

PUBLIC INTEREST DISCLOSURE OPERATING GUIDELINE

30 July 2019

Legislative

PARENT DOCUMENT: *Public Interest Disclosure Act 2018*

PURPOSE

This Operating Guideline has been prepared in accordance with the requirements of section 12(4) and (5) of the *Public Interest Disclosure Act 2018* (PID Act). This guideline provides information for a person who wants to make an appropriate disclosure of environment and health information or public administration information to Council, or to another Relevant Authority. Furthermore, the guideline provides guidance for Elected Members, officers and employees of Council in dealing with disclosures.

The Principal Officers' intent of this guideline and the implementation and operation of the PID Act is to encourage and facilitate further transparency and accountability in City of Adelaide's administrative and management practices and to encourage the disclosure about information of interest to the public.

There are two types of public interest information –

- a) Environment and health information which means 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; and
- b) Public administration information which means information that raises a potential issue of corruption, misconduct or maladministration in public administration.

OPERATION

Application of this document

City of Adelaide is committed to:

- The protection of informants who make public interest disclosures;
- The genuine and efficient consideration of public interest information;
- Referring, as necessary, appropriate Disclosures to another [Relevant Authority](#);
- Where the Disclosure relates to Corruption, or serious or systemic Misconduct or Maladministration in public administration, reporting the Disclosure direct to the Office of Public Integrity (OPI) in accordance with the OPI Guidelines and the [Independent Commissioner Against Corruption Act 2012](#) (ICAC Act);
- Facilitating the investigation (where necessary) of appropriate Disclosures in a manner which promotes fair and objective treatment of those involved; and
- Rectifying any substantiated wrongdoing to the extent practicable in all circumstances.

This Operating Guideline applies to appropriate disclosures of public interest information that are made by members of the public, or by public officers; and to the handling of appropriate disclosures received by public officers. Note, public officers include Council (Elected) Members, Officers and employees of the Council.

Responsible Officer

Pursuant to section 12 (1) the Chief Executive Officer must ensure that 1 or more officers or employees are trained and designated responsible offices; The Responsible Officers below have been trained by OPI to assist members of the public and public officers in making disclosures and administering other parts of the PID Act. Any person wishing to make a disclosure under the PID Act can do so confidentially to any of the following **Responsible Officers** in person, over the telephone or in writing.

Associate Director, Customer & People	8203 7156	v.godden@cityofadelaide.com.au
Manager, Governance	8203 7442	r.deco@cityofadelaide.com.au
Senior Consultant, Risk & Audit	8203 7168	j.dillon@cityofadelaide.com.au
Governance Advisor	8203 7144	f.galbraith@cityofadelaide.com.au

Role and Responsibilities

Role of Responsible Officers:

- Receive appropriate disclosures from members of the public, or public officers, and ensure compliance with the PID Act in handling the information, including provisions to protect the informant and meeting legislative timelines (defined in the CoA Work Instruction);
- Make recommendations to the CEO in relation to dealing with disclosures;
- Provide advice to Council Members, employees or officers in relation to receiving appropriate disclosures and their compliance with the PID Act;
- Monitoring public interest information and accepting disclosures securely and confidentially over the phone or email and storing information in a TRIM location restricted to Responsible Officers;
- Complete Responsible Officer training delivered by the Office of Public Integrity.

Role of the Principal Officer (CEO)

- Ensuring that one or more appropriately qualified officers or employees of the Council are designated as responsible officers of the Council for the purposes of the PID Act;
- Ensuring that the name and contact details of each responsible officer of the Council are made available to officers and employees of the Council;
- As a matter of discretion, inform Elected Members on a confidential basis of the fact that an investigation of a disclosure has taken place and the outcome of that investigation. Factors that the CEO can take into account in determining whether to inform Elected Members, and the level of detail provided, include:
 - whether the informant has consented to their identity being divulged
 - if applicable, the identity of a person the subject of the disclosure;
 - any impact of the investigation upon the Council's achievement of its objectives under its Strategic Plan or policies; and
 - the impact of any action taken to finalise the matter on Council's operations or budget.
- Where a disclosure or subsequent investigation process is related to Council employees and human resource processes, Elected Members will not be informed of the disclosure or investigation as these matters fall outside the roles and responsibilities of Elected Members under the *Local Government Act 1999*.

