

ATTACHMENT TO AGENDA ITEM

Ordinary Meeting

17 December 2019

Agenda Item 10.3 Public Interest Disclosure Policy

Attachment 1 Public Interest Disclosure Policy 278

GREATER SHEPPARTON CITY COUNCIL

Policy Number 37.POL9

Public Interest Disclosure Policy

Version 2.0

Adopted 15 March 2016

Last Reviewed 17 December 2019

Effective from 1 January 2020

Business Unit:	Corporate Governance
Responsible Officer:	Manager Corporate Governance
Approved By:	Chief Executive Officer
Next Review:	Within Six Months of a General Election

DOCUMENT REVISIONS

Version #	Summary of Changes	Date Adopted
1		19 September 2017
2	Policy updated to reflect changes in legislation (Protected Disclosure to Public Interest Disclosure)	17 December 2019

PURPOSE

This Policy has been developed in accordance with the *Public Interest Disclosures Act 2012* (Act) to provide guidance on the process for making, assessing and handling a disclosure.

OBJECTIVE

This Policy has been developed to facilitate the making of disclosures of improper conduct by Council and Council staff members, and to ensure they are investigated and handled in accordance with the Act.

The Act provides protection from detrimental action to any person affected by a public interest disclosure, whether it is the person making a disclosure, the subject of a disclosure, or a witness any investigation.

SCOPE

The Act applies to Council, Councillors and Council staff members, including any person engaged by, or acting on behalf of Council such as contractors and volunteers.

This Policy provides advice on the process for making a disclosure, which may be relevant to any member of the public who has dealings with Council.

DEFINITIONS

Reference term	Definition
The Act	Refers to the <i>Public Interest Disclosures Act 2012</i>
Assessable Disclosure	A disclosure that, under s21(2) of the Act, must be notified to IBAC
Public Interest Disclosure Coordinator (PIDC)	Refers to the Manager Corporate Governance.
Council	Refers to the Greater Shepparton City Council
Council staff member	Includes a Council employee or officer, and any person engaged by, or acting on behalf of Council such as a contractor or volunteer
The IBAC	Independent Broad-based Anti-corruption Commission established under section 12 of the <i>Independent Broad-based Anti-corruption Commission Act 2011</i>
Public Interest Disclosure	As defined in the <i>Public Interest Disclosures Act 2012</i> ;
Public Interest Disclosure Officer (PIDO)	Authorised officer of the Council to receive and assess disclosures relating to the Council or Council staff members. This includes: <ul style="list-style-type: none"> • Manager People and Development • Team Leader Governance • Team Leader Information Management
Public Interest Disclosure Welfare Officer (PIDWO)	Refers to the Team Leader People and Workforce.

1. Making a Public Interest Disclosure

What is a disclosure?

A disclosure is a report made by a person regarding improper conduct, or detrimental action taken against a person in reprisal for the making of a public interest disclosure.

What is improper conduct?

Improper conduct means –

- Corrupt conduct; or
- Conduct which constitutes:
 - A criminal offence
 - Serious professional misconduct
 - Dishonest performance of public functions
 - Intentional or reckless breach of public trust
 - Intentional or reckless misuse of information
 - Substantial mismanagement of public resources
 - A substantial risk to the health or safety of one or more persons
 - A substantial risk to the environment
- Conduct of any person that:
 - Adversely affects the honest performance by a public officer or public body of their functions
 - Adversely affects the functions or powers of the public officer or body and results in the person or body obtaining:
 - A licence, permit, approval, authority or other statutory entitlement
 - An appointment to a statutory office or board member
 - A financial benefit or real or personal property
 - Any other direct or indirect monetary or proprietary gain
 - Conduct that could constitute a conspiracy -

but excludes matters which are trivial.

Corrupt conduct means –

- conduct which adversely affects honest performance of functions as a public officer
- knowingly or recklessly breaching public trust
- misuse of information resulting in:
 - a licence, permit, approval, authority or other entitlement
 - an appointment to a statutory office or as a member of the board of any public body
 - obtaining a financial benefit or real or personal property

- any other direct or indirect monetary or proprietary gain.

