



Public Interest Disclosure Policy 2023

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Responsible Officer	Governance and Reporting Advisor
Authorising Officer	Director Corporate and Leisure
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1. Statement and Purpose

1.1 This Policy seeks to:

- a) encourage and facilitate the making of disclosures about improper conduct of Council, its Councillors, staff and associates and the disclosure of detrimental action taken in reprisal for a person making such a disclosure;
- b) provide for the confidentiality of the content of those disclosures and the confidentiality of the identity of persons who make those disclosures;
- c) reinforce the protections available to all disclosers; and
- d) provide clarity over the types and nature of disclosures that can be under this Policy and the *Public Interest Disclosures Act 2012 (Vic)* (the 'PID Act').

2. Scope

- 2.1 This Policy applies to Council and its Councillors, staff and agents.
- 2.2 Agents of Council include contractors working in-house, staff on exchange, members of Delegated Committees and Community Reference Groups (however named), members of Council's Audit and Risk Committee, volunteers, work experience students and those undertaking graduate placements, as well as external suppliers and other contractors and subcontractors who perform work for Council.
- 2.3 Any individual (i.e. not organisation or company) may make a disclosure under the Act. The individual may come from within Council or be a member of the public.

3. Policy

- 3.1 Council is committed to fulfilling the aims and objectives of the PID Act and supporting the Independent Broad-based Anti-Corruption Commission ('IBAC') in fulfilling its purpose under the *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)*.
- 3.2 Council recognises the importance of integrity, transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal improper conduct or detrimental action taken in reprisal against such a disclosure of improper conduct.

EXAMPLES OF IMPROPER CONDUCT

- 3.3 A disclosure can be made against any Council representative, including any Councillor, the CEO or any Council staff. Improper conduct is broadly defined and can include any situation captured under Council's Fraud and Corruption Control Policy or related policy. Specific examples of improper conduct can include:
 - a) A criminal offence;
 - b) Serious professional misconduct;
 - c) Dishonest performance of public functions;
 - d) An intentional or reckless breach of public trust;
 - e) An intentional or reckless misuse of information or material acquired in the course of the professional functions;
 - f) A substantial misuse of public resources;
 - g) A substantial risk to the health or safety of one or more persons or the environment.

PROTECTIONS AND CONFIDENTIALITY

- 3.4 Council will take all reasonable steps to protect the identity of any person making a public interest disclosure where the disclosure is made in accordance with the Act.
- 3.5 Council will ensure that any person making a disclosure under this Policy is afforded all reasonable legal and employment protections available.
- 3.6 Under the PID Act, a discloser:
- a) cannot be fired, disciplined or bullied from their place of employment or study for making a public interest disclosure
 - b) is not subject to any civil or criminal liability for making a public interest disclosure;
 - c) is not committing an offence against any Act that imposes obligations of confidentiality or any other restriction on the disclosure of information;
 - d) is not breaching any other obligation (made by oath, rule of law or practice) requiring that person to maintain confidentiality or otherwise restrict confidentiality; and
 - e) cannot be held liable for defamation in relation to information included in a public interest disclosure.
- 3.7 The protections provided above do not apply if a discloser knowingly provides false or misleading information or if the subject of a disclosure is knowingly false. Legitimate management action in accordance with Council policy may also be taken against a disclosure.
- 3.8 The identity and content of any assessable disclosure must remain confidential. There are a number of exceptions to this requirement of confidentiality under sections 52-54 of the PID Act.

PROCESS FOR MAKING A DISCLOSURE

- 3.9 A public interest disclosure may be made verbally or in writing (although there may be agency-specific requirements for valid disclosure, please see clauses 3.15 and 3.16 below) . Notwithstanding any protection and confidentiality clauses as provided for in this Policy, verbal disclosures must be made in private.
- 3.10 As the person (or people) making a verbal disclosure, you must reasonably believe that the disclosure is being made only between yourself and the person to whom you are making the disclosure. Council's commitment to ensuring that such a disclosure is being made privately and securely may necessitate any discloser to make their disclosure in writing.
- 3.11 If the disclosure relates to a Councillor, the disclosure must be made to IBAC or the Ombudsman.

- 3.12 If the disclosure relates to council's Chief Executive Officer ('CEO'), the disclosure may be made to council's Public Interest Disclosure Coordinator or to IBAC.
- 3.13 A disclosure relating to a member of council staff or agent must be made to council's Public Interest Disclosure Coordinator.
- 3.14 Any person (or people) making a public interest disclosure may elect to remain anonymous.
- 3.15 A public interest disclosure made to the Ombudsman can be submitted in person, by telephone, by writing sent my post or hand delivered, by email or via the Ombudsman's online complaint form. For more information, please visit the Ombudsman's website.¹
- 3.16 A public interest disclosure made to IBAC must be in writing, unless IBAC determines that exceptional circumstances apply. To make a public interest disclosure to IBAC, a person must complete the form on BAC's website.²
- 3.17 Once the IBAC receives a public interest disclosure or receives a referral, the IBAC must a) dismiss the complaint if there are grounds to do so, b) investigate the complaint or notification or c) refer the complaint or notification to another agency for determination.

