

Public Interest Disclosure Guideline

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Scope

The *Public Interest Disclosure Act 2010* facilitates the disclosure, in the public interest, of information about wrongdoing in the public sector and provides protection for those who make such disclosures.

As a public sector entity Council is subject to the *Public Interest Disclosure Act 2010* and all Council employees and Councillors are public officers for the purposes of the legislation. Council, therefore, has obligations placed on it related to receiving public interest disclosures and to ensure that persons making such disclosures are protected from reprisals.

The Chief Executive Officer is the responsible officer for receiving disclosures and acting on them (or the Mayor if the disclosure is about the Chief Executive Officer).

Purpose

This guideline has been developed to:

- Promote the public interest by facilitating public interest disclosures of wrongdoing in the public sector; and
- Ensure that public interest disclosures are properly assessed and when appropriate, properly investigated and dealt with; and
- Ensure that appropriate consideration is given to the interest of persons who are the subject of a public interest disclosure; and
- Afford protection from reprisals to persons making public interest disclosures, in accordance with the *Public Interest Disclosure Act 2010*.

Definitions

The following definitions apply for the purposes of this Guideline:

“**Chief Executive Officer**” is the Chief Executive Officer of the Redland City Council or the Mayor (where a disclosure is about the Chief Executive Officer).

“**Corrupt Conduct**” is conduct that could, if proved, be a criminal offence or a disciplinary breach providing reasonable grounds for terminating the person’s services. A full definition of ‘corrupt conduct’ can be found in the *Crime and Corruption Act 2001*, section 15(1).

“**Detriment**” includes:

- (a) Personal injury or prejudice to safety;
- (b) Property damage or loss;
- (c) Intimidation or harassment;
- (d) Adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business;
- (e) Financial loss; and
- (f) Damage to reputation, including, for example, personal, professional or business reputation.

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“**Discloser**” is a person who makes a public interest disclosure.

“**Maladministration**” is an administrative action that is unlawful, arbitrary, unjust, oppressive, improperly discriminatory or taken for an improper purpose; or a waste of public funds.

“**Proper Authority**” is (a) a public sector entity, or (b) a member of the Legislative Assembly.

“**Public Interest Disclosure**” is a disclosure of information by an employee to a proper authority about certain wrongdoing i.e. suspected corrupt conduct, maladministration, a substantial misuse of public resources, or a substantial and specific danger to public health or safety or the environment. Any person may also disclose to a proper authority a substantial and specific danger to the health or safety of a person with a disability, certain substantial and specific dangers to the environment or a reprisal.

“**Public Officer**” is a person who is an employee, member or officer of a public sector entity regardless of their employment status, role or position, i.e. permanent, temporary, casual, part-time, contractors or volunteers.

“**Reprisal**” occurs when any person causes or attempts or conspires to cause detriment to another person because or in the belief that (a) a person has made or may make a public interest disclosure or (b) a person has been, or intends to be, involved in a proceeding under the *Public Interest Disclosure Act 2010*. A public officer who is found to have taken a reprisal commits a criminal offence.

“**Subject Officer**” is any employee who is the subject of an allegation made against them which requires an investigation, review or other form of managerial response in order to have the allegation addressed.

Actions and Responsibilities

Responsibilities

All employees and councillors must:

- Make themselves familiar with the Public Interest Disclosure Policy and these Guidelines and their obligations under the Employee Code of Conduct;
- Be able to identify situations where behaviour may be unethical or fraudulent and know how to report it;
- Refer public interest disclosures to an appropriate officer as per these guidelines; and
- Notify the Chief Executive Officer if a reprisal is suspected or reported.

Managers and Supervisors must ensure employees are provided with information about making a disclosure and are familiar with the process of making and receiving a public interest disclosure.

Council’s Legal Services Unit is responsible for the management and recording of all public interest disclosures and will ensure that effective systems and procedures are in place for issues arising from public interest disclosures.

Protected disclosures

This guideline applies to public interest disclosures within the meaning of the *Public Interest Disclosure Act 2010*. What constitutes a public interest disclosure depends on who is making the disclosure, with the *Public Interest Disclosure Act 2010* distinguishing between disclosures made by a public officer and those made by anyone else.

