



Public Interest Disclosure Procedure

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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
January 2020	3	New procedure updated in line with legislative changes. Endorsed by Council 21 April 2020

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Introduction

Maribyrnong City Council is a public body subject to the *Public Interest Disclosure Act 2012 (Act)* and is committed to the aims and objectives of this Act. 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

To satisfy the Act and the IBAC's Guidelines, Maribyrnong City Council must establish and publish procedures under s58 of the Act 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 faced by Council or its employees pursuant to Council's obligations under the Act. It specifies the procedures for the handling of disclosures and notification to the IBAC. It also provides for protection from detrimental action to any person affected by a public interest 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 Maribyrnong City Council representatives (that is, Councillors, employees, volunteers, contractors and consultants of Council).

Disclosures may be made by any Council representative or by members of the public. A disclosure cannot be made by a business or company.

Council representatives and members of the public are encouraged to raise alleged 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	Public Interest Disclosure Act 2012
Assessable disclosure	A disclosure that must be made directly, or notified, to IBAC, that the notifier considers may be a public interest disclosure
Corrupt Conduct	Includes conduct: <ol style="list-style-type: none"> a) of any person that adversely affects the honest performance by a public officer of a public body of his/her/its functions; or b) of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body; or c) of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust; or d) 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, whether or not for the benefit of the public officer or public body or any other person; or e) of a person (the first person) intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and result in the first person or an

	<p>associate of the first person obtaining –</p> <ul style="list-style-type: none"> i. a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or ii. an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or iii. a financial benefit or real or personal property; or iv. any other direct or indirect monetary or proprietary gain- <p>that they would not have otherwise obtained; or</p> <ul style="list-style-type: none"> v. that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c), (d) or (da)- <p>being conduct that would constitute a relevant offence¹.</p>
Detrimental Action	<p>Detrimental action includes:</p> <ul style="list-style-type: none"> • Actions causing injury, loss or damage; • Intimidation or harassment; or • Discrimination, disadvantage or adverse treatment in relation to a person’s employment, career, profession, trade or business, including the taking of disciplinary action
Discloser	<p>A person who (purports to) make(s) a complaint, allegation or disclosure (however described) under the Act</p>
IBAC	<p>Independent Broad-based Anti-corruption Commission</p>
Improper Conduct	<p>Improper conduct means</p> <ul style="list-style-type: none"> a) corrupt conduct, or b) conduct of a public officer or public body engaged in by the public officer or public body in their capacity as a public officer or a public body that constitutes – <ul style="list-style-type: none"> i. a criminal offence; or

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

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- ii. serious professional misconduct; or
 - iii. dishonest performance of public functions;
or
 - iv. an intentional or reckless breach of public trust; or
 - v. an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body; or
 - vi. a substantial mismanagement of public resources; or
 - vii. a substantial risk to the health or safety of one or more persons; or
 - viii. a substantial risk to the environment; or
- c) Conduct of any person that –
- i. adversely affects the honest performance by a public officer or public body of their functions as a public officer or public body; or
 - ii. is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and results in the person, or an associate of the person obtaining –
 - A. a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
 - B. An appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
 - C. A financial benefit or real or personal property; or
 - D. Any other direct or indirect monetary or proprietary gain -
that the person or associated would not have otherwise obtained; or
- d) conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to in paragraph (a), (b) or (c).
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Investigating entity	<ul style="list-style-type: none"> • the IBAC; • Victoria Police; • the Ombudsman; • the Victorian Inspectorate; • the Judicial Commission and if the Judicial Commission has appointed an investigating panel to investigate a complaint that is, or includes, a public interest complaint, the investigating panel; • the Chief Municipal Inspector; • the Racing Integrity Commissioner; • the Information Commissioner
Natural person	A human being, not a legal entity like a corporate body.
Public interest complaint (PIC)	A public interest disclosure that has been determined by IBAC, the Victorian Inspectorate or IOC to be a Public Interest Complaint
Public interest disclosure (PID)	A disclosure by a natural person of information that shows / tends to show or information that the person reasonably believes to show / tends to show improper conduct or detrimental action
Public Body	A public body within the meaning of section 6 of the <i>Independent Broad-based Anti- corruption Act 2011</i> , IBAC, or the Victorian Inspectorate 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, a Victorian Inspectorate Officer, a Public Interest Monitor or any other person prescribed for the purposes of this definition.
Regulations	Public Interest Disclosure Regulations 2019

Responsibilities

All Council representatives 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 alleged 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, any associated Regulations and Guidelines and this procedure;
- Liaise with the IBAC (or referred authority) in regard to co-operating with any investigations;
- Be responsible for actioning any investigation outcomes and providing relevant information to the Public Interest Disclosure Coordinator for reporting requirements;
- Be responsible for commencing 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 Public Interest Disclosure Coordinator for assessment as soon as practicable; and
- Take all necessary steps to ensure the identity of the witness(es) is kept confidential.

