

Public Interest Disclosure Guideline

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As Chief Executive Officer of the City of Onkaparinga (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 Purpose

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
- 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.

2 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 (ie Elected Members, officers or employees) and is intended to complement the reporting framework under the ICAC Act.

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, or serious or systemic misconduct or maladministration in public administration, reporting the disclosure directly to the OPI in accordance with the Guidelines issued by the ICAC and the requirements of the ICAC Act
- 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.

3 Definitions

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| Council | means the City of Onkaparinga |
| 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 | <p>means an appropriate disclosure of public interest information made by an Informant to a Relevant Authority.</p> <p>A person makes an appropriate disclosure of environmental and health information if:</p> <p>(a) the person</p> <p>(i) believes on reasonable grounds that the information is true; or</p> <p>(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</p> <p>(b) the disclosure is made to a Relevant Authority.</p> <p>A person makes an appropriate disclosure of public administration information if:</p> <p>(a) the person is</p> <p>(i) a public officer, and</p> <p>(ii) reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration, and</p> <p>(b) the disclosure is made to a Relevant Authority.</p> |
| Employee | includes 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 |
| ICAC Act | means the <i>Independent Commissioner Against Corruption Act 2012</i> |
| Informant | means a person who makes an appropriate disclosure of public interest information to a Relevant Authority |
| Maladministration in Public Administration | <p>is defined in the ICAC Act and means</p> <ul style="list-style-type: none"> • 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 • conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and • includes conduct resulting from impropriety, incompetence or negligence; and • is to be assessed having regard to relevant statutory provisions and administrative instructions and directions. |
| Misconduct in Public Administration | <p>is defined in section 5(3)the ICAC Act and means</p> <ul style="list-style-type: none"> • 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 • other misconduct of a public officer while acting in his or her capacity as a public officer. <p>The act may constitute misconduct even if the person:</p> <ul style="list-style-type: none"> • is no longer a public official • was not at the time but is now a public official |

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| | <ul style="list-style-type: none"> committed the misconduct outside South Australia did not receive money or a personal benefit. |
| 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"> a Council member; and an employee or officer of the Council |
| Relevant authority | means the person or entity that receives an appropriate disclosure of public interest information in accordance with the PID Act |
| Responsible Officer | is a person who has been designated by the Council as responsible officer under section 12 of the PID Act and has completed any training courses approved by the Commissioner for the purposes of the <i>Public Interest Disclosure Regulations 2019</i> . Responsible Officers are currently as set out in Section 4 |
| 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 |

4 Responsible Officers

The Chief Executive Officer (CEO) has designated the Responsible Officers below to assist the public or public officers in making a disclosure and administering the obligations under the PID Act. All Responsible Officers have undertaken, or will undertake, the training required by legislation and delivered by the ICAC. A Responsible Officer may be contacted in person, by telephone or in writing.

Responsible Officers

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|-----------------------------|----------------------------------|
| Director, Corporate | Manager Governance |
| Manager People and Culture | Team Leader Corporate Governance |
| Team Leader Human Resources | |

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.

In writing –to the Responsible Officer marked Confidential and include their position title. All mail received this way will be delivered directly to a Responsible Officer unopened.

Attention: Responsible Officer [include position title]
PO Box 512
NOARLUNGA SA 5168

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 Commissioner
- 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*.

5 Principal 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.

6 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.

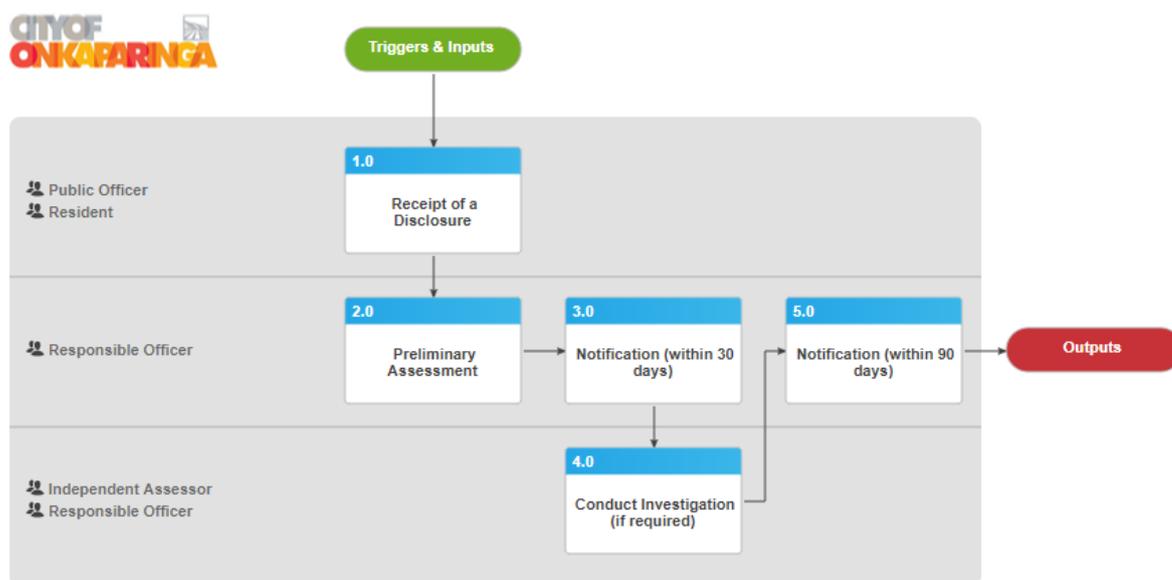
- **Public administration information**

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.

7 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.

8 Informant

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

- any disclosure relating to public administration information about a public officer who is a member, officer or employee of the Council may be made to a Responsible Officer, or to the person responsible (either in fact, or as may be designated by the PID Act) for the management or supervision of the public officer the subject of the disclosure
- any disclosure relating to maladministration or misconduct in public administration may be reported to Office of Public Integrity (OPI) in accordance with the ICAC Act;
- 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 Directions and Guidelines issued by the ICAC
- 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.

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.

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.

9 Relevant legislation and references

ICAC Act 2012 (SA)

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 LGA)

10 Availability of the Guideline

This Guideline will be available free of charge for inspection at the Council's Offices during ordinary business hours, via the Council's website or copies provided to the public on request and payment of a fee in accordance with Council's Schedule of Fees and Charges.

Document control

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