informant in order to prevent or minimise an imminent risk of serious physical injury or death to any person. The identity of the Informant can then be divulged to a person or authority that the recipient believes on reasonable grounds is the most appropriate authority or person to be able to take action to prevent or minimise the imminent risk of serious physical injury or death to any person;
- The recipient has been issued with a notice from the OPI advising that the identity of the Informant is required by the OPI, in which case the recipient must disclose the identity of the Informant to the OPI;
- Doing so is necessary for the matter to be properly investigated (but only to the extent necessary to ensure proper investigation);
- The Informant consents to his/her identity being disclosed.

The PID Act does not expressly require any other information relating to a Disclosure (including, for example, the nature of the allegations) to be maintained as confidential.

An Informant may wish to remain anonymous, but in that event must ensure that the allegation is sufficiently supported by the provision of necessary details and evidence to enable the matter to be properly investigated.

### **4.2 Disclosures**

Disclosures will to be managed in accordance with PR152 Council's Public Interest Disclosure Procedure (the Procedure).

4.2.1 Environmental and Health Information

Anyone can make a Disclosure of Environmental and Health Information. However to gain the protections provided under the PID Act, a person who makes a Disclosure of Environmental and Health Information:

- Must believe on reasonable grounds that the information is true: or
- Not being in a position to form such a belief, believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated.

4.2.2 Public Administration Information

While anyone can make a Disclosure of Public Administration Information only Public Officers who make such a Disclosure are eligible for the protections provided by the PID Act.

Elected Members, Employees or officers of the Council must immediately refer any Disclosure of Environmental and Health Information made to them by a member of the public, or any Disclosure of Public Interest Information made to them by a Public Officer, to a Responsible Officer.

Nothing in this policy prevents a person from making a Disclosure to a Relevant Authority external to the Council (i.e. the Ombudsman or the OPI). This is a choice to be made by the Informant at his/her discretion.

**4.3 Responsible Officer Role**

A Disclosure may be made to the Council's designated Responsible Officer in person, by telephone or in writing. A person designated as a Responsible Officer for the Council:

- Must receive appropriate Disclosures relating to the Council and ensure compliance with the PID Act, and the Procedure, in relation to any such Disclosures;
- Must make appropriate recommendations to the Principal Officer of the Council in relation to dealing with Disclosures, including any suggested changes to this policy or the Procedure;
- Must provide advice to officers and Employees of the Council in relation to the administration of the PID Act;
- Must complete any training courses approved by the Commissioner for the purposes of the Public Interest Disclosure Regulations;
- Will deal with a Disclosure in accordance with the Procedure;
- May carry out any other functions relating to the PID Act.

In making any determination or taking any action under this policy or the Procedure the Responsible Officer:

- May seek legal advice from Council's lawyers and/or guidance from SAPOL or the Ombudsman in relation to the most appropriate course of action to pursue;
- Is authorised to incur costs in accordance with the Council's Budget for that purpose.

The Responsible Officer will liaise as required with the Informant and any Independent Assessor, in relation to any investigation process, undertaken in accordance with the

Procedure, and will ensure that the Informant is provided with support and protection as necessary and appropriate in the circumstances of the Disclosure.

### **4.4 Protection for the Informant**

An Informant who makes an appropriate Disclosure is protected by:

- Immunity from criminal or civil liability as provided for in section 5(1) of the PID Act;
- A prohibition on disclosure of identity as provided for in section 8 of the PID Act;
- A prohibition against Victimisation as provided for in section 9 of the PID Act;
- A prohibition against hindering, obstructing or preventing an Informant from making an appropriate Disclosure as provided for in section 11 of the PID Act.

A person who personally commits an act of Victimisation against an Informant is guilty of an offence and may be prosecuted.

The Council will take action as appropriate in the circumstances of the relevant Disclosure(s) to protect Informants from Victimisation. Such action may include acting in accordance with the risk minimisation steps set out in the Public Interest Disclosure Procedure and/or referring the matter to the SAPOL.