A public officer can report wrongdoing to a proper authority about:

- a) the conduct of another person that could, if proved, be—
 - (i) corrupt conduct; or
 - (ii) maladministration that adversely affects a person's interests in a substantial and specific way; or
- b) a substantial misuse of public resources (other than an alleged misuse based on mere disagreement over policy that may properly be adopted about amounts, purposes or priorities of expenditure); or
- c) a substantial and specific danger to public health or safety; or
- d) a substantial and specific danger to the environment.

Any person can report wrongdoing to a proper authority about:

- a) a substantial and specific danger to the health or safety of a person with a 'disability' as defined in the *Disability Services Act 2006*; or
- b) a contravention of environmental law which is a substantial and specific danger to the environment (per provisions mentioned in Schedule 2 of the *Public Interest Disclosure Act 2010*); or
- c) the conduct of another person that could, if proved, be a reprisal.

To determine that a disclosure is a public interest disclosure, the disclosure must also satisfy either:

- a) the person making the disclosure honestly believes, on reasonable grounds, that the information tends to show the conduct or other matter is wrongdoing (subjective test);
or
- b) the information tends to show the conduct or other matter is wrongdoing, regardless of whether the person making the complaint honestly believes the information (objective test).

The *Public Interest Disclosure Act 2010* only protects public interest disclosures that are made to a "proper authority". Council is a proper authority for conduct concerning the Council, a councillor or Council employee or behaviour that Council has the power to investigate or remedy. Disclosures made otherwise than in accordance with this guideline may not attract the protection of the *Public Interest Disclosure Act 2010*, including disclosures made to the media (except in special circumstances outlined in part 4 section 20 of the *Public Interest Disclosure Act 2010*); unions or professional associations; federal government departments and agencies; private organisations; and organisations operating outside of Queensland.

Making a Disclosure

A Council employee may make a public interest disclosure to:

- Their direct or indirect supervisor or manager;
- Any other person in a management position within Council;
- The Chief Executive Officer.

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A public interest disclosure can always be made to a member of the Legislative Assembly or to an external agency if that agency has the power to investigate and remedy that type of disclosure, such as the Crime and Corruption Commission if it concerns corrupt conduct or the Queensland Ombudsman if it concerns maladministration or waste of public resources.

A disclosure may be made anonymously; however, it is difficult in these circumstances to protect the person making the disclosure from any retributive action or reprisal. As such, although anonymous disclosures are permitted under the *Public Interest Disclosure Act 2010*, disclosers are encouraged to provide their contact details when making a disclosure.

A disclosure should be in writing, although it may be made orally. If a supervisor receives a public interest disclosure, they should encourage the discloser to put the information in writing. If the discloser is unable or unwilling to do so, the supervisor should document the disclosure and ask the discloser to confirm the contents before signing it. If circumstances prevent this occurring (e.g. telephone caller who remains anonymous), the supervisor should promptly make a written note recording the precise matters raised and this should be referred to the Chief Executive Officer.

Under certain circumstances a person may make a disclosure to a journalist (refer to part 4 section 20 of *Public Interest Disclosure Act 2010*). This can only occur if a person has already made a disclosure to the proper authority and that proper authority:

- Has decided not to investigate or deal with the disclosure; or
- Investigated but did not recommend taking any action; or
- Did not notify the discloser within six months of whether or not the disclosure was to be investigated or dealt with.

A public interest disclosure can be made about an unidentified person.

A person can involuntarily make a public interest disclosure if they are legally compelled to do so.

A public interest disclosure can be made in a proceeding in a court or tribunal as part of giving information to the court or tribunal.

A public interest disclosure can concern an event that happened or may have happened even if the event occurred before the enactment of the *Public Interest Disclosure Act 2010*. The public interest disclosure can also concern a current or potential event that will or may happen.

There is no limit to the number of public interest disclosures that can be made. When making a public interest disclosure, the discloser has the responsibility to provide honest and accurate information. It is a criminal offence under the *Public Interest Disclosure Act 2010* to make a disclosure which is intentionally false or misleading and the discloser may face disciplinary action and criminal prosecution. Knowingly providing false or misleading information is different to providing information that turns out to be incorrect or unable to be substantiated.

