

Protected Disclosures Procedure

Records number:	18/89451	Endorsed by:	Council
Date Endorsed:	11 September 2018	Policy Author:	Manager Governance and Commercial Services
Policy Owner:	Manager Governance and Commercial Services	Review date	July 2020
Procedure Status:	Active	Policy type	Council

REVISION RECORD

Date	Version	Revision Description
3/7/2012	1	New procedure superseding Fraud and Corruption Control and Whistleblower Policy and Procedure 2011
11/9/2018	2	Review approved by Council

Table of Contents

Introduction	1
Purpose	1
Scope.....	1
Definitions	2
Responsibilities	6
Procedures	8
Related Legislation	25
Related Documents	26
Review of Procedure.....	26
<i>Appendix 1 - Process for Making a Disclosure</i>	<i>27</i>
<i>Appendix 2 - Where to report disclosures.....</i>	<i>28</i>

Introduction

Maribyrnong City Council is committed to the aims and objectives of the *Protected Disclosure Act 2012*. It does not tolerate corrupt or improper conduct by its employees, officers, or Councillors, nor the taking of reprisals against those who disclose such conduct.

Council recognises the value of transparency and accountability in its administrative and management practices and supports the making of disclosures that:

- a) Reveal corrupt conduct, such as conduct involving a substantial mismanagement of public resources, or
- b) Conduct involving a substantial risk to public health and safety or the environment

Council will take all reasonable steps to protect and support people who make such disclosures from any detrimental action in reprisal for making the disclosure.

Purpose

Maribyrnong City Council is required to establish and publish procedures under s58 of the *Protected Disclosure Act 2012* and in accordance with the Guidelines of the IBAC published under s57 of the Act. Council is required to ensure these procedures are readily available to members of the public as well as to all Councillors and employees of Council.

These procedures establish a system to facilitate the making of disclosures of improper conduct or detrimental action by Council or its employees pursuant to the obligations on Council under the Act. It specifies the procedures for the handling of disclosures and, where appropriate, notification to the IBAC. It also provides for protection from detrimental action to any person affected by a protected disclosure whether it is a person who makes a disclosure, a witness, or a person who is the subject of an investigation.

Scope

These procedures apply to all Councillors, employees, volunteers, contractors and consultants of Council.

Disclosures may be made by employees, Councillors or by members of the public. A disclosure cannot be made by a business or company.

Maribyrnong City Council Councillors, employees or contractors and members of the public are encouraged to raise matters of improper conduct, including suspected fraud, corruption, substantial mismanagement of public resources, risk to public health and safety, risk to the environment, or detrimental action.

Reports of improper conduct can be made via Council's public complaints process, fraud and corruption control procedures and/or, if made in accordance with the Act, through this Procedure.

Disclosures about improper conduct or detrimental action by Maribyrnong City Council Councillors must be made directly to IBAC or the Victorian Ombudsman.

Definitions

Term	Definition
Act	Protected Disclosure Act 2012
Assessable disclosure	A disclosure that must be made directly, or notified, to IBAC, that the notifier considers may be a protected disclosure
Belief	A disclosure has to be more than a suspicion – the belief must be based on reasonable grounds
Corrupt Conduct	<p>Includes conduct:</p> <ul style="list-style-type: none">• of any person that adversely affects the honest performance by a public officer of a public body of his/her/its functions• of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust• of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust• of a public officer or public body that involves the misuse of information or material acquired in the course of the performance of his/her functions <p>that would, if the facts were found proved beyond a reasonable doubt, constitute a relevant offence¹.</p>

¹ As defined in Section 4 of the *Independent Broad-based Anti-corruption Commission Act 2011*

Detrimental Action	<p>It is an offence for a person to take or threaten action in reprisal when:</p> <ul style="list-style-type: none"> • a protected disclosure has been made • a person believes a protected disclosure has been made • a person believes that another person intends to make a protected disclosure <p>Detrimental action includes:</p> <ul style="list-style-type: none"> • Actions 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 taking of disciplinary action (if the person can prove the substantial reason is because of the disclosure).
Discloser	A person who makes a disclosure of improper conduct or detrimental action, in accordance with the requirements of Part 2 of the <i>Protected Disclosure Act 2012</i>
Entity that can receive a disclosure	A public service body within the meaning of section 4(1) of the <i>Public Administration Act 2004</i> , a Council (established under <i>the Local Government Act 1989</i>), a public body or public officer prescribed for the purposes of section 13 of the <i>Protected Disclosure Act 2012</i> .
IBAC	Independent Broad-based Anti-corruption Commission
Improper Conduct	<p>Improper conduct means</p> <ol style="list-style-type: none"> a) corrupt conduct, or b) conduct specified in section 4(2) of the <i>Protected Disclosure Act 2012</i> that would constitute a criminal offence, or reasonable grounds for dismissing, dispensing with, or otherwise terminating the services of the officer who was, or is engaged in the conduct. <p>Improper conduct can also refer to any person whose conduct adversely affects the honest performance of a public officer or public official.</p>

Investigating entity	<p>Only the following entities can investigate a protected disclosure complaint:</p> <ul style="list-style-type: none"> • IBAC • Victorian Ombudsman • Chief Commissioner of Police, and • Victorian Inspectorate
Notifier	The officer responsible for notifying IBAC of an assessable disclosure
Protected Disclosure	<p>A disclosure made in accordance with Part 2 of the <i>Protected Disclosure Act 2012</i>. A Protected Disclosure is one which is made by a natural person or group of people who has reasonable grounds for the belief that a public officer or public body has engaged in, or intends to engage in improper conduct in their official capacity, or detrimental action.</p> <p>To be a protected disclosure, a disclosure must satisfy the following criteria:</p> <ul style="list-style-type: none"> • Is it made by an individual, or group of people (joint disclosure)? • Has it been made verbally (in private) or in writing? • Is it made to the right body? • Is it about a public body or officer acting in their official capacity? • Does the information show or tend to show there is improper conduct or detrimental action? • Does the discloser believe on reasonable grounds that the information shows or tends to show there is improper conduct or detrimental action?
Protected Disclosure complaint	A disclosure that has been determined by IBAC under section 26 of the <i>Protected Disclosure Act 2012</i> to be a protected disclosure complaint. A Protected Disclosure that has been determined warrants investigation.
Protected Disclosure Coordinator/Officer	The officer of the public body responsible for assessing if a disclosure is an assessable disclosure, and notifying IBAC, based on the information received by a discloser or specified

