



Public Interest Disclosure Policy

Approved by	Council
First Approved	19 August 2019 CNC36/19-20
Review Frequency	Annually
Last Reviewed	2019
Next Review	2020
Document Number	POL201935838
File	18.63.1.1
Responsible Officer	Chief Executive Officer
Policies Related	Fraud and Corruption Prevention Policy Code of Conduct for Council Employees Code of Conduct for Council Members Internal Review of Council Decisions Policy
Applicable Legislation	Public Interest Disclosure Act 2018 Criminal Law Consolidation Act 1935 Local Government Act 1999 Local Government (General) Regulations 2013 Independent Commissioner Against Corruption Act 2012 Ombudsman Act 1972

1. Introduction

- 1.1 Council is committed to ensuring Elected Members and employees maintain high levels of ethical behaviour, transparency, accountability and integrity.
- 1.2 Consequently, the Council is committed to fulfilling its responsibilities under the *Public Interest Disclosure Act 2018* (Act) and encourages the making of disclosures that reveal public interest information.
- 1.3 Where a disclosure relates to corruption, or serious or systemic misconduct or maladministration in public administration the disclosure will be directly referred to the Office of Public Integrity (OPI) in accordance with the requirements with the *Independent Commissioner Against Corruption Act 2012* (ICAC Act).

2. Purpose

- 2.1 The purpose of this Policy is to:
 - 2.1.1 encourage and facilitate the disclosure of public interest information regarding:
 - substantial risks to public health or safety or to the environment in the locality of the Town of Walkerville (ToW).
 - corruption, misconduct and maladministration occurring in the organisation.
 - 2.1.2 provide the process by which disclosures may be made by an Informant.

- 2.1.3 specify how appropriate disclosures will be managed and investigated.
- 2.1.4 provide appropriate protection and confidentiality to those making disclosures of public interest information in accordance with the Act.

2.2 The Council will review and update this Policy each year as part of its annual policy review.

3. **Scope**

This Policy applies to appropriate disclosures of public interest information that are made in accordance with the Act.

4. **Definitions**

4.1 **Appropriate disclosure** means a disclosure made to the designated Responsible Officer or a relevant authority,

4.2 **Commissioner** means any person holding or acting in the office of the Independent Commissioner Against Corruption.

4.3 **Corruption in public administration** is defined in section 5(1) of the ICAC Act and means:

4.3.1 an offence against Part 7 Division 4 (Offences relating to public officers) of the *Criminal Law Consolidation Act 1935*, which includes the following offences:

- bribery or corruption of public officers;
- threats or reprisals against public officers;
- abuse of public office;
- demanding or requiring a benefit on basis of public office;
- offences relating to the appointment to public office; or

4.3.2 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

4.3.3 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

4.3.4 any of the following in relation to an offence referred to in a preceding paragraph:

- aiding, abetting, counselling or procuring the commission of the offence;
- inducing, whether by threats or promises or otherwise, the commission of the offence;
- being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
- conspiring with others to effect the commission of the offence;

4.4 **Detriment** includes:

- injury, harm (including psychological harm), damage (including damage to reputation) or loss;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to a person's employment; and / or
- threats of reprisal (which may be express or implied, and / or conditional or unconditional).

4.5 **Disclosure** means an appropriate disclosure of public interest information made by an Informant to a Relevant Authority.

4.5.1 A person makes an ***appropriate disclosure of environmental and health information*** if the person:

- believes on reasonable grounds that the information is true; or
- 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.

4.5.2 A person makes an ***appropriate disclosure of public administration information*** if the person:

- is a public officer;
- reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration.

4.6 **Employee** includes employees of ToW whether fulltime, part time, casual or contract employment; employees of a subsidiary of Council and members of a Council committee.

4.7 **Environmental and health information** means information that raises a potential issue of substantial risk to the environment or to the health and safety of the public generally or a significant section of the public; whether occurring before the commencement of the Act or not.

4.8 **Fraud** is an intentional dishonest act or omission done with the purpose of deceiving.

4.9 **Informant** means any person who makes an appropriate disclosure of public interest information with regard to ToW.

4.10 **Maladministration in public office** is defined in section 5(4) of the ICAC Act and means:

4.10.1 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

4.10.2 conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and

4.10.3 includes conduct resulting from impropriety, incompetence or negligence; and