Council encourages persons contemplating the making of a public interest disclosure to give due prior consideration to that course to ensure that matters raised have substance and are soundly based.

Under the *Public Interest Disclosure Act 2010* a person is not liable civilly, criminally or under an administrative process, including disciplinary action, for making a public interest disclosure.

Assessing a Disclosure

When a disclosure is made to a supervisor, the supervisor must communicate the disclosure immediately to the Chief Executive Officer.

The Chief Executive Officer must ensure that all disclosures made to Council or referred to it by another entity or Member of the Legislative Assembly are assessed.

The Chief Executive Officer will assess the public interest disclosure to determine whether the disclosure requires:

- Referral to another public sector entity, e.g. all cases of suspected corrupt conduct must be referred to the Crime and Corruption Commission;
- Further enquiries to be made;
- Investigation; or
- Finalisation.

In assessing a disclosure, the Chief Executive Officer will determine if:

- The person making the disclosure is able to receive the protection of the *Public Interest Disclosure Act 2010*;
- The disclosure concerns a matter about which a public interest disclosure can be made;
- The disclosure meets either the subjective or objective test set out in the *Public Interest Disclosure Act 2010*;
- The disclosure has been made to an individual or entity who may receive a public interest disclosure; and
- The disclosure has been made in accordance with Council's procedure or to a person listed in the *Public Interest Disclosure Act 2010*.

If there is doubt whether a disclosure is a public interest disclosure, the Chief Executive Officer will assume the disclosure is protected by the *Public Interest Disclosure Act 2010* and manage the disclosure as if it is a public interest disclosure.

Each separate allegation should be reported as a separate public interest disclosure, unless the matters are clearly linked and it would be reasonable to view them as a single disclosure.

Council cannot decline to receive and/or assess a disclosure as a public interest disclosure.

The Chief Executive Officer may decide not to investigate or deal with a public interest disclosure if:

- The substance of the disclosure has already been investigated or dealt with by another appropriate process; or
- Council reasonably considers that the disclosure should be dealt with by another appropriate process; or
- The age of the information the subject of the disclosure makes it impracticable to investigate; or
- Council reasonably considers that the disclosure is too trivial to warrant investigation and that dealing with the disclosure would substantially and unreasonably divert the resources of Council from the performance of its functions; or

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- Another entity that has the jurisdiction to investigate the disclosure has notified Council that investigation of the disclosure is not warranted.

If Council decides not to investigate or deal with a public interest disclosure, written reasons for this decision will be given to the person making the disclosure. A person who receives written reasons for a decision not to investigate may apply to the Chief Executive Officer for a review of the decision within 28 days after receiving the written reasons.

Informing the Discloser

The Chief Executive Officer will provide the discloser or the entity that referred the disclosure reasonable information about the disclosure in writing, including:

- Confirmation that the disclosure was received by Council;
- A description of the action proposed to be taken, or taken, by Council in relation to the disclosure;
- If action has been taken by Council in relation to the disclosure – a description of the results of the action;
- The likely timeframes (if possible);
- Their involvement in the investigation process;
- The importance of maintaining confidentiality;
- The protections under the *Public Interest Disclosure Act 2010* that will apply;
- That Council will keep the information disclosed, including the discloser's identity, confidential, except as allowed under the *Public Interest Disclosure Act 2010*;
- How they will be advised of progress and outcomes; and
- Who to contact if they want further information or are concerned about reprisals.

Regular follow up with the discloser should be arranged by agreement to advise on the progress of resolving the public interest disclosure (where this is desired by the discloser, and it is safe to do so).

Discloser Support and Protection

As soon as possible after receiving a public interest disclosure, the Chief Executive Officer will determine the level of protection and support appropriate for a discloser by conducting a risk assessment of a reprisal to the discloser and others associated with the discloser (including those who may wrongly be suspected of being a discloser). Council will also take into account any consequences if reprisals do occur.

The Chief Executive Officer will ensure protective measures are in place which are proportionate to the risk of reprisal, and the potential consequences of a reprisal. If the risk is assessed as sufficiently high, Council will prepare a protection plan to protect the discloser. Where feasible, this will be developed in consultation with the discloser and other relevant stakeholders.