	officer.
Public Body	A public body within the meaning of section 6 of the <i>Independent Broad-based Anti- corruption Act 2011</i> , IBAC or any other body or entity prescribed for the purposes of this definition.
Public officer	A public officer within the meaning of section 6 of the <i>Independent Broad-based Anti- corruption Act 2011</i> , an IBAC officer or any other person prescribed for the purposes of this definition.
Reasonable grounds	Reasonable grounds for a state of mind required the existence of facts which are sufficient to induce that state of mind in a reasonable person.
Regulations	Protected Disclosure Regulations 2012
Specified conduct	<p>As defined in section 4(2) of the <i>Protected Disclosure Act 2012</i> and includes conduct of a public officer in his/her capacity as a public officer, or a public body in its capacity as a public body, that involves:</p> <ul style="list-style-type: none"> • substantial mismanagement of public resources • substantial risk to public health or safety • substantial risk to the environment, <p>Where such conduct would, if proved, give rise to a criminal offence or reasonable grounds for terminating the services of the officer engaging in the conduct.</p>
Specified persons	Officers at the public body that have been nominated in this procedure, to accept a disclosure.
Welfare Manager	The officer of the public body responsible for managing the welfare of witnesses, either directly or through and EAP program
Witnesses	A term that can refer to a discloser, the subject of a disclosure, or witnesses for an investigation relating to a Protected Disclosure Complaint

Responsibilities

Employees and Councillors are encouraged to raise matters of concern in relation to Council, including about any employee or Councillors. In particular, employees and Councillors are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures, whether such conduct or action has taken place, is suspected will take place, or is still occurring. Disclosures may also be made about conduct that occurred prior to the commencement of the Act on 10 February 2013.

Chief Executive Officer

The CEO will:

- Be responsible for ensuring Maribyrnong City Council carries out its responsibilities under the Act and guidelines
- Liaise with IBAC (or referred authority) in regard to cooperating with any investigations
- Be responsible for actioning any investigation outcomes, and providing relevant information to the Protected Disclosure Coordinator for reporting requirements
- Be responsible for instigating and overseeing any actions in response to concerns about detrimental actions or reprisals for a person making a disclosure
- Receive a disclosure in accordance with this Procedure and the Act, and refer to the Protected Disclosure Coordinator or Officer for assessment as soon as practicable
- Take all necessary steps to ensure the identity of the witness/es is kept confidential

Protected Disclosure Coordinator

The Protected Disclosure Coordinator has a central role in the internal reporting system and maintains oversight over the system.

The Protected Disclosure Coordinator will:

- Receive and assess a disclosure, in accordance with this Procedure and the Act, to determine whether it is an assessable disclosure
- Notify all assessable disclosures to IBAC
- Notify a discloser
- Coordinate training for specified officers
- Be a contact point for general advice about this Procedure and the Act
- Contact the welfare manager to notify of a witness/es requiring welfare support

- Hear and take notes of any concerns about detrimental action by the witness/es, and notify the CEO
- Establish and maintain a confidential filing system
- Collate and publish statistics in the Annual Report
- Take all necessary steps to ensure the identity of the witness/es is kept confidential
- Liaise with the Maribyrnong City Council CEO.

The Protected Disclosure Coordinator appointed by Council is:

Lisa King, Manager Governance and Commercial Services.
Telephone: 9688 0200
Mail: PO Box 58, Footscray, VIC 3011
Email: disclosure@maribyrnong.vic.gov.au

Protected Disclosure Officer

The Protected Disclosure Officer will:

- Receive and assess a disclosure, in accordance with this Procedure and the Act, to determine whether it is an assessable disclosure
- Be a contact point for general advice about this Procedure and the Act
- Contact the welfare manager to notify of a witness/es requiring welfare support
- Establish and maintain a confidential filing system
- Take all necessary steps to ensure the identity of the witness/es is kept confidential

The Protected Disclosure Officer appointed by Council is:

Danny Bilaver, Coordinator Governance
Telephone: 9688 0200
Mail: PO Box 58, Footscray VIC 3011
Email: disclosure@maribyrnong.vic.gov.au

Welfare Manager

The Welfare Manager is responsible for looking after the general welfare of a person making a protected disclosure. The Welfare Manager will:

- Make initial, and then regular confidential contact with the witness/es to provide support, and determine/organise professional counselling through EAP, if required
- Hear and take notes of any concerns about detrimental action by the witness/es, and notify the Protected Disclosure Coordinator or CEO
- Not discuss any aspects of the disclosure or investigation with the

- witness/es
- Establish and maintain a confidential filing system
- Take all necessary steps to ensure the identity of the witness/es is kept confidential

The Welfare Manager appointed by Council is:

Paul Anstey, Coordinator Human Resources

Telephone: 9688 0200

Mail: PO Box 58, Footscray VIC 3011

Managers and supervisors will:

- Receive a disclosure in accordance with this Procedure and the Act, and refer to the Protected Disclosure Coordinator or Officer for assessment as soon as practicable
- Attend mandatory training on receiving a disclosure in line with this Procedure
- Establish and maintain a confidential filing system
- Take all necessary steps to ensure the identity of the witness/es is kept confidential

Managers and supervisors can be:

- Direct or indirect (line) supervisor or manager of the discloser
- Direct or indirect (line) supervisor or manager of the subject of the disclosure

IBAC

IBAC is Victoria's anti-corruption agency responsible for preventing and exposing public sector corruption and police misconduct.