- 4.10.4 is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.
- 4.11 **Misconduct in public administration** is defined in section 5(3) of the ICAC Act and means:
- 4.11.1 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
- 4.11.2 other misconduct of a public officer while acting in his or her capacity as a public officer.
- 4.12 **Natural justice** means the administrative process that ensures a person is given a fair, equitable and reasonable opportunity to respond to, or comment on, an allegation made before any determination is made as to the veracity, or otherwise of that allegation.
- 4.13 **OPI** means the Office of Public Integrity as established under the ICAC Act.
- 4.14 **Public administration information** means information that raises a potential issue of corruption, misconduct or maladministration in public administration.
- 4.15 **Public interest information** is defined in the Act as:
- 4.15.1 environmental and health information.
- 4.15.2 public administration information.
- 4.16 **Public Officer** is defined in the ICAC Act and includes:
- 4.16.1 An Elected Member
- 4.16.2 An employee of ToW
- 4.16.3 A person performing contract work for ToW.
- 4.17 **Relevant Authority** is defined in section 5(5) of the Act.
- 4.17.1 Where the appropriate disclosure relates to a public officer the Relevant Authority is the Responsible Officer.
- 4.17.2 Where the appropriate disclosure relates to a location within the Town of Walkerville an Elected Member or employee are also considered to be relevant authorities.
- 4.18 **Responsible Officer** is a person designated by the Chief Executive Officer (CEO) to receive and act upon appropriate disclosures forwarded from Informants. For the purposes of this Policy the CEO designates the persons occupying the positions of Group Manager Customer Experience and the Executive Assistant to the Mayor and CEO.
- 4.19 **Victimisation** occurs when a person causes detriment to another on the ground, or substantially on the ground, that the other person (or a third person) has made or intends to make an appropriate disclosure of public interest information.

5 Policy Statement

5.1 Appropriate Disclosures

- 5.1.1 If an Informant makes an appropriate disclosure of environmental and health information or public administration information the Informant is not subject to any liability as a result of that disclosure.
- 5.1.1 An Informant makes an appropriate disclosure of environmental and health information if the disclosure is made to a Relevant Authority and the Informant:
- believes on reasonable grounds that the information is true.
 - 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 disclosure.
- 5.1.2 A public officer makes an appropriate disclosure of public interest information if the disclosure is made to a Responsible Officer and the public officer reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration.
- 5.1.3 In the case of an Informant making an appropriate disclosure about (or relating to) a Responsible Officer, the information must be reported directly to another person appointed as a Responsible Officer or failing this to a Relevant Authority external to the ToW such as the OPI.
- 5.1.4 Council will ensure that an appropriate framework exists to allow employees, members of the public and Elected Members to make appropriate disclosures to the Relevant Authority and to ensure that the Informant receives protection in accordance with the provisions of the Act.
- 5.1.5 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.
- 5.1.6 if there is a reasonable suspicion of corruption, or of maladministration or misconduct that is serious or systemic, it must be reported to the OPI in accordance with the ICAC Act.

5.2 Responding to Appropriate Disclosures

- 5.2.1 The Responsible Officer will receive appropriate disclosures of public interest information for the ToW for the purposes of the Act and will ensure compliance with the Act and this Policy.
- 5.2.2 ToW is committed to investigating all appropriate disclosures in a confidential manner and if required, taking appropriate action.
- 5.2.3 Acknowledgement of the receipt of an appropriate disclosure will be made to the Informant within three (3) business days.
- 5.2.4 The Responsible Officer will make appropriate recommendations to the CEO in relation to dealing with disclosures.
- 5.2.5 The Responsible Officer must provide OPI with information relating to the disclosure in accordance with the Guidelines issued by the Commissioner.

5.3 Confidentiality of Informant

- 5.3.1 The identity of an Informant who appropriately discloses public interest information will be kept confidential, unless the Informant has given written consent to divulge their identity, or so far as may be necessary to ensure that the matters to which the information relates are properly investigated.
- 5.3.2 The identity of an Informant may be released to the OPI on receipt of an official request from the OPI in accordance with the Guidelines issued by the Commissioner.
- 5.3.3 Council will take such action as required and appropriate to protect the Informant from victimisation and ensure that they are not subjected to intimidation, reprisals or discrimination.

5.4 Protection for the Informant

- 5.4.1 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 Act
 - a prohibition on disclosure of his / her identity as provided for in section 8 of the 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 Act.
- 5.4.2 The Act does not provide any protection to people who knowingly make disclosures that are false or misleading in a material particular (whether by reason of the inclusion or omission of a particular).

5.5 Deliberate False Disclosures and Accusations

- 5.5.1 In situations where a disclosure of public interest information is found to be false or misleading in a particular matter, whether by reason of the inclusion or omission of a particular matter the Informant is guilty of an offence.
- The maximum penalty being \$20 000 or imprisonment for two (2) years.
- 5.5.2 An Informant who makes a false or misleading disclosure of public interest information is not protected from liability.

5.6 Information to Elected Body

- 5.6.1 As a matter of discretion, the CEO may inform the elected body, on a confidential basis, of the fact that an investigation of a disclosure took place and the outcome of the investigation.
- 5.6.2 Factors the CEO will take into account in determining whether to inform the elected body of an investigation and the level of detail provided in doing so are to include:
- if known, the identity of the Informant, and whether the Informant has consented to his / her identity being divulged.
 - if applicable, the identity of any person the subject of the disclosure.
 - the impact (if any) of the investigation upon the Council's achievement of its objectives under its Strategic Plan and / or policies.