The PID Act does not provide any protection to people who knowingly make disclosures that are false or misleading (whether by reason of the inclusion or omission).

A person who knowingly makes a Disclosure that is false or misleading is guilty of an offence and may be prosecuted.

Any Elected Member, Employee or officer of the Council who:

- Knowingly makes a disclosure that is false or misleading;
- Commits an act of Victimisation in relation to an Informant;
- Acts otherwise than in accordance with this policy or the Procedure in relation to a Disclosure

may also face disciplinary action in accordance with Council's existing systems/policies/procedures/processes, including in relation to:

- PO123 Code of Conduct for Council Members;
- PO014 Code of Conduct for Council Employees;
- PO146 Support Disciplinary and Performance Management Policy.

### **4.5 Information to the Elected Members**

As a matter of discretion, the Chief Executive Officer (CEO) may inform the Elected Members, on a confidential basis, of the fact that an investigation of a Disclosure took place and the outcome of the investigation. Factors the CEO will take into account in determining whether to inform the Elected Members and the level of detail provided in doing so is set out in the Procedure.

## **5 POLICY AVAILABILITY**

This policy will be available for inspection at the Council's Offices during ordinary business hours and via the Council's website. Copies will also be provided to the public upon request, and upon payment of a fee in accordance with the Council's Fees and Charges Register.

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### **6 COMPLAINTS**

Complaints about this policy can be made in writing to the Governance Officer and will be managed in accordance with PO147 Council's Complaint Policy.

### **7 REVIEW**

This policy will be reviewed every three years and as necessary in consideration of any changes to legislation and relevant standards, codes and guidelines.

### **8 TRAINING**

Council will ensure that Responsible Officers are appropriately trained and is committed to supporting employees in complying with this policy.

Training needs will be identified through performance reviews, audit and training needs analysis processes. Training will also occur and as necessary in response to changes to legislation and relevant standards, codes and guidelines.

### **9 RELATED COUNCIL POLICIES AND DOCUMENTS**

PO014 Code of Conduct for Council Employees  
PO037 Internal Review of Council Decisions Policy  
PO063 Records Management Policy  
PO123 Code of Conduct for Council Members  
PO146 Support Disciplinary and Performance Management Policy  
PO147 Complaints Policy  
PO148 Fraud and Corruption Prevention Policy  
PO150 Gifts and Benefits Policy  
PR152 Public Interest Disclosure Procedure  
Fees and Charges Register

### **10 REFERENCES AND LEGISLATION**

Public Interest Disclosure Act 2018  
Independent Commissioner Against Corruption Act 2012  
Local Government Act 1999  
Local Government Association Model Public Interest Disclosure Policy

### **11 COUNCIL DELEGATION**

<b>Details of Delegation:</b>	Nil.
<b>Delegate:</b>	

### **12 VERSION HISTORY**

<b>Archived Policy Name</b>	<b>Policy Number</b>	<b>Date Adopted</b>	<b>Last Reviewed</b>

**DEFINITIONS**

**ATTACHMENT 1**

<p><b>Commissioner</b></p>	<p>The person holding or acting in the office of the Independent Commissioner Against Corruption.</p>
<p><b>Corruption in Public Administration</b></p>	<p>As defined in section 5(1) of the ICAC Act and means:</p> <p>An offence against Part 7 Division 4 (Offences relating to public officers) of the Criminal Law Consolidation Act 1935, which includes the following offences:</p> <ul style="list-style-type: none"> <li>(i) bribery or corruption of public officers;</li> <li>(ii) threats or reprisals against public officers;</li> <li>(iii) abuse of public office;</li> <li>(iv) demanding or requiring benefit on basis of public office;</li> <li>(v) offences relating to appointment to public office; or</li> </ul> <p>An offence against the Public Sector (Honesty and Accountability) Act 1995 or the Public Corporations Act 1993, or an attempt to commit such an offence; or</p> <p>An offence against the Lobbyists Act 2015, or an attempt to commit such an offence; or</p> <p>Any other offence (including an offence against Part 5 (Offences of dishonesty) of the Criminal Law Consolidation Act 1935) committed by a public officer while acting in his or her capacity as a public officer or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or an attempt to commit such an offence; or</p> <p>Any of the following in relation to an offence referred to in a preceding paragraph:</p> <ul style="list-style-type: none"> <li>(i) aiding, abetting, counselling or procuring the commission of the offence;</li> <li>(ii) inducing, whether by threats or promises or otherwise, the commission of the offence;</li> <li>(iii) being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;</li> <li>(iv) conspiring with others to effect the commission of the offence</li> </ul>