Phone: 1300 735 135

Mail: GPO Box 24234 Melbourne VIC 3000

Level 1, North Tower, 459 Collins Street, Melbourne

Email: info@ibac.vic.gov.au

Web: www.ibac.vic.gov.au

Procedures

1. Making a Disclosure

1.1 What is a disclosure?

A disclosure may be made about two things under the Act:

- Improper conduct of public bodies or public officers; and

- Detrimental action taken by public bodies or public officers in reprisal against a person for the making of a protected disclosure

The term disclosure is interpreted under the Act in the ordinary sense of the word, for example, as a “revelation” to the person receiving it. A complaint or allegation that is already in the public domain will not normally be a protected disclosure. Such material would, for example, include matters which have already been subject to media or other public commentary.

1.2 Who can make a disclosure?

A disclosure may:

- Only be made by a natural person (or a group of individuals making joint disclosures);
- Cannot be made by a company or an organization, but its officers or employees can;
- Be made anonymously
- Be made even where the discloser is unable to identify precisely the individual or the organisation to which the disclosure relates; and
- Also be a complaint, notification or disclosure (or however described under another law)

Anonymous disclosures may create difficulties in Council being able to communicate with the discloser, and some of the notification requirements imposed on Council in relation to disclosures will not apply in relation to an anonymously made disclosure. In addition, it may impede Council's ability to properly assess whether the complaint or allegation is a protected disclosure for the purposes of the Act.

The disclosure must relate to Maribyrnong City Council employees, Councillors, contractors or organisation (public body), in relation to public duties or functions. If the disclosure does not relate to Maribyrnong City Council, then the person taking the disclosure should refer the discloser to the appropriate public body or IBAC.

1.3 How can a disclosure be made?

A disclosure must be made in accordance with Part 2 of the Act. Part 2 of the Act permits disclosures to be made anonymously, orally or in writing and need not identify the person or organization being complained about.

Generally:

- Verbal disclosure may be made:
 - In person;
 - By telephone;
 - By leaving a voicemail message on a particular telephone

- answering machine; or
- By any other form of non-written electronic communication

An oral disclosure must be made in private. To maintain confidentiality, the disclosure can be made at a time and location of the discloser's choosing. The disclosure must be taken in a private environment, and organised in a way that protects the confidentiality of the meeting.

If verbal, the person receiving the disclosure must make notes at the time. These notes, and/or any supporting evidence provided, must be kept secure and only provided to the Protected Disclosure Coordinator or IBAC.

A person can make a written disclosure via email or letter. A letter must be hand-delivered or mailed or emailed. Disclosures cannot be made by fax.

- A written disclosure to the IBAC and the Victorian Ombudsman can be made via an online form available at each of their respective websites:
 - <https://www.ibac.vic.gov.au/reporting-corruption/complaints-form>
 - <https://www.ombudsman.vic.gov.au/Complaints/Make-a-Complaint>

1.4 The disclosure must be made to a body authorised to receive it

One of the requirements in Part 2 of the Act is that the disclosure has been made to a body authorised under the Act to receive the disclosure.

Council can only deal with disclosures which concern Council and its employees.

Disclosures about improper conduct or detrimental action by Council's Councillors must be made to the IBAC or the Victorian Ombudsman. Those disclosures must not be made to the Council.

Disclosures about improper conduct or detrimental action by Council or its employees and staff may be made to Council or one of four external authorities:

- IBAC;
- The Victorian Ombudsman in relation to limited types of disclosures;
- The Victorian Inspectorate in relation to limited types of disclosures; or
- The Chief Commissioner of Police in relation to limited types of disclosures.

Disclosure relates to:	Disclosure can be made to:
Maribyrnong City Council Employee/Contractor/ Organisation	<ul style="list-style-type: none"> • Protected Disclosure Coordinator • Protected Disclosure Officer • CEO • IBAC • Managers or supervisors: <ul style="list-style-type: none"> • Direct or Indirect (Line) Supervisor or Manager of the discloser • Direct or Indirect (Line) Supervisor or Manager of the subject of the disclosure
Maribyrnong City Council Councillor	<ul style="list-style-type: none"> • IBAC • Victorian Ombudsman

1.5 Making a disclosure to the Council

Council can only address disclosures that relate to Council or an employee of Council. Disclosures about Councillors must be made to IBAC or the Victorian Ombudsman.

In accordance with the Regulations, an oral disclosure must be made in private, either in person, by telephone or some form of electronic communication not involving writing, to:

- The CEO, or
- Council's Protected Disclosure Coordinator or Council's Protected Disclosure Officer; or
- The person's supervisor or manager (if the person making the disclosure is an employee of Council, or the disclosure relates to a person who is an employee of Council).

A written disclosure must be:

- Delivered personally to the office of Council;
- Sent by post addressed to Council's office; or
- Emailed to the CEO or Council's Protected Disclosure Coordinator or Officer at disclosure@maribyrnong.vic.gov.au

1.6 Making a disclosure to IBAC

An oral disclosure to IBAC must be made in private and may be made:

- In person
- By telephone, to 1300 735 135
- By leaving a voicemail message on the telephone number of one of the specified individuals below and to whom an oral disclosure can be made
- By some other form of non-written electronic communication

The oral disclosure must be made to one of the following persons:

- The Commissioner of the IBAC;
- The Deputy Commissioner of the IBAC;
- The CEO of the IBAC;
- An employee referred to in s 35(1) of the IBAC Act; or
- Any staff referred to in s 35(2) of the IBAC Act

A written disclosure to the IBAC must be:

- Delivered personally to the office of the IBAC, at Level 1, North Tower, 459 Collins Street, Melbourne, VIC 3001; or
- Sent by post addressed to the office of the IBAC, at GPO Box 24234, Melbourne, VIC 3001
- Sent by email to the official email address of a person specified above to whom an oral disclosure may be made (i.e the Commissioner, the Deputy Commissioner, the CEO, or employee or staff referred to in s 35 of the IBAC Act); or
- Submitted by an online form available from
<https://www.ibac.vic.gov.au/reporting-corruption/complaints-form>

1.7 Making a disclosure to the Victorian Ombudsman

An oral disclosure to the Victorian Ombudsman must be made in private and may be made:

- In person;
- By telephone, to 9613 6222, or toll free (regional areas only) to 1800 806 314
- By leaving a voicemail message on the telephone number of any Victorian Ombudsman officer; or
- By some other form of non-written electronic communication

The oral disclosure may be made to a Victorian Ombudsman officer.