Role of Public Officers - Elected Members, employees and officers

- Always handle information of this nature confidentially – contact a Responsible Officer to provide guidance to the recipient of a disclosure in the first instance;
- Comply with this Operating Guideline when dealing with any disclosure that may be received from a member of the public;
- Immediately refer any disclosure of environmental and health information to the Responsible Officer, in accordance with the requirement for confidentiality of the informants' identity;
- Upon receipt of a disclosure from a public officer, the Responsible Officer will deal with the disclosure in accordance with this Operating Guideline.

See the CoA Work Instruction for the process to follow if a Public Officer receives a disclosure.

Protections of the Informant

An informant who makes an appropriate disclosure is protected by several mechanisms:

- A prohibition on disclosure of their identity – the identity of an informant will remain confidential (see Informant Confidentiality below);
- Immunity from criminal or civil liability;
- A prohibition against victimisation; and
- A prohibition against the hindering, obstructing or being prevented from making an appropriate disclosure.

If a public officer (Elected Member, employee or officer) commits an act against these provisions, disciplinary action may be undertaken.

Protection is not provided to people who knowingly make false or misleading disclosures and the offence is prosecutable.

Informant Confidentiality

The informant may not consent to their identity being disclosed as a matter of handling the disclosure. The recipient of a disclosure may only divulge the identity of an informant in certain circumstances and to the extent required, only 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; or
- The recipient has been issued with a notice from the Office for Public Integrity (OPI) advising that the identity of the informant is required by the OPI; or
- The identity of the informant is required for the matter to be properly investigated (or where the informant wants to remain anonymous, sufficient evidence must be supplied).

Disclosure type

For an informant to afford the protections of the PID Act, an '**appropriate disclosure**' of public interest information must be made, of which there are two types:

Environment and 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.

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; and
- the disclosure is made to a Relevant Authority (e.g. Council).

Who can receive this type of information?

Elected Members, Council employees and Officers can receive a disclosure relating to environmental and health information.

Who can disclose this type of information?

Any member of the community can make a disclosure of environmental and health information pertaining to a location within the Council area.

Public administration information - information that raises a potential issue of corruption, misconduct or maladministration in public administration.

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

- the person is a public officer; and
- reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration; and
- the disclosure is made to a Relevant Authority (e.g. Council).

Who can receive this type of information?

The person responsible for the supervision of the employee that the information relates, or a Responsible Officer can receive a disclosure relating to public administration information.

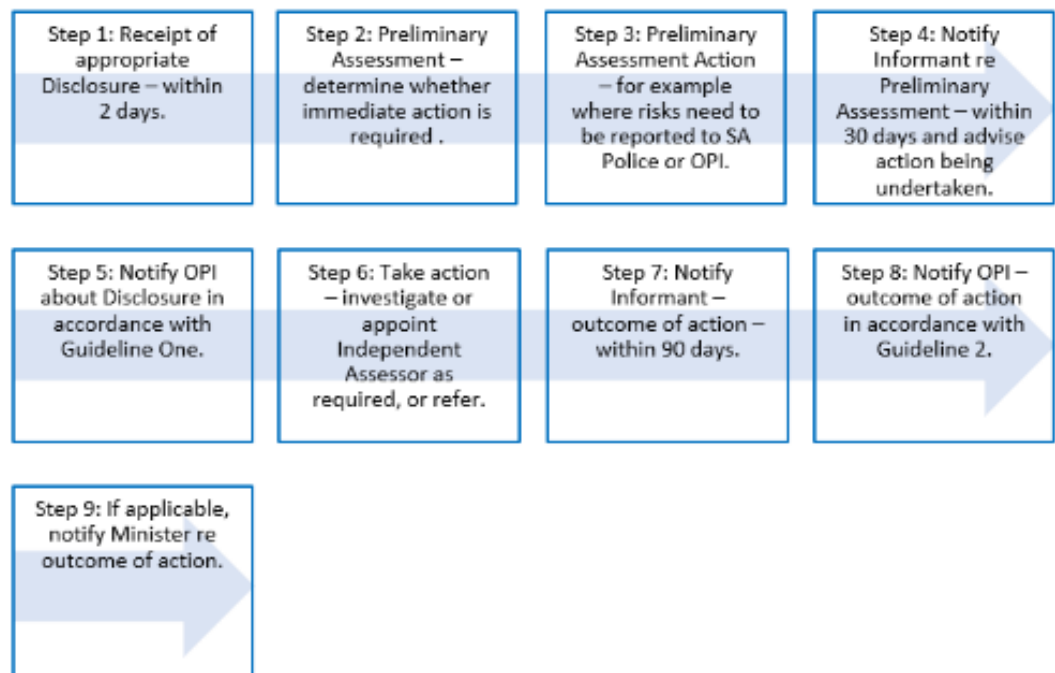
Who can disclose this type of information?