When assessing the risk, an assessment of the discloser's need for support will also be conducted. If it is determined that a discloser requires support, Council will offer an appropriate level of support. This may include:

- Acknowledging that making a public interest disclosure was the right action to take and is valued;
- Making a clear statement that the entity will support the discloser;
- Appointing an appropriate person (separate from the investigations function) with sufficient authority to ensure the discloser has appropriate support and protection from reprisals;
- Regularly checking on the discloser's wellbeing, where this is warranted;
- Advising the discloser of the availability of the employee assistance scheme; and
- Where the health of the discloser becomes a concern, liaising with officers responsible for occupational workplace health and safety.

Managing Reprisals

Council has a duty of care to support and protect employees from negative action, including reprisals that occur as a result of a disclosure. Reprisals are not condoned or tolerated by Council.

The Chief Executive Officer will ensure effective systems and procedures are in place to monitor a discloser's workplace for any signs of reprisal action.

In the event of a reprisal being alleged or suspected, Council will act in the interest of the discloser by:

- Attending to the safety of the discloser or affected third parties as a matter of priority;
- Reviewing the risk assessment of reprisal and any protective measures needed; and
- Managing any allegation of a reprisal as a public interest disclosures in its own right.

Any employees found to have engaged in reprisals will be the subject of disciplinary action up to dismissal. Criminal action may be taken with respect to reprisal and substantial fines and/or terms of imprisonment can apply under the *Public Interest Disclosure Act 2010*.

Council may be vicariously liable for reprisal actions taken by employees, but may be able to raise as a defence, on the balance of probabilities, that reasonable steps were taken to prevent the employee taking reprisal action.

Reasonable management action is not prevented in relation to an employee who has made a public interest disclosure. Any management action can only be taken if the manager's reasons for taking the action do not include the fact that the person has made a public interest disclosure.

Protecting the rights of the subject officer

All public interest disclosures will be assessed and managed impartially, fairly and reasonably. The rules of natural justice will apply to any subject officer under investigation in respect of an allegation raised against them. Accordingly, subject officers will be advised of the nature of allegations against them at the appropriate time and are to be afforded an opportunity to respond.

Employees who are the subject of a public interest disclosure may seek assistance from their employee association (e.g. Union) or may engage their own private legal representation. An employee may also utilise the services of Council's employee assistance scheme.

Investigation

The assessment about whether the reported conduct constitutes a public interest disclosure and the determination of appropriate action to be taken will be determined by the Chief Executive Officer on a case by case basis.

Notwithstanding whether a complaint has been assessed as a public interest disclosure, the appropriate investigation procedure identified in the Complaints Management Process Guideline (GL-3037-001) for general complaints or Workplace Investigations Procedure (PR-2127-017-01) for internal work grievances will apply.

Where appropriate, an investigator will be engaged to investigate the public interest disclosure. In all cases the investigator must:

- Have the necessary skills or training to perform that task in a professional manner; and
- Not be under the direction of a person being investigated; and
- Be sufficiently removed from the issue as to not have a conflict of interest or perceived conflict of interest when undertaking the investigation; and
- When assessing (and where necessary, investigating and taking action on) a public interest disclosure, take account of Council's obligations to the subject officer. The fact that Council is relying on information obtained through a public interest disclosure for any subsequent disciplinary process does not exempt Council from its obligations to the subject officer.

On conclusion of the investigation the investigator will provide the Chief Executive Officer with a written report detailing the process followed and their findings. The Chief Executive Officer will utilise that report as appropriate to:

- Inform improvements to service delivery, business processes and internal controls;
- Recommend any amendments to Council policies and/or procedures;
- Recommend amendments to this guideline to improve its effectiveness; or
- Investigate disciplinary action.

Where reasonable, an edited extract of the report may be forwarded to the discloser upon application through the right to information process.

A person dissatisfied with Council's handling of their public interest disclosure has an internal right of review to the Chief Executive Officer. Disclosers are also entitled to raise the matter with other entities, such as the Queensland Ombudsman in cases of maladministration.

