

## GUIDELINE– ADMINISTRATION

# Public Interest Disclosure Guideline

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### Changes from 7 October 2021

Amendments came into effect on 7 October 2021 because of changes to the *Independent Commissioner Against Corruption Act 2012* to become the *Independent Commission Against Corruption Act 2012* (ICAC Act), making the Office for Public Integrity (OPI) a standalone independent body and an Independent Commission Against Corruption (ICAC).

#### *Corruption*

Public officers must report to the OPI any conduct in public administration they reasonably suspect involves corruption unless the public officer knows that the conduct has already been reported to OPI. Refer to OPI Directions and Guidelines. See Definitions of Corruption.

*Misconduct and Maladministration in Public Administration*

ICAC will no longer investigate complaints about misconduct and maladministration in public administration. These matters instead are referred to the Ombudsman SA for investigation.

The Ombudsman SA has issued Directions and Guidelines outlining the reporting requirements for public officers to report relevant matters. Public officers are no longer mandated to report misconduct or maladministration in public administration however, the Ombudsman expects breaches of these matters to be reported as stated in its Directions and Guidelines. See Definitions of Misconduct and Maladministration.

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As Chief Executive Officer (CEO) of the City of Onkaparinga (the Council) and designated Principal Officer for the purposes of the *Public Interest Disclosure Act 2018* (PID Act), the intent of this Guideline is to encourage and facilitate further transparency and accountability in the Council's administrative and management practices; and the disclosure of information of interest to the public about substantial risks to public health or safety, or to the environment and about corruption, misconduct and maladministration in public administration.

This Guideline has been prepared in accordance with the requirements of sections 12(4) and (5) of the PID Act and is designed to ensure proper procedures are in place for the making, and dealing with, public interest disclosures and for providing appropriate protections for informants who make such disclosures.

The Council is committed to the protection of informants who make public interest disclosures and to the genuine and efficient consideration and action in relation to information provided to the Council via a public interest disclosure, as contemplated and demonstrated by this Guideline.

Any questions about this Guideline should be directed in the first instance to a Responsible Officer, whose details are at section 4 of this Guideline.

**Chief Executive Officer**

## 1. Document control

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## 2. Purpose

The City of Onkaparinga (the Council) is committed to achieving and operating with the highest possible standards of service and management practices, including transparency and accountability, and encourages the making of disclosures that divulge public interest information.

This Guideline outlines the system for reporting public interest disclosures in accordance with the PID Act. It acts as a framework to allow genuine concerns to be raised confidentially and for referring appropriate disclosures to another relevant authority, as necessary the matter.

Its purpose is to ensure the Council:

- properly fulfils its responsibilities under the PID Act and the ICAC Act; the associated Ombudsman SA Directions and Guidelines

- encourages and facilitates disclosures of public Interest information, including environmental and health information regarding a location within the area of the City of Onkaparinga
- provides a process by which disclosures may be made so that they are properly investigated
- provides appropriate protection for those who make disclosures in accordance with the PID Act, and
- recognises the need to support Informants, the Responsible Officer and public officers who may be affected by any appropriate disclosure.

### 3. Scope

This Guideline applies to appropriate disclosures of public interest information that are made in accordance with the PID Act, by members of the public, or by public officers (i.e. Elected members, officers or employees) and is intended to complement the reporting framework under the Ombudsman SA Directions and Guidelines.

It is designed to operate in conjunction with Council's suite of policies and procedures for complaint management and any other relevant Council policies and reporting procedures such as:

- Code of Conduct for Council Employees
- Code of Conduct for Council Members
- Internal Review of Council Decisions under s270 of the *Local Government Act 1999*
- Resolution internal grievances and complaints Administrative procedure
- Resolution of external grievances and complaints Administrative procedure.