4. Roles and Responsibilities

COUNCILLORS AND MEMBERS OF COUNCIL COMMITTEES

- 4.1 All elected Councillors and appointed members of any Council Delegated Committee or Community Reference Group (howsoever named) are strongly encouraged to report improper conduct and detrimental action.

CEO

- 4.2 If the CEO incorrectly receives a disclosure about a Councillor and considers it may be a public interest disclosure, they should refer it to IBAC within 28 days of receipt under the 'no wrong door' principle, which ensures the protections in the Act apply to the discloser if they mistakenly notify the wrong person of their disclosure.
- 4.3 The CEO must refer all disclosures to the Public Interest Disclosure Coordinator for assessment, unless the disclosure relates to the Public Interest Disclosure Coordinator, in which case the disclosure must be forwarded to the Public Interest Disclosure Coordinator's manager.

MANAGERS

¹ [Public Interest Disclosure Policy | Victorian Ombudsman](#)

² [Information sheet - Reporting corruption and misconduct | IBAC](#)

- 4.4 Managers must refer all disclosures to the Public Interest Disclosure Coordinator for assessment, unless the disclosure relates to the Public Interest Disclosure Coordinator, in which case the disclosure must be forwarded to the Public Interest Disclosure Coordinator's manager.

PUBLIC INTEREST DISCLOSURE COORDINATOR

- 4.5 The Public Interest Disclosure Coordinator must assess the disclosure to determine if it meets the requirements to attract the protections of the Act. If the disclosure is assessed as a public interest disclosure, the Public Interest Disclosure Coordinator must assist the CEO to notify IBAC.
- 4.6 If the Public Interest Disclosure Coordinator receives a disclosure about a Councillor, they should refer it to IBAC within 28 days of receipt.
- 4.7 The Public Interest Disclosure Coordinator must ensure the confidentiality of all disclosures and the person making the disclosure.
- 4.8 The Public Interest Disclosure Co-ordinator is also responsible for the provision of welfare services for any person making a public interest disclosure and for the welfare needs of anyone making a disclosure.

GOVERNANCE AND REPORTING ADVISOR

- 4.9 The Governance and Reporting Advisor is responsible for maintaining this Policy and providing training and advice to Councillors, staff and agents, as necessary.

5. Breaches

- 5.1 It is an offence under the PID Act to disclose information connected with an assessable disclosure made in accordance with the Act, including the identity of the discloser and the content of the assessable disclosure. The penalties for breaching confidentiality obligations include financial penalties and imprisonment. These penalties will be in addition to any internal penalties captured by the relevant Code of Conduct or internal policy.
- 5.2 Councillors, staff and Council agents must be aware of Council's intention to take whatever lawful action necessary to ensure compliance with the PID Act.

6. Community Consultation

- 6.1 This Policy is subject to a period of community consultation in accordance with Council's Community Engagement Policy, and so members of the community will be invited to provide feedback for Council consideration prior to formal adoption.

7. Human Rights

- 7.1 In adopting this Policy Council has considered and complies with the relevant human rights contained in the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

8. Gender Impact Assessment

- 8.1 This Policy has taken into account and applied Council's Gender Impact Assessment Template, and satisfies the provisions established in the *Gender Equality Act 2020* (Vic).

9. Monitoring and evaluation

- 9.1 This Policy will be formally considered by Council's Audit and Risk Committee Meeting once every three years and reviewed by Council's Governance and Reporting Advisor in accordance with the Date for Review, or whenever required as a result of legislative change.

10. Definitions

- 10.1 **Assessable disclosure** is defined in section 3 of the PID Act and includes:

- a) any disclosure that must be notified to the IBAC or the Ombudsman as the disclosure relates to a Councillor; or,
- b) If, any only if, the public interest disclosure shows or tends to show a person, public officer or public body has engaged in or proposes to engage in improper conduct; or,
- c) Council, or a Council officer has taken or proposes to take detrimental action against a person.

10.2 Corrupt conduct is defined in section 4 of the IBAC Act, and is reflected in Council's Fraud and Corruption Control Policy.

10.3 Detrimental action is defined in section 3 of the PID Act and includes any action causing injury, loss or damage, intimidation or harassment or discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

10.4 Improper conduct is defined in section 4 of the PID Act as corrupt conduct, conduct of any personal that adversely affects the honest performance by a public officer or public body as their professional functions or conduct of a public officer or public body engaged in by the public officer or public body in their capacity as a public officer (examples of improper conduct are provided in 3.3)

11. References and Related Policies

Council Policy

Councillor Code of Conduct

Disciplinary Policy

Fraud and Corruption Control Policy

Staff Code of Conduct

Legislation

Independent Broad-based Anti-Corruption Commission Act 2011 (Vic)

Local Government Act 2020 (Vic)

Ombudsman Act 1973 (Vic)

Public Interest Disclosure Act 2012 (Vic)

Victorian Inspectorate Act 2011 (Vic)

Guidelines

IBAC Guidelines for making and handling public interest disclosures

IBAC Guidelines for public interest disclosure welfare management

12. Review

Version History		
Version Number	Date of change	Reasons for change
1.0	August 2019	Creation of policy
2.0	March 2023	Standard review to reflect IBAC Guidelines
3.0	July 2023	Expansion of definitions