Written disclosure to the Ombudsman must be:

- Delivered personally to the office of the Victorian Ombudsman, at Level 2, 570 Bourke Street, Melbourne, VIC 3000; or
- Sent by post addressed to the office of the Victorian Ombudsman, as above; or
- Sent by email to the official email address of any Victorian Ombudsman officer; or
- Submitted by an online form available from:
<https://www.ombudsman.vic.gov.au/Complaints/Make-a-Complaint>

2. Handling Disclosures

2.1 Receiving a disclosure

When the Council receives a complaint, report or allegation of improper conduct or detrimental action, the first step will be to ascertain whether it has been made in accordance with Part 2 of the Act.

If the disclosure satisfies Part 2 of the Act, the discloser is entitled to receive protections under Part 6 of the Act (see section 3 of these procedures).

At the time of the disclosure being made, the following will be discussed with the discloser:

- The intent of the Act and what constitutes a protected disclosure
- The role of Maribyrnong City Council and IBAC
- Details and evidence of the allegation
- The expectations of the discloser
- The options available to the discloser. If the discloser does not want to make a protected disclosure at this time, this decision must be confirmed in writing

2.2 Assessment of Disclosure

The person taking a disclosure must, as soon as practicable, provide the details of the disclosure – including any notes or supporting evidence – to the Protected Disclosure Coordinator or Protected Disclosure Officer in person.

The Protected Disclosure Coordinator will assess the disclosure in accordance with the requirements of *the Act*. If the disclosure satisfies the requirements of Part 2 of the Act, Council is required to determine whether the disclosure may be a protected disclosure by going through the 2 step assessment process recommended by the IBAC as follows.

This will be the case even if the discloser does not refer to the Act or require the protections of the Act. The initial assessment is made on the nature of the information disclosed or on the belief that the discloser has about the nature of the information, and not the discloser's intention.

2.2.1 First Step

The first question Council must answer is whether the information disclosed shows, or tends to show, that there is improper conduct or detrimental action taken in reprisal for the making of a protected disclosure.

This requires the Council to ascertain whether the information satisfied the 'elements' of improper conduct or detrimental action, as defined in the Act and whether any of the relevant exceptions apply. This may require Council to:

- Seek further information;
- Conduct a discreet initial enquiry;
- Seek (further) evidence from the discloser;
- Ascertain whether there is sufficient supporting material to demonstrate that the conduct or actions covered by the Act have occurred, are occurring or are likely to occur.

If it is not clear that the information disclosed does show or tend to show that there is improper conduct or detrimental action, then Council will move to the second step below.

2.2.2 Second Step

This requires Council to ask whether the discloser believes on reasonable grounds that the information shows or tends to show there is improper conduct or detrimental action. That is, does the person actually believe that the information shows, or tends to show, there is improper conduct or detrimental action? A reasonable belief requires the belief to be based on facts that would be sufficient to make a reasonable person believe there was improper conduct or detrimental action.

This reasonable belief does not have to be based on actual proof that the improper conduct or detrimental action in fact occurred, is occurring, or will occur, but there must be some information supporting this belief. The grounds for the reasonable belief can leave something to surmise or conjecture, but it must be more than just a reasonable suspicion, and the belief must be probable.

According to the IBAC, simply stating that improper conduct or detrimental action is occurring, without providing any supporting information, would not be a sufficient basis for having a reasonable belief. In the IBAC's view, a belief cannot be based on a mere allegation or conclusion unsupported by any further facts or circumstances.

Other matters that the IBAC suggests Council can consider are:

- The reliability of the information provided by the discloser, even if it is second or third-hand. For example, how would the discloser have obtained the information?
- The amount of detail that has been provided in the information disclosed; and
- The credibility of the discloser, or of those people who have provided the discloser with information.

2.2.3 Urgent Action

If the person taking the disclosure believes the disclosure details behaviour or a threat requiring urgent action, they should report the relevant details (not the discloser's identity) to their Director or the CEO.

In these cases Council can take immediate action while considering whether or not it is an assessable disclosure that must be notified to the IBAC or awaiting the IBAC's decision on a notified matter.

The Director, CEO or Protected Disclosure Coordinator must notify IBAC of any urgent action undertaken.

It may also be necessary to report criminal conduct to Victoria Police for immediate investigation, or take management action against an employee to prevent future conduct. Reporting the alleged conduct to the Victoria Police as criminal conduct, or taking legitimate management action against the subject of the disclosure in order to prevent future conduct, may be appropriate courses of action in these circumstances.

Examples of this provided by the IBAC include where the disclosure may be about:

- A child protection worker allegedly sexually assaulting children in care;
- A council worker allegedly lighting bush fires;
- A person threatening to poison the water supply.

Section 52(3)(a)(iii) of the Act allows Council to disclose the content of the disclosure by a person of body "to the extent necessary for the purpose of taking lawful action in relation to the conduct that is subject of an assessable disclosure including disciplinary process or action".

2.2.4 Assessment Decisions

If Council decides it may be a protected disclosure, it must notify the IBAC of the disclosure. If the matter is considered not to be an assessable disclosure, then the Protected Disclosure Coordinator will notify the discloser and recommend the discloser follows up the issue under Council's complaints procedure, grievance procedure or other appropriate avenue.

2.3 Notification to IBAC and Discloser

Within 28 days of receipt of disclosure by a discloser or specified person at Council:

1. The Protected Disclosure Coordinator will notify IBAC in writing via registered mail of an assessable disclosure, including relevant details and supporting evidence.

