

COUNCIL POLICY

Public Interest Disclosure

Policy Number:	PO171		
Strategic Plan Objective:	5. Responsible Governance and Leadership		
Policy Owner:	Chief Executive Officer	Record Number:	19/84646[V2]
Responsible Officer:	Governance Officer	Minute Reference:	244/2022
Date Adopted:	14/12/2022	Next Review Date:	December 2026

1. POLICY OBJECTIVES

This policy aims to ensure that Yorke Peninsula Council (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 and reporting of Public Interest Information Disclosures about Corruption, Misconduct and Maladministration in Public Administration;
- Provides appropriate protection for Informants who make Disclosures in accordance with the PID Act;
- Appropriately supports Informants, Responsible Officers and 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

Refer to Attachment 1.

4. POLICY STATEMENT

Council will:

- Uphold the principles of transparency and accountability in its administrative and management practices;
- Ensure that genuine and efficient consideration is given to information provided in a Public Interest Information Disclosure and that appropriate action is taken;

- Refer, as necessary, appropriate Disclosures to another Relevant Authority or external body in accordance with the Directions and Guidelines;
- Where the Disclosure relates to Corruption 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 Commission 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 ICAC Act, Ombudsman Act 1972 and Council's existing systems and policies, including:

- PO148 Fraud Corruption Misconduct and Maladministration Prevention Policy;
- PO014 Council Employee Code of Conduct Policy;
- PO037 Internal Review of Council Decision Policy;
- PO026 Fair Treatment Policy;
- PO146 Disciplinary and Performance Management Policy.

4.1. Confidentiality

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

A Public Officer who receives 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, but in considering whether to further disclose other information provided as part of an appropriate Disclosure the Council should consider the prohibition against Victimisation in the PID Act and confidentiality requirements.

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

4.2. Disclosures

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

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 (as explained in Clause 4.4).

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

4.3. Responsibilities

4.3.1. Responsible Officer

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, this policy and the Procedure, in relation to any such Disclosures;
- 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;
- Provide advice to officers and Employees of the Council in relation to the administration of the PID Act;
- Complete any training courses approved by the Commissioner for the purposes of the Public Interest Disclosure Regulations 2019 (PID Regulations);
- Manage a Disclosure in accordance with the Procedure;

and 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.

4.3.2. Principal Officer

The Principal Officer must:

- Ensure that one or more appropriately qualified Employees of the Council are designated as Responsible Officers of the Council for the purposes of the PID Act and undertake any training required by the Public Interest Disclosure Regulations 2019 (PID Regulations);
- Ensure that the name and contact details of each Responsible Officer of the Council are made available to Officers and Employees of the Council;
- The preparation and maintenance of this procedure in accordance with the requirements of the PID Act.

4.3.3. Elected Members, Employees or Officers

Elected Members, Employees or Officers must:

- Ensure they comply with the Policy and this procedure when dealing with any Disclosure;
- Immediately referring any Disclosure made to them by a member of the public or a Public Officer, to the Responsible Officer.

4.4. Protection for the Informant

An Informant who makes an appropriate Disclosure is protected by an immunity from criminal or civil liability (section 5(1) of the PID Act) where;

- (i) the Informant is a person who makes an appropriate Disclosure of Environmental and Health Information; or
- (ii) the Informant is a Public Officer who makes an appropriate Disclosure of Public Administration Information;

Also, it is illegal to :

- Disclose an Informant's identity (section 8 of the PID Act);
- Victimise an Informant (section 9 of the PID Act);
- Hinder, obstruct or prevent an Informant from making an appropriate Disclosure (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 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 (including by 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 and/or a Responsible Officer;
- 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.

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 (www.yorke.sa.gov.au). 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.

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 four years and as necessary in consideration of any changes to legislation and relevant standards, codes, guidelines and audit findings.

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, guidelines and audit findings.

9. RECORDS

Records will be maintained as required by Council's Records Management Policy (PO063) and relevant legislation.

10. RELATED COUNCIL POLICIES/PROCEDURES AND DOCUMENTS

PO014 Council Employee Code of Conduct Policy

PO026 Fair Treatment Policy

PO037 Internal Review of Council Decision Policy

PO063 Records Management Policy

PO146 Support Disciplinary and Performance Management Policy

PO147 Complaints Policy

PO148 Fraud Corruption Misconduct and Maladministration Prevention Policy

PO150 Gifts and Benefits Policy

PR152 Public Interest Disclosure Procedure

Fees and Charges Register

11. REFERENCES AND LEGISLATION

Public Interest Disclosure Act 2018

Independent Commission Against Corruption Act 2012

Ombudsman Act 1972

Local Government Act 1999

Behavioural Standards for Council Members

Behavioural Standards for Council Employees

Public Interest Disclosure Regulations 2019

Local Government Association Model Public Interest Disclosure Policy

12. COUNCIL DELEGATION

Details of Delegation:	Nil
Delegate:	

13. VERSION HISTORY

Version No	Issue Date	Description of Change
1	09/10/2019	New Policy
2	14/12/2022	Legislative Update. Full Revision.

ATTACHMENT 1: DEFINITIONS

Term/Reference	Definition
Commissioner	The person holding or acting in the office of the Independent Commissioner Against Corruption.
Corruption in Public Administration	<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">(i) bribery or corruption of Public Officers;(ii) threats or reprisals against Public Officers;(iii) abuse of public office;(iv) demanding or requiring benefit on basis of public office;(v) offences relating to appointment to public office; or <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 of the following in relation to an offence referred to in a preceding paragraph:</p> <ul style="list-style-type: none">(i) aiding, abetting, counselling or procuring the commission of the offence;(ii) inducing, whether by threats or promises or otherwise, the commission of the offence;(iii) being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;(iv) conspiring with others to effect the commission of the offence.

