Whistleblowers Protection Operating Guideline

PURPOSE

This operating guideline is designed to ensure the City of Adelaide meets its obligations under the Whistleblowers Protection Act 1993 (the Act), to facilitate disclosures of public interest information, and provide protection for those who make those disclosures.

OPERATION

Where a Public Officer has formed a reasonable suspicion of corruption, or serious or systemic maladministration or misconduct, they MUST make a report to the Office of Public Integrity (the OPI).

However, where a Public Officer is aware of an issue which does not fall within the above definition, mechanisms under the Whistleblowers Protection Act 1993 (the Act) can be utilised. Alternatively, a Public Officer is also able to raise these issues through normal management channels, or through the Ombudsman.

Any person (an Informant) is able to make an appropriate disclosure of public interest information under the Act. Where the disclosure is made to a Responsible Officer, or other employee or Elected Member of the Council, the person to whom the disclosure is made will ensure:

- The identity of the person who made the disclosure (the Informant) is not, without the consent of that person, divulged to any other person except so far as may be necessary to ensure the matters are properly investigated by a Responsible Officer;
- An appropriate investigation is conducted into the matter by a Responsible Officer;
- Where the investigation results in the Responsible Officer forming a reasonable suspicion of corruption, or serious or systemic misconduct or maladministration a report will be made to the OPI;
- Wherever practicable and in accordance with the law, the Informant will be advised of the outcome of the investigation.

A Responsible Officer may determine that an investigation may be conducted by an independent party if appropriate, however, in doing so, will not disclose the identity of the Informant without the consent of the Informant.

Informants have obligations under Section 6 of the Act to assist with an investigation of the matters by the police or any other official investigating authority (except an
investigation by an authority or body to which the public interest information relates). Failure to do so, without reasonable excuse, forfeits the protection of the Act.

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

Except for the identity of the Informant, the Act does not expressly require any other information relating to a public interest disclosure (i.e. the nature of the allegation) to be maintained as confidential. However, such information will be treated confidentially wherever possible and will not be reported to Council, any Committee, or internal group, to avoid any possibility of the identity of the Informant being ascertained.

The person/s the subject of the appropriate disclosure will be afforded procedural fairness throughout the course of any investigation.

Any person wishing to make a disclosure under the Act can do so by the following means:

(a) Written disclosures can be made addressed to the Senior Consultant Risk & Audit at the following post office box:

GPO Box 2586
Adelaide SA 5001

This is a private post office box which is operated solely for the purposes of the Act and is cleared on a fortnightly basis.

(b) Disclosures can be made to any of the following Responsible Officers in person, over the telephone or in writing:

Chief Executive Officer 8203 7695
Director Services 8203 7141
Associate Director People & Governance 8203 7256

The Act provides immunity from criminal or civil liability for Informants, and makes it unlawful to victimise any person who has made or intends to make an appropriate disclosure. Accordingly, the City of Adelaide will take action as appropriate to protect Informants from victimisation. Furthermore, in the event that an Informant is victimised, the City of Adelaide will ensure that person is aware of options for support. The Informant may take legal action, or may lodge a complaint under the Equal Opportunity Act 1984.
The Act does not provide protection to people who knowingly make false claims or are reckless about whether their claims are true. People who knowingly make false claims are committing an offence and may be liable for prosecution under the Act.

Other Responsible Officers will advise the Senior Consultant Risk & Audit of the disclosure for the purposes of retaining a record in a confidential file. This advice needs to include that an appropriate disclosure has been received and a general overview of the matter. No personal details or specifics need to be provided.

OTHER USEFUL DOCUMENTS

- Corporate Complaint Handling Operating Guideline
- Directions & Guidelines for Public Officers issued by the Independent Commissioner Against Corruption

relevant legislation

- Whistleblowers Protection Act 1993
- Independent Commissioner Against Corruption Act 2012

GLOSSARY

Throughout this document, the below terms have been used and are defined as:

Appropriate Disclosure: A person makes an appropriate disclosure of public interest information if, and only if—

(a) the person—
   (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

(b) the disclosure is made to a person to whom it is, in the circumstances of the case, reasonable and appropriate to make the disclosure, whether that be a Responsible Officer or another person.

Informant: A person who makes an appropriate disclosure of public interest information under the Whistleblowers Protection Act 1993

Public Interest Information: That an adult person (whether or not a public officer) has been involved in:
- An illegal activity; or
- In an irregular and unauthorised use of public money; or
- Substantial mismanagement of public resources; or
- Conduct that causes a substantial risk to public health or safety or to the environment.

Public Officer: as defined by the Independent Commissioner Against Corruption Act 2012
**Responsible Officer:** is an employee who has been appointed by the CEO, for the purpose of receiving a disclosure of public interest information under the Act. Appointments of Responsible Officers are made based on the Responsible Officer having the qualifications/experience prescribed by Section 302B of the Local Government Act and associated Regulations.

**ADMINISTRATIVE**

As part of Council’s commitment to deliver the City of Adelaide Strategic Plan, services to the community and the provision of transparent information, all policy documents are reviewed for currency at least annually as part of the review of delegations. Those requiring detailed consideration are flagged in the current forward Council Policy Program.

**review history:**

*ACC2017/124678: Adopted by Council on 23 May 2017, decision ID#23*

*Minor additions made*

**contact:**

For further information contact the People & Governance Program (Risk & Audit Team)

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Reporting Mechanisms

If you’ve come across an issue involving unacceptable conduct of a Public Officer, or a lack of controls which may allow for unacceptable conduct being able to occur, the below process map is designed to guide you in how to report it.

Does the issue involve: Corruption; or Maladministration; or Misconduct?

Yes No

Public Officers are encouraged to report the issue through normal management channels. Members of the public may report to CoA management, Elected Members, or the Ombudsman.

Does the issue involve a Public Officer and Corruption?

Yes

Public Officers MUST make a report to the OPI. Members of the public may make a complaint to the OPI.

No

Have you formed a reasonable suspicion that the act has occurred?

Yes

Public Officers are encouraged to report the issue through normal management channels.

No

The issue does need to be reported. However there is no obligation to report to OPI. It may be reported to the Ombudsman.

Do you believe reporting the issue would be considered an appropriate disclosure?

Yes

You may report the matter to a Responsible Officer and make use of the Whistleblowers provisions.

No