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<p><b>Detriment</b></p>	<p>includes:</p> <ul style="list-style-type: none"> <li>(i) injury, harm (including psychological harm), damage (including damage to reputation) or loss;</li> <li>(ii) intimidation or harassment;</li> <li>(iii) discrimination, disadvantage or adverse treatment in relation to a person's employment; and/or</li> <li>(iv) threats of reprisal (which may be expressed or implied, and/or conditional or unconditional).</li> </ul>
<p><b>Directions and Guidelines</b></p>	<p>A reference to the Directions and Guidelines issued pursuant to section 20 of the ICAC Act and/or section 14 of the PID Act, which are available on the Commissioner's website (<a href="http://www.icac.sa.gov.au">www.icac.sa.gov.au</a>).</p>
<p><b>Disclosure</b></p>	<p>Means an appropriate disclosure of Public Interest Information made by an Informant to a Relevant Authority.</p> <p>A person makes an <b>appropriate disclosure of</b> environmental and health information if:</p> <ul style="list-style-type: none"> <li>(a) the person: <ul style="list-style-type: none"> <li>(i) believes on reasonable grounds that the information is true; or</li> <li>(ii) is not in a position to form a belief on reasonable grounds about the truth of the information, but believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated; and</li> </ul> </li> <li>(b) the disclosure is made to a Relevant Authority.</li> </ul> <p>A person makes an appropriate disclosure of public administration information if:</p> <ul style="list-style-type: none"> <li>(a) the person: <ul style="list-style-type: none"> <li>(i) is a public officer;</li> <li>(ii) reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration; and</li> </ul> </li> <li>(b) the disclosure is made to a Relevant Authority.</li> </ul>
<p><b>Employee</b></p>	<p>All Council employees, whether they are working in a full-time, part-time or casual capacity.</p>

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<b>Environmental and Health Information</b>	Information that raises a potential issue of a substantial risk to the environment and/or to the health or safety of the public generally or a significant section of the public.
<b>Fraud</b>	An intentional dishonest act or omission done with the purpose of deceiving.
<b>Independent Assessor</b>	The person designated by the Responsible Officer as being responsible for investigating a disclosure made to Yorke Peninsula Council in accordance with the Public Interest Disclosure Procedure.
<b>Informant</b>	A person who makes an appropriate disclosure of Public Interest Information to a Relevant Authority.
<b>Maladministration in Public Administration</b>	As defined in section 5(4) of the ICAC Act and means: <ul style="list-style-type: none"><li>(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</li><li>(ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and</li><li>(iii) includes conduct resulting from impropriety, incompetence or negligence; and</li><li>(iv) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.</li></ul>
<b>Misconduct in Public Administration</b>	As defined in section 5(3) of the ICAC Act and means: <ul style="list-style-type: none"><li>(i) 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</li><li>(ii) Other misconduct of a public officer while acting in his or her capacity as a public officer.</li></ul>
<b>Office for Public Integrity (OPI)</b>	The office established under the <i>ICAC Act</i> that has the function to: <ul style="list-style-type: none"><li>(i) receive and assess complaints about public administration from members of the public;</li><li>(ii) receive and assess reports about corruption, misconduct and maladministration in public administration from the Ombudsman, the Council and public officers;</li><li>(iii) refer complaints and reports to inquiry agencies, public authorities and public officers in circumstances approved by the</li></ul>