The Council is committed to

- referring, as necessary appropriate disclosures to another relevant authority
- where the disclosure relates to corruption reporting the disclosure to OPI (in accordance with the Directions and Guidelines issued by OPI); and where the disclosure relates to misconduct or maladministration in public administration, reporting the disclosure to the Ombudsman SA (in accordance with the Directions and Guidelines issued by the Ombudsman SA).
- facilitating the investigation of appropriate disclosures in a manner which promotes fair and objective treatment of those involved
- rectifying any substantiated wrongdoing to the extent practicable in all the circumstances.

### 4. Definitions

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Corruption	means in section 5(1) of the ICAC 2012- <b>Corruption</b> in public administration means conduct that constitutes— (a) an offence against Part 7 Division 4 (Offences relating to public officers) of the Criminal Law Consolidation Act 1935, which includes the following offences:  <ul style="list-style-type: none"> <li>(i) bribery or corruption of public officers;</li> <li>(ii) threats or reprisals against public officers;</li> <li>(iii) abuse of public office;</li> </ul>
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	(iv) demanding or requiring benefit on basis of public office; (v) offences relating to appointment to public office.
Council member	means a member of the elected body of the Council including the Mayor; as defined by the <i>Local Government Act 1999</i> (SA).
Disclosure	means an appropriate disclosure of public interest information made by an Informant to a Relevant Authority.  A person makes an <b><i>appropriate disclosure of environmental and health information</i></b> 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 Relevant Authority.  A person makes an <b><i>appropriate disclosure of public administration information</i></b> if: (a) the person is (i) a public officer, and (ii) 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.
Employee	means all Council employees, trainees, work experience students, volunteers, and contractors undertaking work for Council in a full-time, part-time or casual capacity.
Environmental and health information	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.
Informant	means a person who makes an appropriate disclosure of public interest information to a Relevant Authority.
Inquiry agency	means: (a) the Independent Commission Against Corruption; or (b) the Ombudsman SA
Maladministration in Public Administration	means in section 4(2) of the <i>Ombudsman Act 1972</i> : (a) (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 (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and (b) includes conduct resulting from impropriety, incompetence or negligence; and (c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.  <b>(new definition limited to specific offences)</b>
Misconduct in Public Administration	is defined in section 4(1) of the <i>Ombudsman Act 1972</i> : means 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. <b><i>(same definition but now in the Ombudsman Act 1972)</i></b>

Public administration information	means information that raises a potential issue of corruption, misconduct or maladministration in public administration.
Public Interest Information	means environmental and health information or public administration information.
Public Officer	has the meaning given by section 4 and Schedule 1 of the ICAC Act, and includes: <ul style="list-style-type: none"> <li>• a Council member; and</li> <li>• an employee or officer of the Council.</li> </ul>
Reasonable suspicion	means a state of mind that requires more than mere conjecture, but which is less than a knowledge or belief as to the existence of relevant events. A suspicion must have a factual basis. Whether or not a suspicion is reasonable will depend on the surrounding circumstances
Relevant authority	means the person or entity that receives an appropriate disclosure of public interest information in accordance with the PID Act.
Responsible Officer	means a person who has been designated by the Council as a Responsible Officer under section 12 of the PID Act and has completed any training courses approved by the Commission for the purposes of the <i>Public Interest Disclosure Regulations 2019</i> . Responsible Officers are set out in Section 4 of this Guideline.
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. Responsible Officers

Responsible Officers in the Council	
Director, Corporate	Manager Governance
Director, Planning and Regulatory Services	Manager Fleet, Civil and Waste Manager People and Culture
Team Leader Human Resources	Team Leader Corporate Governance

If the concern relates to one or more of the Responsible Officers, the Informant should contact another Responsible Officer to make a disclosure. If the disclosure relates to all Responsible Officers, the Informant should make the disclosure to the Chief Executive Officer or make a report to the Office of Public Integrity.

*To make a disclosure in writing* address as below. All mail received this way will be delivered directly to a Responsible Officer unopened.