- the impact of any action taken to finalise the matter upon the Council's operations and / or budget.

5.6.3 In the event the disclosure and / or any subsequent investigation process is confined to issues that impact only upon employees, the CEO will not inform the elected body of the fact of the disclosure and / or investigation since these matters fall outside the roles and responsibilities of elected members under the *Local Government Act 1999*.

5.7 Awareness

5.7.1 The ability to make appropriate disclosures pursuant to the Act will be communicated via the Council's website, intranet, social media and the employee induction process.

5.7.2 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 Schedule of Fees and Charges.

6 Procedure

6.1 Process for Appropriate Disclosures

6.1.1 Appropriate disclosures should be made to the Responsible Officer in writing, by email or by telephone.

- Written disclosures should be addressed:

Confidential

Public Interest Disclosure Responsible Officer

Town of Walkerville

PO Box 55

WALKERVILLE SA 5081

- Email disclosures may be sent to disclosures@walkerville.sa.gov.au.
- Disclosures may be made, in person, to the Responsible Officer by telephoning (08) 8342 7140.

6.1.2 The details of all appropriate disclosures received will be noted in a single purpose Register, such register will be kept on a confidential basis which may be accessed by the Responsible Officers.

6.2 Investigations

6.2.1 Upon receipt of a disclosure, the Responsible Officer will undertake a preliminary assessment to determine:

- if the content of the disclosure suggests there is an imminent risk of serious physical injury or death to any person or the public generally.
- if the subject of the disclosure involves corruption in public administration, or serious or systemic misconduct or maladministration in public administration.
- if the information disclosed justifies further action, including a decision as to whether the disclosure:

- is frivolous, vexatious or trivial (in which case, no further action will be taken in relation to the disclosure);
 - involves a matter which has already been investigated or acted upon by a Relevant Authority and there is no reason to re-examine the matter or there is other good reason why no action should be taken in respect of the matter (in which case, no further action will be taken in relation to the disclosure).
- 6.2.2 Informants who make an appropriate disclosure anonymously must provide sufficient detail and evidence for the matter to be investigated. If the Responsible Officer determines that there is not sufficient evidence to facilitate an appropriate investigation, then the allegations will not be investigated.
- 6.2.3 Appropriate disclosures will be investigated by the Responsible Officer unless the disclosure relates to the Responsible Officer in which case the disclosure will be investigated by another Responsible Officer or an external agency such as the OPI.
- 6.2.4 All investigations will be conducted in accordance with the Act.
- 6.2.5 The Responsible Officer will notify the Informant, within 30 business days, that an assessment of the disclosure has been made, or that the investigation is ongoing, and will advise:
- of the action being taken in relation to the information provided.
 - if no action is to be taken in relation to the information, the reasons why no action will be taken in relation to the action.

It is at the discretion of the Informant as to whether these details are provided.

- 6.2.6 If the Informant is dissatisfied with the Responsible Officer's determination, it is open to him / her to report the disclosure to another Relevant Authority external to the Council.
- 6.2.7 All information will be kept by the Responsible Officer in a securely stored file. All information gathered will be kept confidential unless disclosure is required at law.

6.3 **Reporting**

- 6.3.1 If the findings of an investigation confirm the allegations made in a disclosure of environmental and health information, that finding will be reported to the most appropriate Relevant Authority to mitigate the risk (i.e. South Australia Police, SafeWork SA, SA Ambulance, Environment Protection Authority).
- 6.3.2 If the findings of an investigation confirm the allegations made in a disclosure of public interest information the findings will be reported by the Responsible Officer to the OPI and to the CEO.
- 6.3.3 For the avoidance of doubt, the Responsible Officer's reporting obligations to the OPI will not detract from their obligations to investigate in accordance with the Act and pursuant to the provisions of this Policy.
- 6.3.4 On conclusion of an investigation and in accordance with the principles of natural justice, the Responsible Officer will advise the person about whom the disclosure of public interest information relates, of the disclosure and the investigation, and they will be given the opportunity to make a submission to be taken into account by the Responsible Officer before the investigation report is finalised.
- If the disclosure relates to an employee they may be subject to further investigation by an external oversight body and / or disciplinary action.

- If the disclosure relates to an Elected Member, they may be subject to further investigation by an external oversight body, an enquiry agency or action taken in accordance with the *Code of Conduct for Council Members*.
- 6.3.5 Any report prepared will not disclose particulars that will or are likely to lead to the identification of the Informant, unless the circumstances in clause 5.2 of this Procedure apply.
- 6.3.6 The Responsible Officer's report must be provided to the CEO to action as he / she considers appropriate.
- 6.3.7 The CEO may, at his / her discretion, inform the elected body, on a confidential basis, about a disclosure in accordance with clause 5.6 of this Policy.