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	<p>Commissioner or make recommendations as to whether and by whom complaints and reports should be investigated;</p> <p>(iv) give directions or guidance to public authorities in circumstances approved by the Commissioner;</p> <p>(v) perform other functions assigned to the Office by the Commissioner.</p>
<b>Public Administration</b>	Defined at section 4 of the ICAC Act and, without limiting the acts that may comprise public administration, an administrative act within the meaning of the Ombudsman Act 1972 will be taken to be carried out in the course of public administration.
<b>Public Administration Information</b>	Information that raises a potential issue of corruption, misconduct or maladministration in public administration.
<b>Public Interest Information</b>	Environmental and/or health information, or public administration information.
<b>Principal Officer</b>	For the purposes of the PID Act means the Chief Executive Officer of the Council.
<b>Public Officer</b>	Has the meaning given by section 4 and Schedule 1 of the ICAC Act, and includes:  <p>(i) A Council member; and</p> <p>(ii) An Employee or officer of the Council.</p>
<b>Relevant Authority</b>	The person or entity that receives an appropriate disclosure of Public Interest Information in accordance with the PID Act, as set out in Attachment 2 to this policy.
<b>Responsible Officer</b>	<p>A person who has completed any training courses approved by the Commissioner for the purposes of the <i>Public Interest Disclosure Regulations 2019</i> and has been designated by the Council as a responsible officer under section 12 of the PID Act.</p> <p>For purposes of the Public Interest Disclosure Regulations 2019 the Manager People and Culture and Governance Officer have been appointed by the Council as a Responsible Officers under section 12 of the PID Act.</p>
<b>Victimisation</b>	Occurs when a person causes detriment to another on the grounds, or substantially on the grounds, that the other person (or a third person) has made or intends to make an appropriate disclosure of Public Interest Information.

**RELEVANT AUTHORITIES**

**ATTACHMENT 2**

Where the information relates to...	The relevant authority is...
<p>A public officer*</p> <p><i>*as defined and set out in Schedule 1 of the Independent Commissioner Against Corruption Act 2012 - relevantly, this includes members, officers and employees of local government bodies</i></p>	<p>Either:</p> <p>the person who is designated by the Guidelines as being taken to be responsible for management or supervision of the public officer; or</p> <p>the person who is in fact responsible for the management or supervision of the public officer; or</p> <p>the relevant responsible officer (as designated by the Council in accordance with section 12 of the PID Act)</p>
<p>A public sector agency or public sector employee</p>	<p>Either:</p> <p>the Commissioner for Public Sector Employment; or</p> <p>the responsible officer for the relevant public sector agency</p>
<p>An agency to which the <i>Ombudsman Act 1972</i> applies</p>	<p>The Ombudsman</p>
<p>A location within the area of a particular council established under the <i>Local Government Act 1999</i></p>	<p>A member, officer or employee of that Council</p>
<p>A risk to the environment</p>	<p>The Environment Protection Authority</p>
<p>An irregular and unauthorised use of public money or substantial</p>	<p>The Auditor-General</p>
<p>The commission, or suspected commission, of any offence</p>	<p>A member of the police force</p>
<p>A judicial officer</p>	<p>The Judicial Conduct Commissioner</p>
<p>A member of Parliament</p>	<p>The Presiding Officer of the House of Parliament to which the member belongs</p>
<p>A person or a matter of a prescribed class<sup>1</sup></p>	<p>An authority declared by the regulations to be a relevant authority in relation to such information</p>
<p>Public Interest Information - being: environmental and/or health information (information that raises a potential issue of a substantial risk to the environment or to the health or safety of the public generally or a significant section of the public); or public administration information (information that raises a potential issue of corruption, misconduct or maladministration in public administration)</p>	<p>The OPI;</p> <p>a Minister of the Crown;</p> <p>any other prescribed person or person of a prescribed class.</p>

<sup>1</sup> at this stage, no prescribed persons or classes have been identified