CONFIDENTIAL

Attention: Responsible Officer [include position title]

PO Box 612

NOARLUNGA SA 5168

Disclosures can also be provided in writing to [PID@onkaparinga.sa.gov.au](mailto:PID@onkaparinga.sa.gov.au). Access to this email address is restricted to Responsible Officers only.

### **The role of a Responsible Officer is to:**

- receive appropriate disclosures relating to the Council and ensure compliance with the PID Act, in relation to any such disclosures
- make recommendations to the CEO in relation to dealing with disclosures
- provide advice to officers and employees of the Council in relation to receiving appropriate disclosures and obligations under the PID Act
- complete Responsible Officer training as approved by the ICAC
- carry out any other functions relating to the PID Act, if required
- on the receipt of a disclosure, the Responsible Officer will deal with it in accordance with Council's *Dealing with Public Interest Disclosures Administrative Procedure*.

## **6. Principle Officer**

### **The CEO is responsible for:**

- 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 and undertake any training required by the Public Interest Disclosure Regulations.
- 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 their roles and responsibilities under the *Local Government Act 1999*.

### **Employees, elected members or officers are responsible for:**

- ensuring they comply with this Guideline and the associated administrative procedure when dealing with any disclosure
- ensure information is handled securely and confidentially – contact a Responsible Officer for guidance
- immediately refer any disclosure of environmental and health information made or of public interest information to a Responsible Officer.

## **7. Disclosure Types**

The PID Act provides for protection of informants where appropriate disclosures of public interest information are made. There are two types of disclosures:

- **Environmental and health information**

Anyone can make a disclosure of environmental and health information. However, to gain the protection provided under the PID Act a person who makes such a disclosure:

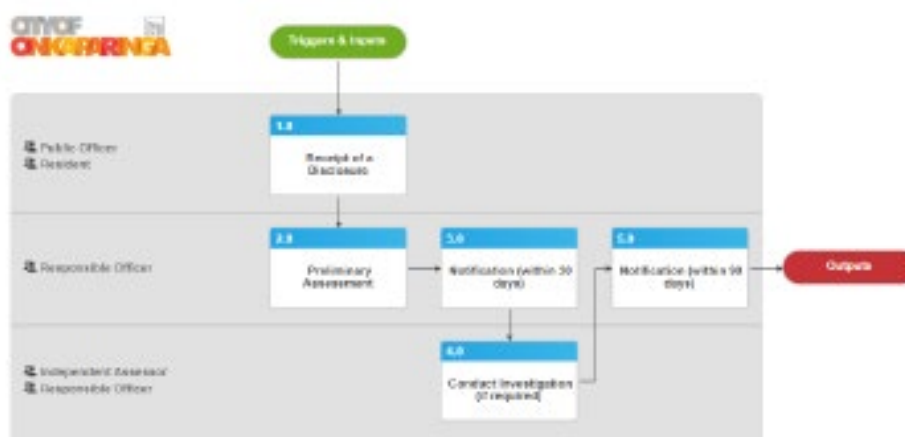
- must believe on reasonable grounds that the information is true or
- not being in a position to form such a belief, believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated.

- **Public administration information**

While anyone can make a disclosure of public administration information only a public officer is eligible for the protections provided by the PID Act. An informant must have a reasonable suspicion that the information raises a potential issue of corruption, misconduct or maladministration in public administration.

## 8. Disclosure process

Disclosures should, wherever possible, be directed to a Responsible Officer, who has the responsibility for receiving appropriate disclosures relating to the Council. When a disclosure is received a preliminary assessment will be undertaken to ensure the appropriate considerations are taken into account.



Neither the PID Act nor this Guideline prevents a person from making a disclosure to another Relevant Authority, including a Relevant Authority external to the Council. This is a choice to be made by the informant at their discretion.

## 9. Informant

The following are relevant considerations for an informant to determine where to direct a disclosure:

- any disclosure relating to maladministration or misconduct in public administration may be reported to Ombudsman SA.