Confidentiality

An employee who gains confidential information because he or she receives a public interest disclosure or is involved in dealing with a public interest disclosure must not make a record of the information, or intentionally or recklessly disclose the information to anyone, other than:

- For the *Public Interest Disclosure Act 2010*;
- To discharge a function under another Act including, for example, to investigate something disclosed by a public interest disclosure;
- For a proceeding in a court or tribunal;

- If the person to whom the confidential information relates consents in writing to the making of the record or disclosure of the information;
- If the employee cannot reasonably obtain consent from the person to whom the confidential information relates and making the record or disclosing the information is unlikely to harm the interests of the person to whom the confidential information relates and is reasonable in all the circumstances;
- If the person reasonably believes that making the record or disclosing the information is necessary to provide for the safety or welfare of a person; or
- If authorised under a regulation or another Act.

In certain circumstances, natural justice may require a person to disclose information to a person whose rights would otherwise be detrimentally affected. The identity of the discloser may only be disclosed if it is essential to do so under the principles of natural justice and it is unlikely that a reprisal will be taken against a discloser because of the public interest disclosure.

Making a record of confidential information or disclosing information to anyone (other than for the reasons noted above) is an offence under the *Public Interest Disclosure Act 2010*.

Record keeping and reporting

The *Public Interest Disclosure Act 2010* requires Council to keep adequate record of public interest disclosures, including details of the discloser (where known), the nature of the information disclosed and action taken by Council, even where the disclosure is investigated and found to be incorrect.

Council will maintain a confidential file pertaining to each potential public interest disclosure, with the following minimum requirements:

- The name of the person making the disclosure (if known);
- Details of the disclosure;
- The determination made in respect of the disclosure; and
- Action taken on the disclosure (including review, investigation or other form of managerial response).

All records of public interest disclosure and their investigation will be kept in Council's official central records system and will be kept strictly confidential. Responsibility for creating records and for fulfilling Council's reporting obligations rests with Council's public interest disclosure co-ordinators who form part of the Legal Services Unit.

Council will also provide the oversight agency, the Queensland Ombudsman, with the following information in electronic form:

- The date the disclosure was received and where it was received from;
- The status of the discloser (e.g. entity staff, staff from another entity, member of the public, anonymous);
- The gender and status of the subject officer (e.g. staff-member, non-staff-member);
- The relationship between the discloser and the subject officer;
- The location of the subject officer (geographical region);
- A summary of the allegation/information received;
- The involvement of an external agency/party;

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- The action taken to minimise any risk of reprisal;
- Date inquiry/investigation commenced and completed;
- The outcome of the assessment, inquiry/investigation;
- The date the public interest disclosure was resolved or closed;
- When the outcome was advised to the discloser;
- If no action was taken, the reason for the decision; and
- Other legal processes associated with the disclosure.

Further information

Further advice about this guideline can be obtained from the Group Manager Internal Audit.

Reference Documents

Public Interest Disclosure Act 2010

Crime and Corruption Act 2001

Public Interest Disclosure Standard – effective 1 January 2013

Managing a Public Interest Disclosure Program – A guide for public sector organisations 2011

Handling a Public Interest Disclosure – A guide for public sector managers and supervisors 2011

Making a Public Interest Disclosure – A guide for individuals working in the public sector 2011

Associated Documents

- Public Interest Disclosure Policy (POL-3123)
- Fraud and Corruption Prevention Policy (POL-3060)
- Fraud and Corruption Prevention Guideline (GL-3060-001)
- Employee Code of Conduct
- Complaints Management Process Policy (GL-3037)
- Complaints Management Process Guideline (GL-3037-001)
- Workplace Investigations Procedure (PR-2127-017-01)

Document Control

- General Manager Organisational Services can approve amendments to this guideline. Please forward any requests to change the content of this document to the Group Manager Internal Audit.
- Approved amended documents must be submitted to the Corporate Meetings and Registers Team to place the document on the Policy, Guidelines and the Procedures Register.

Version Information

Version No.	Date	Key Changes
2	September 2013	<ul style="list-style-type: none">• Moved last paragraph regarding the appropriate investigation procedure to be performed from “Assessing a disclosure” to “Investigation”.• Minor formatting and name changes.
3	March 2015	<ul style="list-style-type: none">• Minor legislation changes.

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