What is detrimental action?

Detrimental action includes –

- Action causing injury, loss or damage
- Intimidation or harassment
- Discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the inappropriate taking of disciplinary action.

Persons making such disclosures will be advised that it is in their own interests to keep disclosures confidential by only discussing related matters with authorised persons.

Who can make a disclosure?

A disclosure that relates to the conduct of Council or a Council staff member may be made to –

- Council or the IBAC by a person who is a Council staff member; or
- The IBAC by a Councillor or a member of the public.

A disclosure that relates to the conduct of a Councillor may be made to the IBAC or to the Victorian Ombudsman.

A disclosure that relates to Council's Chief Executive Officer may be made to the PIDC or to the IBAC.

Disclosures may be made in writing or verbally. They can also be made anonymously, however it is important to note that this can create difficulties throughout the assessment process.

Joint disclosures are also permitted, but may impose limitations as to who will be provided protection under the Act.

Who to Contact

Council can only receive disclosures from Council staff members and which relate to its own conduct or Council staff members.

A disclosure can only be made to a permitted person being –

- Council's Chief Executive Officer
- The Public Interest Disclosure Coordinator
- A Public Interest Disclosure Officer
- The discloser's direct or indirect manager, or supervisor, noting that the manager or supervisor receiving the disclosure must promptly notify the Public Interest Disclosure Coordinator.

2. Roles and Responsibilities

Public Interest Disclosure Coordinator (PIDC)

The PDC will:

- impartially assess each disclosure to determine whether it appears to be a public interest disclosure
- coordinate the reporting system used by Council
- be a contact point for general advice about the operation of the Act and for integrity agencies such as the IBAC
- be responsible for ensuring that the Council carries out its responsibilities under the Act
- liaise with the IBAC in regard to the Act
- arrange for appropriate welfare support for the person making the public interest disclosure
- advise the person making a public interest disclosure of the progress of an investigation into the disclosed matter
- establish and manage a confidential filing system
- collate statistics on disclosures made
- take all necessary steps to ensure the identity of the person making a public interest disclosure and the identity of the person who is the subject of the disclosure are kept confidential
- liaise with the CEO.

Central oversight will be maintained by the PIDC to ensure accurate reporting on outcomes.

Public Interest Disclosure Officer (PIDO) A PDO

will:

- be a contact point for general advice about the operation of the Act and for integrity agencies such as the IBAC
- arrange for appropriate welfare support for the person making a public interest disclosure
- advise the person making a public interest disclosure of the progress of an investigation into the disclosed matter
- manage a confidential filing system
- take all necessary steps to ensure the identity of the person making a public interest disclosure and the identity of the person who is the subject of the disclosure are kept confidential.

A PIDO will assist the PIDC with the receipt of disclosures.

Public Interest Disclosure Welfare Officer (PIDWO)

The PIDWO will be responsible for monitoring the needs of the person making a public interest disclosure and to provide advice and support.

The PIDWO will provide reasonable support to a person making a disclosure and will discuss the issue of reasonable expectations.

The level of support provided to the person will require the written approval of the Chief Executive Officer and will be documented. A copy of the agreement reached will be provided to the discloser.

The PIDWO will be engaged by the PIDC where a public interest disclosure proceeds to an investigation stage.

The PIDWO will:

- i. examine the immediate welfare and protection needs of a person making a public interest disclosure who has made a disclosure and seek to foster a supportive work environment
- ii. advise the person making a public interest disclosure of the legislative and administrative protections available to him or her
- iii. listen and respond to any concerns of harassment, intimidation, or victimisation in reprisal for making a disclosure
- iv. keep comprehensive records of all aspects of the case management of the person making the public interest disclosure, including all contact and follow up action
- v. endeavour to ensure that the expectations of the person making a public interest disclosure are realistic.

The PIDWO will not divulge any details relating to the disclosed matter to any person other than the PIDC, a PIDO, or the investigator.

All meetings between the PIDWO and the person making a public interest disclosure will be conducted discreetly to protect the confidentiality of the person making a public interest disclosure.