Only a public officer is able to disclose information about public administration to afford the protections of the Act.

Disclosure Process

When a disclosure is received, there are several matters that need to be considered when handling the disclosure to ensure the informant is protected by the provisions of the PID Act. To ensure compliance with the PID Act, the disclosure process is outlined in Table 1 and detailed in the CoA Work Instruction.

Table 1. Relevant Authority Disclosure Process



Fraud and Corruption

If a disclosure contains allegations of Corruption, the Informant should report the matter to the OPI. If the disclosure is related to Fraud, the Informant may report the matter to SAPOL. In both circumstances, the Responsible Officer is able to receive a report and determine the next step in the reporting or referral process.

Other Reporting Options

The implementation of the PID Act does not change the ability for a public officer or member of the community to report directly to another agency or Relevant Authority under the PID Act such as:

- the Office of Public Integrity (OPI) – where information relates to corruption, maladministration or misconduct;
- the Independent Commissioner Against Corruption (ICAC) – if the matter involves corruption or serious or systemic misconduct or maladministration in public administration, the recipient must comply with separate reporting obligations under the ICAC Act;
- the Ombudsman – complaints about local government process, action or decision;
- South Australian Police (SAPOL) – where information relates to fraud or corruption;

In certain circumstances, a person can be directed to another Relevant Authority (defined under section 5(5) of the PID Act) to handle the information. These Relevant Authorities could include:

- the Commissioner for Public Sector Employment – where information relates to a public sector agency or public sector employee (in addition to or instead of a Responsible Officer); or
- the Environment Protection Authority (EPA) – where the information relates to a risk to the environment.

OTHER USEFUL DOCUMENTS

Related documents

- Public Interest Disclosure Guidelines, OPI, 1 July 2019
- Code of Conduct for Council Employees
- Code of Conduct for Council Members
- Internal Review of Council Decisions Procedure

Relevant legislation

- Public Interest Disclosure Act 2018 and Public Interest Disclosure Regulations 2019
 - Independent Commissioner Against Corruption Act 2012
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GLOSSARY

Throughout this document, the below terms have been used (and are consistent with [PID Act](#) or [ICAC Act](#) definitions) and are defined as:

Disclosure: means an appropriate disclosure of public interest information made by an Informant to a Relevant Authority in accordance with the PID Act.

Relevant Authority: means the person or entity that receives an appropriate disclosure of public interest information in accordance with the PID Act.

Informant: means a person who makes an appropriate disclosure of public interest information to a Relevant Authority.

Public Officer: means a Council Member, an employee or officer of the Council, in accordance with section 4, Schedule 1 of the ICAC Act. An *officer* is defined under the [Corporations Act 2001](#).

Corruption: the ICAC Act uses the term to describe a raft of criminal offences including bribery, theft and abuse of public office. If a public officer commits a criminal offence whilst acting as a public officer, he or she may have engaged in corruption. If it is not a crime, it is not corruption.

Misconduct: means inappropriate behaviour including behaviour that might breach the public officer's code of conduct in a way that could lead to disciplinary action. The general theme of most codes of conduct is that public officers should conduct themselves with honesty, integrity and diligence.

Maladministration: is about poor governance that might result in irregular and unauthorised use of public money, or the substantial mismanagement of official functions.

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 as per legislative requirements or when there is no such provision a risk assessment approach is taken to guide the review timeframe.

This Policy document will be reviewed every 3 years unless legislative or operational change occurs beforehand. The next review is required in July 2022.

Review history:

Trim Reference	Authorising Body	Date/ Decision ID	Description of Edits
ACC2019/117624	Chief Executive Officer	30/07/2019	Commencement.

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