The Protected Disclosure Coordinator will also notify the discloser (in writing if contact details are available and/or it is not an anonymous disclosure) that:

- The disclosure has been notified to IBAC for assessment and IBAC will be

- the body responsible for further assessing, and dismissing/investigating/referring the disclosure.
- It is an offence under section 74 of the Act to disclose that the disclosure has been notified to IBAC for assessment under the Act

OR

2. If the Protected Disclosure Coordinator determines the disclosure is not an assessable disclosure, they will notify the discloser (in writing if contact details are available and/or it is not an anonymous disclosure) that:

- Council does not consider the disclosure to be a protected disclosure
- The disclosure has not been notified to IBAC for assessment
- The protections under Part 6 of the Act apply, regardless of whether the disclosure is notified to IBAC for assessment,
- The options available to pursue the matter, including making the disclosure directly to IBAC, or making a complaint/report/allegation through Council's complaints policy, grievance procedure or other appropriate avenue.

2.4 Investigations

It is the responsibility of the CEO to cooperate with, and undertake any actions resulting from the findings and outcomes of a Protected Disclosure Complaint investigation by IBAC, or referred investigations by the Victorian Ombudsman or Victorian Inspectorate.

2.5 Protections for public officers

A public officer is given specific protections under the Act to provide information to other public officers or to the IBAC in dealing with a disclosure they have received. When a public officer acts in good faith and in accordance with the Act, Regulations and the IBAC's Guidelines, the public officer does not commit an offence under laws imposing a duty to maintain confidentiality or restricting the disclosure of information.

3. Welfare management

3.1 Commitment to protecting people making protected disclosures

Council is committed to the protection of genuine disclosures against detrimental action taken in reprisal for the making of a protected disclosure.

The protection of persons making genuine protected disclosures against improper conduct or detrimental action is essential for the effective implementation of the Act. In addition, the Act extends the need for welfare management to people who have cooperated or intend to cooperate with an investigation of a protected disclosure complaint ("cooperators"). Persons who

are the subject of allegations will also have their welfare looked after.

Council must ensure disclosers and cooperators are protected from direct and indirect detrimental action being taken against them in reprisal for the protected disclosure. Council will ensure its workplace culture supports disclosers and cooperators. Such support will extend to the relevant persons regardless of whether they are internal to the organisation (e.g. employees, Councillors, other officers) or external members of the public. However, different legislative responsibilities (including those external to the Act) apply to persons internal to the organisation, and to persons who may be clients or users of Council's services. Those derive from various legislative and administrative obligations to:

- Ensure the health and wellbeing of employees of a public sector body under laws including those relating to Occupational Health and Safety, the Charter of Human Rights and Responsibilities Act 2006, the Public Administration Act 2004, and various Victorian Public Sector Codes of Conduct (as relevant); and
- Comply with various relevant laws, policies and practices when making administrative and other decisions or taking particular actions affecting a customer, client or user of the public body's services.

Generally, for employees, Council will ensure a supportive work environment and respond appropriately to any reports of intimidation or harassment against these persons. For external persons, Council will take reasonable steps to provide appropriate support. Council will discuss reasonable expectations with all persons receiving welfare management in connection with a protected disclosure.

3.2 Support available to disclosers and cooperators

Council will support disclosers and cooperators by:

- keeping them informed, by providing:
 - confirmation that the disclosure has been received;
 - the legislative or administrative protections available to the person;
 - a description of any action proposed to be taken;
 - if action has been taken by Council, details about results of the action known to Council;
- providing active support by:
 - acknowledging the person for having come forward
 - assuring the discloser or cooperator that they have done the right thing, and Council appreciates it;
 - making a clear offer of support;
 - assuring them that all reasonable steps will be taken to protect them;
 - giving them an undertaking to keep them informed as far as Council

- is reasonably able to;
- managing their expectations by undertaking an early discussion with them about:
 - what outcome they seek;
 - whether their expectations are realistic;
 - what Council will be able to deliver;
- maintaining confidentiality by:
 - ensuring as far as is possible that other people cannot infer the identity of the discloser or cooperator;
 - reminding the discloser or cooperator not to reveal themselves or to reveal any information that would enable others to identify them as a discloser or cooperator;
 - ensuring that hardcopy and electronic files relating to the disclosure are accessible only to those who are involved in managing disclosures in Council;
- proactively assessing the risk of detrimental action being taken in reprisal (rather than reactively waiting for a problem to arise and a complaint made by the discloser or cooperator), that is, actively monitor the workplace, anticipating problems and dealing with them before they develop as far as is possible;
- protecting the discloser or cooperator by:
 - examining the immediate welfare and protection needs of the person and seeking to foster a supportive work environment;
 - listening and responding to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions;
- assessing whether the concerns the person may have about harassment, intimidation or victimisation might be due to other causes other than those related to the protected disclosure;
- preventing the spread of gossip and rumours about any investigation into the protected disclosure; and
- keeping contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action.

3.3 Welfare Manager

The welfare manager is responsible for looking after the general welfare of the witness/es – including the discloser/s, anyone participating in an investigation, and the person who is the subject of a disclosure. The welfare manager will:

- Examine the immediate welfare and protection needs of a witness, to foster a supportive work environment
- Listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure, make notes and advise the Protected Disclosure Coordinator, Officer or CEO
- Organise professional counselling through Council's Employee Assist service provider, if identified as appropriate or requested by the witness

(not disclosing the details of the matter to the service, beyond it for is a protected disclosure witness)

- Attempt to ensure the expectations of the witness are realistic, and that their efforts to maintain confidentiality around the matter will assist in ensuring them the protections of the Act.

The welfare manager must not divulge any details relating the disclosed matter to any person other than the Protected Disclosure Coordinator, or the CEO. All meetings between the welfare manager and the witness must be conducted discreetly to protect the person's identity.