3. Handling Disclosures

Assessment Decisions

In order for a disclosure to be considered a public interest disclosure, it must meet the requirements set out in the Act.

Where Council determines that the disclosure is not a public interest disclosure under the Act, the person making the disclosure will be notified in writing within 28 days of making the disclosure, that:

- Council does not consider the disclosure to be a protected public interest disclosure
- the disclosure has not been notified to the IBAC for assessment
- the protections under the Act apply, regardless of whether the disclosure is notified to the IBAC for assessment; and
- the disclosure will be referred to the appropriate officer and the matter will be addressed in accordance with Council's standard complaints handling process.

Where Council considers that the disclosure may be a disclosure that—

- shows or tends to show—
 - a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or
 - a public officer or public body has taken, is taking or proposes to take

detrimental action against a person in contravention of section 45 of the Act; or

- the person who made the disclosure believes on reasonable grounds shows or tends to show—
 - a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or
 - a public officer or public body has taken, is taking or proposes to take detrimental action against a person in contravention of section 45 of the Act –

Council must, no later than 28 days after the disclosure is made, notify

- the disclosure to the IBAC for assessment; and
- the person who made the disclosure that it has been referred to the IBAC.

The IBAC must assess within a reasonable time if the referred disclosure is a public interest disclosure. If the IBAC determines that the referred disclosure –

- is a public interest disclosure, it becomes a public interest complaint which must be dealt with by the IBAC under its legislation; or
- is not a public interest disclosure after consulting with Council and the discloser, it may recommend that Council can better deal with it.

The IBAC must notify Council and the discloser of its determination.

Protection for persons making a disclosure

Council is obligated to protect all persons making public interest disclosures from detrimental action taken in reprisal for the making of the disclosure.

Protections will apply to any person who makes a disclosure under Part 2 of the Act. These protections will apply even if Council does not notify the disclosure to the IBAC, and whether or not the IBAC has determined that it is a public interest complaint.

A Council staff member who has made a public interest disclosure and believes on reasonable grounds that detrimental action will be, is being, or has been taken against them may request a transfer of employment or leave of absence.

Limitations on Protections

A discloser is not protected if they commit an offence under section 72 or 73 of the Act, including:

- provides false or misleading information that the person knows to be false or misleading
- claims the matter is the subject of a public interest disclosure, knowing the claim to be false
- falsely claims that a matter is the subject of a disclosure that the IBAC has determined to be a public interest disclosure complaint.

A Council staff member who makes a disclosure is not protected against legitimate

management action and will still be held liable for their own conduct that they disclose as part of the public interest disclosure.

Natural Justice

Council will ensure that natural justice is adhered to in the receipt and management of a disclosure.

Council staff members who are the subject of a disclosure will be provided with notification, in writing, of the disclosure, where that notification does not compromise the identity of the person making the disclosure or the investigation into the disclosure.

4. Support and Welfare

The PIDWO will foster a supportive work environment and respond to any reports of intimidation or harassment against the person making the disclosure. Any such incidents will also be reported to the PIDC.

Occurrence of Detrimental Action

If a person making a public interest disclosure reports an incident of harassment, discrimination or adverse treatment that would amount to detrimental action apparently taken in reprisal for the making of the disclosure, the PIDWO or the PIDC will:

- record details of the incident, and
- advise the person making a public interest disclosure of his or her rights under the Act.

The PIDC will inform the IBAC where the detrimental action is of a serious nature likely to amount to a criminal offence. Where detrimental action is reported, the allegation will be assessed as a new disclosure under the Act.

Council will be extremely cautious about conducting enquiries or gathering information concerning an allegation of detrimental action, as a criminal offence may have been committed and any informal investigation may compromise the integrity of evidence.

5. Confidentiality

Section 52 of the Act requires any person who receives information due to the handling or investigation of an assessable disclosure, not to disclose that information, except in certain limited circumstances. These circumstances include:

- where exercising the functions of Council under the Act
- when making a report or recommendation under the Act, or
- when publishing statistics in the annual report of Council.