Term/Reference	Definition
Detriment	<p>Includes:</p> <ul style="list-style-type: none">(i) injury, harm (including psychological harm), damage (including damage to reputation) or loss;(ii) intimidation or harassment;(iii) discrimination, disadvantage or adverse treatment in relation to a person's employment; and/or(iv) threats of reprisal (which may be expressed or implied, and/or conditional or unconditional).
Directions and Guidelines	<p>A reference to the Directions and Guidelines issued:</p> <ul style="list-style-type: none">(i) by the OPI pursuant to section 18B of the ICAC Act, available on the OPI website (www.publicintegrity.sa.gov.au); and/or(ii) by the Commissioner pursuant to section 14 of the PID Act, available on the Commissioner's website (www.icac.sa.gov.au); and/or(iii) by the Ombudsman SA pursuant to section 12D(1) of the Ombudsman Act 1972, available on the Ombudsman SA website (www.ombudsman.sa.gov.au).
Disclosure	<p>Means an appropriate disclosure of Public Interest Information made by an Informant to a Relevant Authority.</p> <p>A person makes an appropriate Disclosure of Environmental and Health Information if:</p> <ul style="list-style-type: none">(a) the person:<ul style="list-style-type: none">(i) believes on reasonable grounds that the information is true; or(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

Term/Reference	Definition
	<p>(b) the disclosure is made to a Relevant Authority.</p> <p>A person makes an appropriate disclosure of Public Administration Information if:</p> <p>(a) the person:</p> <p>(i) is a Public Officer;</p> <p>(ii) reasonably suspects that the information raises a potential issue of Corruption, Misconduct or Maladministration in Public Administration; and</p> <p>(b) the disclosure is made to a Relevant Authority.</p>
Employee	For the purposes of this policy and its supporting procedures, includes persons who have entered into an employment contract with the Council, volunteers, trainees, work experience placements, casual personnel, agency personnel, independent consultants and contractors and/or other persons undertaking work for/on behalf of the Council.
Environmental and Health Information	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.
Fraud	An intentional dishonest act or omission done with the purpose of deceiving.
Independent Assessor	The person designated by the Responsible Officer as being responsible for investigating a Disclosure made to the Council in accordance with the Procedure.
Informant	A person who makes an appropriate disclosure of Public Interest Information to a Relevant Authority.
Maladministration in Public Administration	<p>As defined in section 4(2) of the Ombudsman Act 1972 and means:</p> <p>(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</p>

Term/Reference	Definition
	<ul style="list-style-type: none">(ii) conduct of a Public Officer involving substantial mismanagement in or in relation to the performance of official functions; and(iii) includes conduct resulting from impropriety, incompetence or negligence; and(iv) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.
Misconduct in Public Administration	<p>As defined in section 4(1) of the Ombudsman Act 1972:</p> <p>An intentional and serious contravention of a code of conduct by a Public Officer while acting in their capacity as a Public Officer that constitutes a ground for disciplinary action against the officer.</p>
Office for Public Integrity (OPI)	<p>The office established under section 17 of the ICAC Act that has the function to:</p> <ul style="list-style-type: none">(i) receive and assess complaints about Public Administration from members of the public;(ii) receive and assess reports about Corruption, Misconduct and Maladministration in Public Administration from Public Officers, inquiry agencies and public authorities;(iii) refer complaints and reports to inquiry agencies, public authorities and Public Officers or to determine to take no action.
Principal Officer	<p>For the purposes of the PID Act means the Chief Executive Officer of the Council.</p>
Public Administration	<p>Defined at section 4 of the ICAC Act. 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.</p>
Public Administration Information	<p>Information that raises a potential issue of Corruption, Misconduct or Maladministration in Public Administration.</p>
Public Interest Information	<p>Environmental and/or Health Information, or Public Administration Information.</p>

Term/Reference	Definition
Public Officer	<p>Has the meaning given by section 4 and Schedule 1 of the ICAC Act, and includes:</p> <ul style="list-style-type: none">(i) a Council member (Elected Member); and(ii) an Employee or officer of the Council.
Relevant Authority	<p>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.</p>
Responsible Officer	<p>A person who has completed any training courses approved by the Commissioner for the purposes of the PID Regulations and has been designated by the Council as a Responsible Officer under section 12 of the PID Act.</p> <p>For purposes of the PID Regulations 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>
Victimisation	<p>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.</p>

ATTACHMENT 2: RELEVANT AUTHORITIES

Where the information relates to...	The relevant authority is...
Public Officer.	The person who is responsible for the management or supervision of the Public Officer; or The Responsible Officer.
A public sector agency or public sector Employee.	The Commissioner for Public Sector Employment; or The Responsible Officer for the relevant public sector agency.
An agency to which the Ombudsman Act 1972 applies.	The Ombudsman.
A location within the area of a particular council established under the Local Government Act 1999.	An Elected Member, officer or Employee of that Council.
A risk to the environment.	The Environment Protection Authority.
An irregular and unauthorised use of public money or substantial mismanagement of public resources.	The Auditor-General.
The commission, or suspected commission, of any offence.	A member of the police force.
A judicial officer.	The Judicial Conduct Commissioner.
A member of Parliament.	The Presiding Officer of the House of Parliament to which the member belongs.
A person or a matter of a prescribed class ¹	An authority declared by the PID Regulations to be a Relevant Authority in relation to such information: or: (i) the OPI; (ii) a Minister of the Crown; (iii) any other prescribed person or person of a prescribed class ¹ .

¹ at this stage, no prescribed persons or classes have been identified