3.4 Protections for persons making a protected disclosure

Part 6 of the Act sets out the protections provided to persons who make a disclosure that is a 'protected disclosure', i.e., one that is made in accordance with Part 2 of the Act. In summary, they are as follows:

- the discloser is not subject to any civil or criminal liability for making the protected disclosure;
- the discloser is not subject to any administrative action (including disciplinary action) for making the protected disclosure;
- by making the protected disclosure, the discloser is not committing an offence against the Constitution Act 1975 or any other law that imposes obligations of confidentiality or otherwise restricts the disclosure of information;
- by making the protected disclosure, the discloser is not breaching any other obligation (made by oath, rule of law or practice) requiring him or her to maintain confidentiality; and
- the discloser cannot be held liable for defamation in relation to information included in a protected disclosure made by him or her.

The protections in Part 6 apply from the time at which the disclosure is made by the discloser. They apply even if Council receiving the disclosure does not notify the disclosure to the IBAC, and even if the IBAC has determined that the protected disclosure is not a protected disclosure complaint.

The protections also apply to further information relating to a protected disclosure made by the original discloser, if the further information has been provided, verbally or in writing, to:

- the entity to which the protected disclosure was made;
- the IBAC; or any investigating entity investigating the protected disclosure.

Sections 52 and 53 of the Act refer specifically to confidentiality obligations of persons receiving information connected with an assessable disclosure, or leading to the identification of a discloser. Those confidentiality obligations do not apply to disclosers.

3.4.1 Actions of the discloser constituting offences and leading to protections being lost

A discloser is not protected if they commit an offence under s 72 or s 73 of Act, as follows:

- provide false or misleading information, or further information that relates to a protected disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a protected disclosure;
- claim that a matter is the subject of a protected disclosure knowing the claim to be false;
- falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a protected disclosure complaint.

Similar provisions set out in the IBAC Act, such as in s184, also makes it a criminal offence to disclose certain information received from the IBAC.

3.4.2 Other limitations on protections afforded to disclosers

A discloser is not protected against legitimate management action being taken by Council in accordance with the Act.

In addition, although the discloser of a protected disclosure is not subject to criminal or civil liability for making the disclosure, the Act specifically provides that a person remains liable for their own conduct even though the person has made a disclosure of that conduct under the Act. Therefore, the discloser will still be held liable for their own conduct that they disclose as part of making a protected disclosure.

3.4.3 If the person making the disclosure is implicated in the improper conduct or detrimental action that is the subject of the disclosure

Where a discloser is implicated in improper conduct, Council will handle the disclosure and protect the discloser from reprisals in accordance with the Act, the IBAC's guidelines and these procedures. Council acknowledges that the act of disclosing should not shield disclosers from the reasonable consequences flowing from any involvement in improper conduct. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

The management of the welfare of a discloser may become complicated when that person is implicated in misconduct, whether or not that misconduct is related to the disclosure.

Taking disciplinary or other action against a person who has made a protected disclosure invariably creates the perception that it is being taken in reprisal for the disclosure. The CEO will make the final decision on the advice of the

Protected Disclosure Coordinator as to whether disciplinary or other action will be taken against a discloser. Where disciplinary or other action relates to conduct that is the subject of the disclosure, the disciplinary or other action will only be taken after the disclosed matter has been appropriately dealt with. In all cases where disciplinary or other action is being contemplated, any such action will not be taken without the CEO ensuring that:

- the fact that a person has made a protected disclosure is not a substantial reason for the Council taking the action against the employee;
- there are good and sufficient grounds that would fully justify action against any other person in the same circumstances;
- there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

Council will take all reasonable steps to thoroughly document its decision-making process, including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not being taken in retribution against the discloser for making the disclosure, so that it will be able to clearly demonstrate that the disciplinary or other action was taken for the appropriate and permitted reasons under the Act.

The discloser will be clearly informed of any action proposed to be taken, be afforded natural justice and be informed of any mitigating factors that have been taken into account. Such communications with the discloser will be made in plain English and reasonable steps to provide appropriate support will be offered where appropriate.

3.5 Welfare Management of persons who are the subject of protected disclosures

Council will also meet the welfare needs of a person who is the subject of a protected disclosure. It is important to remember that until a protected disclosure complaint is resolved, the information about the person is only an allegation.

Council will make a decision about whether or when the subject of a disclosure will be informed about a protected disclosure involving an allegation made against him or her. It is possible that the subject of the disclosure may never be told about the disclosure if it is not determined to be a protected disclosure complaint, or if a decision is made to dismiss the disclosure.

The Act limits the disclosure of information about the content of an assessable disclosure and the identity of the discloser to certain specified circumstances set out in Part 7 of the Act. Council may give information about the disclosure to the subject of the disclosure if it is directed or authorised to do so by the investigative entity investigating the protected disclosure complaint, or for the purpose of taking action with respect to the conduct alleged, including disciplinary action.

Investigative entities may also inform the subject of the protected disclosure complaint in the course of their investigation for the purposes of conducting that investigation, or any actions that they propose to take as a result of the investigation.

3.5.1 Confidentiality

Consistently with Council's confidentiality obligations under the Act as outlined in these procedures, the fact that a disclosure has been made, whether it has been notified to the IBAC for assessment, any information received from the IBAC or another investigative entity and the identities of persons involved will not be divulged.

Council will take all reasonable steps to ensure the confidentiality of the subject of a disclosure during any assessment and any ensuing investigation. Where the disclosure is dismissed or investigations do not substantiate the allegations made against the person, the fact that the investigation was undertaken, its results, and the identity of the person subject of the disclosure will still be kept confidential. See section 4 for further information.

3.5.3 Natural justice

All persons who are the subject of a disclosure are entitled to natural justice, at the appropriate time as determined by investigating body, but before a decision is made about their conduct). At this time, the person/s will be offered support through Council's Welfare Manager.