- if there is a reasonable suspicion of corruption, it must be reported to the OPI in accordance with the Directions and Guidelines issued by the OPI
- if a disclosure contains allegations of fraud, the informant may report the matter to SAPOL.

In all the above circumstances a Responsible Officer is able to receive a report and determine the next step in the reporting or referral process.

<b>Environmental and health information</b>	
<b>Where information relates to</b>	<b>Relevant Authority</b>
Risk to the environment	Environment Protection Authority
A location within the area of a particular Council	Member, Officer or employee of that Council
Any environment or health information	Office of the Public Integrity, Minister of the Crown
<b>Public Administration Information</b>	
<b>Where information relates to</b>	<b>Relevant Authority</b>
A public officer	Relevant supervisor or manager or department responsible officer
A public sector agency or employee	The Commissioner for Public sector Employment or department responsible officer
An irregular and unauthorised use of public money or substantial mismanagement of public resources	Auditor-General
Commission or suspected commission of any offence	A member of the Police force
An Agency to which the Ombudsman Act 1972	Relevant Ombudsman
A judicial officer	The Judicial Conduct Commissioner
A member of Parliament	The Presiding Officer of the House of Parliament
Any public administration information	Office of Public Integrity, a Minister of the Crown

## 10. Protections

An informant who makes an appropriate disclosure will typically be protected in the following ways:

- immunity from criminal or civil liability
- a prohibition on disclosing their identity other than in limited circumstances
- a prohibition against victimisation
- a prohibition against hindering, obstructing or preventing an informant from making an appropriate disclosure.

Protection is not provided to a person who knowingly makes a false or misleading disclosure. Penalties apply under the PID Act.

Disciplinary action may be taken if a public officer (employee, officer or elected member) fails to adhere to their obligations under the PID Act including disclosing an informant's identity without their consent.

A person who personally commits an act of Victimisation against an informant is guilty of an offence and may be prosecuted. The CEO will also consider appropriate disciplinary action.

## **11. Victimisation**

It is a criminal offence to victimise a person who makes an appropriate disclosure of public interest information. The offence carries a maximum penalty of \$20,000 fine or imprisonment for two (2) years. The PID Act also contains provisions dealing with victimisation of a person who suffers a detriment on the ground, or substantially on the ground, that the person has made (or intends to make) an appropriate disclosure of public interest information.

### **Preventing or hindering disclosures**

It is an offence against the PID Act for a person to prevent another person from making an appropriate disclosure of public interest information or to hinder or obstruct another person in making such a disclosure. The offence carries a maximum penalty of \$20,000 or imprisonment for two (2) years.

## **12. Confidentiality**

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

The recipient of an appropriate disclosure may only make an informant's identity known where:

- the informant consents to their identity being disclosed or
- the recipient believes on reasonable grounds that it is necessary to divulge an informant's identity 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 OPI advising that the identity of the informant is required or
- the informant's identity is required for the matter to be properly investigated but only to the extent necessary to ensure proper investigation.

There are no express requirements for any other information relating to a disclosure to be kept confidential but in considering whether to disclose other information provided as

part of a disclosure the Council should be mindful of the prohibition against victimisation under the PID Act.

An informant may wish to remain anonymous, but in that event must ensure that the disclosure is sufficiently supported by the provision of details and evidence to enable the matter to be properly investigated.

### **13. Relevant legislation and references**

*Independent Commission Against Corruption Act 2012*

*ICAC Public Interest Disclosure Guidelines*

*Ombudsman Act 1972*

*Ombudsman SA Directions and Guidelines*

*Office of Public Integrity Direction and Guidelines*

*Public Interest Disclosure Act 2018 and Regulations 2019*

*Public Interest Disclosure Guidelines (issued by the ICAC)*

*Model Public Interest Disclosure Policy and Procedures (issued by the LGA)*