The Act prohibits the:

- inclusion of particulars in any report or recommendation that is likely to lead to the identification of the person making a protected disclosure, and
- disclosure of particulars in an annual report and other reports to Parliament that might lead to the identification of a person against whom a public interest disclosure is made.

A breach of section 52 constitutes a criminal offence.

Exceptions:

The following circumstances exist where information may be disclosed:

- where the disclosure is made in accordance with the consent of the disclosing person to the disclosure of their identity
- where the IBAC has determined that the assessable disclosure is not a public interest disclosure and the person or body subsequently discloses the information
- an investigating entity publishes a report to Parliament, made in accordance with its confidentiality requirements
- for the purposes of a proceeding for an offence against a relevant Act
- for the purpose of obtaining legal advice
- to an interpreter
- to a parent or guardian of a person who is under 18 years of age
- to an independent person, for the purposes of enabling a person who is suffering a disability to understand an obligation under this Act.

6. Criminal Offences

The Act creates the following offences for certain actions:

Criminal Offences

Detrimental Action

It is an offence for a person to take or threaten action in reprisal when:

- a public interest disclosure has been made
- a person believes a public interest disclosure has been made
- a person believes that another person intends to make a public interest disclosure.

Breach of confidentiality

It is an offence for a person to divulge information obtained as a result of the handling or investigation of a public interest disclosure without legislative authority.

Provision of False Information

It is an offence for a person to knowingly provide false information under the Act with the intention that it be acted on as a public interest disclosure.

Civil Action

A person who takes detrimental action against a person in reprisal for a protected disclosure may be found liable in damages to that person. Council may also be found to be vicariously liable.

RELATED POLICIES AND DIRECTIVES

- Councillor Code of Conduct
- Employee Code of Conduct
- Freedom of Information Policy
- Prevention of Harassment, Discrimination, Bullying & Occupational Violence Policy

RELATED LEGISLATION

- *Independent Broad-based Anticorruption Commission Act 2011*
- *Independent Broad-based Anticorruption Commission Regulations 2013*
- *Ombudsman Act 1973*
- *Public Interest Disclosures Act 2012*

Note – the *Freedom of Information Act 1982* **does not apply** to any document in the possession of Council which relates to a public interest disclosure, or that is likely to lead to the identification of a person who made a public interest disclosure.

REVIEW

This Policy is to be reviewed by the Manager Corporate Governance no more than every four years, or within six months of a general election. Reviews may be undertaken sooner in response to changes in legislation or Council's processes.

Peter Harriott
Chief Executive Officer

Date

Attachment 1: Public Interest Disclosure Assessment Process

Step 1 | Receipt of Disclosure

- Is made by an individual or group of individuals
- Made verbally (in private) to PIDC or CEO or made in writing (not by fax).
- Made to Council
- Made about a Council staff member acting in their official capacity



- The disclosure may be a public interest disclosure under the Public Interest Disclosures Act 2012
- Public Interest Disclosure Policy to be applied.

Step 2 | Assessment of Disclosure

- Does the information show / tend to show there is improper conduct or detrimental action?
- Does the discloser believe on reasonable grounds that the information shows / tends to show there is improper conduct or detrimental action?



If **YES**, it is a public interest disclosure and the Public Interest Disclosure Policy will apply.



If **NO**, it is likely that it is not a protected disclosure and may be dealt with through the Council's standard complaint handling processes.

Step 3 | Notifications

The disclosure has been determined to be a possible public interest disclosure



- Inform IBAC in writing, within 28 days of receiving the disclosure.
- Summarise the disclosure and attach supporting documentation.
- Provide IBAC with details of Council's contact person.
- Inform discloser of notification to IBAC within 28 days of the disclosure.
- Notify the subject that a disclosure has been made against them.

The disclosure has been determined **NOT** to be a possible public interest disclosure



- Inform the discloser within 28 days of the assessment.
- Determine alternative suitable processes to handle the matter.
- Inform the discloser that they have the option of referring the matter to IBAC for consideration.