The person who is the subject of a Protected Disclosure Complaint will:

- Be informed about the substance of allegations against them
- Be given the opportunity to answer the allegation before a final decision is made
- Be informed about the substance of any adverse comments that may be included in any report arising from an investigation
- Have his/her defence set out fairly in any report.

3.5.4 If the allegations are wrong or unsubstantiated

Council will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are wrong or unsubstantiated. In those circumstances, Council and any investigative entity involved will ensure that there are no adverse consequences for this person arising out of the disclosure or its investigation. This is particularly crucial in a situation where there has been publicly disclosed information identifying the subject, but also where such information has become well-known across Council and the subject is an employee or Councillor. Further, if the matter has been publicly disclosed by Council, the CEO will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

3.6 Occurrence of detrimental action

If a person who makes a protected disclosure reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action taken in reprisal for the making of the disclosure, the Protected Disclosure Coordinator will:

- record details of the incident;
- advise the person making the protected disclosure of his or her rights under the Act; and

The taking of detrimental action in reprisal for the making of a disclosure can be an offence against the Act as well as grounds for making a further disclosure. Where such detrimental action is reported, the Protected Disclosure Coordinator will assess the report as a new disclosure under the Act.

If the detrimental action is of a serious nature likely to amount to a criminal offence, the Protected Disclosure Coordinator will consider whether to report the matter to the police.

Where the Protected Disclosure Coordinator considers that the disclosure may be a protected disclosure, he or she will refer it to the IBAC. If the IBAC subsequently determines the matter to be a protected disclosure complaint, the IBAC may investigate the matter or refer it to another body for investigation as outlined in the Act.

4. Confidentiality

4.1 General obligation of confidentiality and all individuals

Maribyrnong City Council will take all reasonable steps to protect the identity of witnesses and the content of disclosures. Maintaining confidentiality is crucial in ensuring reprisals are not made against a witness.

The Act requires any person who receives a disclosure, or participates in an investigation, not to disclose that information except in certain limited circumstances.

4.2 Steps taken by Council to ensure confidentiality

4.2.1 Information Management

Maribyrnong City Council will ensure all files, whether paper or electronic, are kept in a secure location and can only be accessed by the Protected Disclosure Coordinator, Protected Disclosure Officer, the CEO, or Welfare Manager (in relation to welfare matters only).

All printed material will be kept in files that are clearly marked as a '*Confidential Protected Disclosure Act* matter – Do not open' – on the cover, and warn of the criminal penalties that apply to any unauthorised divulging information concerning a protected disclosure. Printed files must be kept in locked cabinets, and sealed in an envelope marked '*Confidential Protected Disclosure Act* matter – Do not open' when relocated to central filing for permanent storage. All electronic files must be stored in the corporate Electronic Document Management System with secure access controls in place.

Maribyrnong City Council will not email documents relevant to a protected disclosure matter and will ensure all phone calls and meetings are conducted in private. All correspondence, phone calls and emails from internal or external disclosers will be directed to the Protected Disclosure Coordinator or Protected Disclosure Officer.

4.2.2 Exemption from the Freedom of Information Act 2982 ("FOI Act")

The FOI Act provides a general right of access for any person to seek documents in the possession of Council. However, the Act provides that certain information related to protected disclosures as contained in documents in the possession of Council will be exempt from the application of the FOI Act.

Such information excluded from the operation of the FOI Act includes:

- Any information relating to a disclosure made in accordance with the Act;
- Any information relating to a disclosure notified to the IBAC by Council under s 21 of the Act for assessment; and
- Any information that is likely to lead to the identification of a discloser

Council is required to contact the IBAC prior to providing any document originating from the IBAC or relating to a protected disclosure, if that document is sought under the FOI Act.

4.2.3 Penalties apply for unauthorised disclosure of confidentiality

Disclosure of information in breach of the Act constitutes a criminal offence that is punishable by a maximum fine of 120 penalty units or 12 months imprisonment or both.

4.2.4 Limited exceptions permitted by the Act

The limited circumstances in which it is not an offence to disclose information connected with a disclosure may include:

- Where necessary for the purpose of the exercise of functions under this Act;
- By an investigating entity, or an officer of an investigating entity, where necessary for the purpose of the exercise of functions under the IBAC Act
- For the purpose of obtaining legal advice in relation to matters specified in the Act

- Where a person does not have sufficient knowledge of the English language, to obtain a translation from an interpreter

However, the Act prohibits the inclusion of particulars in any report or recommendation that is likely to lead to the identification of the discloser. The Act also prohibits the identification of the person who is the subject of the disclosure in any particulars included in an annual report.

5. Reporting – Collection and publishing of statistics

The Protected Disclosure Coordinator will be responsible for collating and publishing statistics for the Annual Report relating to disclosures and investigations, as required under the Act. . Special care will be taken to ensure any information published does not inadvertently lead to the identification of the witness/es.

6. Education and Training

Maribyrnong City Council will undertake regular education and communication activities for this Procedure and Council's Codes of Conduct, including mandatory training for Specified Officers and periodic refresher training courses for existing staff about their rights and obligations under the Act.

In addition, this Procedure will be available for all employees, officers and members of the public via Council's intranet and external website.

7. Criminal Offences

The Act contains a number of offence provisions relating to unauthorised disclosure of information by either disclosers or persons who have received disclosures. The relevant penalties include imprisonment, financial payments or both.

The criminal offences set out in the Act relating to confidentiality include:

- Divulging information obtained in connection or as a result of the handling or investigation of a protected disclosure without legislative authority.
- Disclosing that a disclosure has been notified to the IBAC for assessment under the Act.
- Disclosing that a disclosure has been assessed by the IBAC or the Victorian Inspectorate to be a protected disclosure.

Related Legislation

- Protected Disclosure Act 2012
- Protected Disclosure Regulations 2013
- Local Government Act 1989

- Independent Broad-Based Anti-corruption Commission Act 2011
- Independent Broad-Based Anti-corruption Commission Regulations 2013
- Public Administration Act 2004 (for definitions)
- Freedom of Information Act 1982

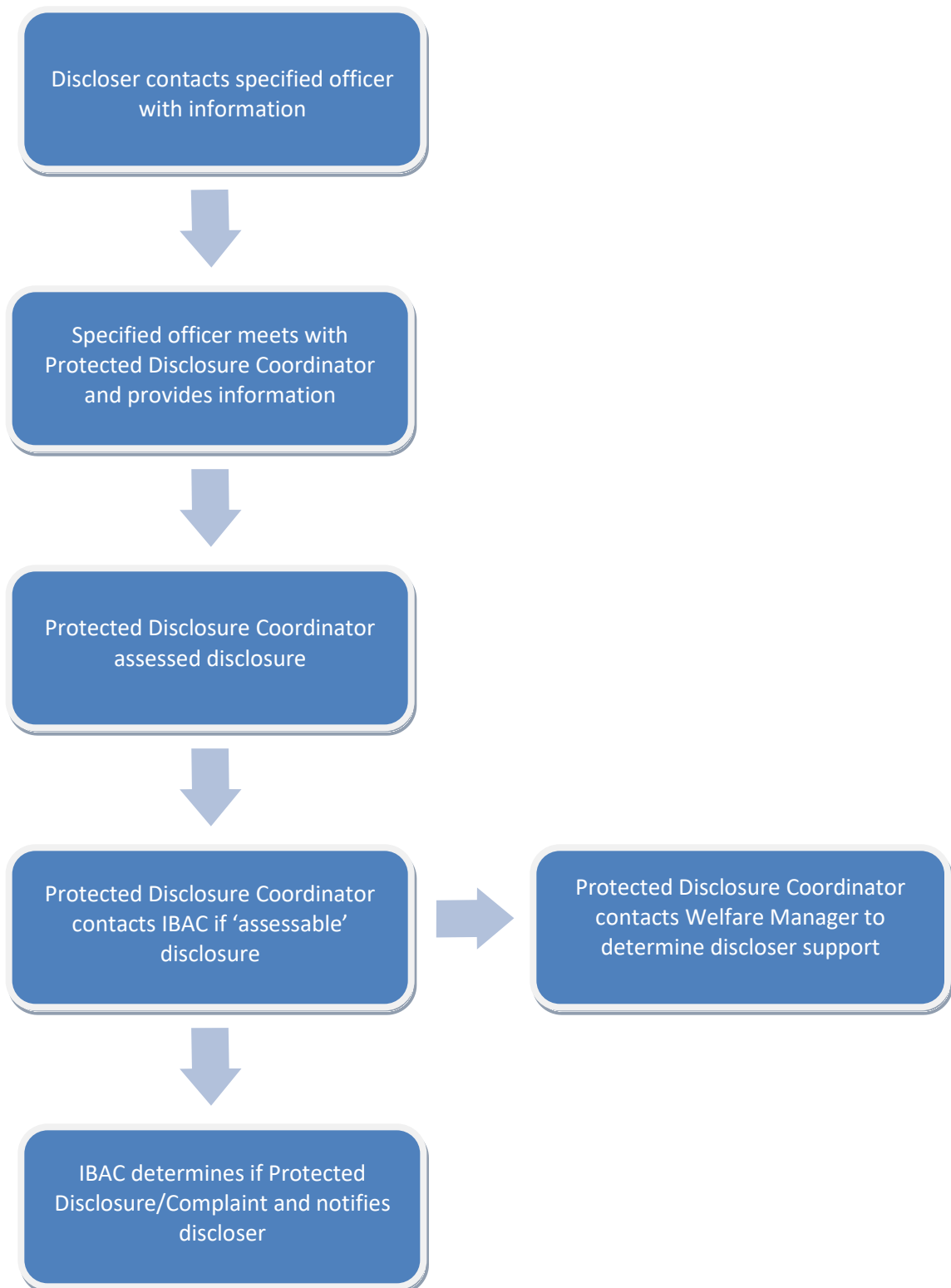
Related Documents

- Fraud and Corruption Control Policy
- Fraud and Corruption Control Procedures
- Councillor Code of Conduct
- Councillor Support and Expenses Policy
- Staff Code of Conduct
- Relevant Council policies and procedures, including the Internal Grievance Procedure and Complaints Resolution Policy.

Review of Procedure

This Procedure will be reviewed in two years from the date of endorsement, or as otherwise required by legislative amendments or the issuing of IBAC guidelines or advice.

Appendix 1 - Process for Making a Disclosure



Appendix 2 - Where to report disclosures

Subject of the disclosure		Report to:
Chief Commissioner of Police	>	IBAC
Director of Public Prosecutions		
Chief Crown Prosecutor		
Solicitor General		
Governor		
Lieutenant Governor or Administrator		
Director, Police Integrity		
Electoral Commissioner		
Commissioner appointed under the <i>Inquiries Act 2014</i>		
A member of a Board or Inquiry		
A judicial officer		
A member of VCAT who is not a judicial officer		
A judicial employee		
A Ministerial officer		
A Parliamentary adviser		
An electorate officer		
A Parliamentary officer		
Minister of the Crown who is not a member of Parliament		
A Councillor	>	IBAC or the Victorian Ombudsman
Freedom of Information Commissioner		
Commissioner for Privacy and Data Protection		
Health Services Commissioner		
The Chief Examiner or an Examiner appointed under section 21 of the <i>Major Crimes (Investigative Powers) Act 2004</i>	>	IBAC or the Victorian Inspectorate
A Victorian Ombudsman officer		
A Victorian Auditor-General's Office officer		
A member of police personnel (other than the Chief Commissioner)	>	IBAC or a prescribed member of police personnel
Member of Parliament (Legislative Council)	>	President of the Legislative Council
Member of Parliament (Legislative Assembly)	>	Speaker of the Legislative Assembly
IBAC, including its officers	>	Victorian Inspectorate

2

² Independent Broad-based Anti-corruption Commission, *Guidelines for making and handling protected disclosures*, October 2016.