Public Interest Disclosure Coordinator

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

The Public Interest Disclosure Coordinator will:

- Receive all disclosures, including phone calls, emails and letters from members of the public or staff;
- Assess disclosures in accordance with the Act;
- Notify all assessable disclosures to the IBAC within 28 days;
- Establish and manage a secure filing system and process to ensure confidentiality;
- Manage the welfare of a discloser and advise them of protections available under the Act in consultation with the Welfare Manager;
- Track the actions taken in relation to disclosures; and
- Collate and report statistics on disclosures.

The Public Interest 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

Public Interest Disclosure Officer

The Public Interest Disclosure Officer will:

- Assist the Public Interest Disclosure Coordinator with the receipt of disclosures; and
- Be a contact point for general advice about this Procedure and the Act.

The Public Interest 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 public interest disclosure. The Welfare Manager will:

- Make initial and then regular confidential contact with the witness(es) to provide support and arrange professional counselling through the Employee Assistance Program, if required;
- Note any concerns about detrimental action by the witness(es) and notify the Public Interest Disclosure Coordinator or CEO as soon as practicable;
- Not discuss any aspects of the disclosure or investigation with the witness(es);
- Establish and maintain a confidential filing system; and
- 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 Public Interest Disclosure Coordinator 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; and
 - 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; or
- 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 Public Interest disclosure are reports about:

- Improper and/or corrupt 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 public interest disclosure.

A disclosure can relate to conduct or action that:

- May have already taken place;
- May be occurring now; and/or
- May happen in the future.

The term disclosure is interpreted under the Act in the ordinary sense of the word. A complaint or allegation that is already in the public domain will not normally be a public interest 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);
- 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).

Although Council will action all disclosures, 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 public interest disclosure for the purposes of the Act.

1.3 How can a disclosure be made?

A person may make a disclosure verbally or in writing. The disclosure may also be made anonymously.

Private verbal disclosure

Disclosures can be made in person, by phone or by leaving a voicemail message.

A verbal 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 and the identity of the person making the disclosure.

If the disclosure is made verbally, the person receiving the disclosure must take notes at the time. These notes, and/or any supporting evidence provided, must be kept secure and only provided to the Public Interest Disclosure Coordinator or the IBAC.

Written Disclosure

A person can make a written disclosure via email or letter. A letter may be hand-delivered to Maribyrnong City Council offices, mailed to Maribyrnong City Council offices, emailed to the email address of Maribyrnong City Council or to the official email address of a person nominated to receive a disclosure in this Procedure or by completing the online form available on the IBAC and the Victorian Ombudsman websites.

Disclosures cannot be made by fax.

Anonymous disclosure

A person does not need to identify themselves to make a disclosure.

An anonymous disclosure can be made by using unverifiable email addresses, through anonymous phone calls or in a face-to-face conversation or meeting where the person refuses to identify themselves (provided the meeting or conversation takes place in private in accordance with the Public Interest Disclosure Regulations).

If the disclosure comes from an email address where the identity of the person making the disclosure cannot be determined, the disclosure will be treated as an anonymous disclosure.

1.4 Who can receive disclosures?

A person must make a disclosure to the appropriate person or body for that disclosure to be assessed as a Public Interest disclosure under the Act.

A disclosure must be made to the public body that the complaint relates to, or to IBAC.

Therefore, the Council can only receive disclosure that relate to the conduct of:

- a. Its own officers or employees; or
- b. A person/s whose actions relate to a Council officer or employee.

A public interest disclosure may be made even if the person making the disclosure cannot identify the person or the body to whom or to which the disclosure relates.

Misdirected Disclosures

If the Council receives a disclosure about an employee, officer or member of another public body, the Council will advise the person making the disclosure of the correct person or body to whom the disclosure must be made. In the event Council receives a misdirected disclosure, Council will ensure all records of the disclosure are destroyed and the identity of the person making the disclosure is kept confidential in accordance with this procedure.

Where a person seeks to make a disclosure about a Councillor, that disclosure must be made to IBAC.

Person who is the subject of the disclosure	Person/body to whom the disclosure must be made
Employee, member of public body	That public body or IBAC
Member of Parliament (Legislative Assembly)	Speaker of the Legislative Assembly
Member of Parliament (Legislative	President of the Legislative Council

Council)	
Councillor	IBAC or the Victorian Ombudsman
Chief Commissioner of Police	IBAC
Member of the police force	IBAC or Chief Commissioner of Police

2. Handling Disclosures

2.1 Receiving a disclosure

All disclosures must be made in accordance with Part 2 of the Act before Council can take or recommend further action.

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

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 Public Interest Disclosure Coordinator identified in this procedure.

The Public Interest Disclosure Coordinator will assess the disclosure in accordance with the requirements of the Act and if the disclosure satisfies the requirements of Part 2 of the Act, Council must determine whether the disclosure may be a public interest disclosure by going through the 2 step assessment process recommended by the IBAC as follows.

2.2.1 First Step

Council must firstly consider 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 public interest 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; and/or
- 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, Council will move to the second step below.

2.2.2 Second Step

Council must consider whether the discloser believes on reasonable grounds 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. 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, including the consideration of how the discloser would have obtained that 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 all relevant details (not the discloser's identity) to the Public Interest Disclosure Coordinator or the CEO as soon as practicable.

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.

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

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

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.

Under the Act, Council may disclose the content of the disclosure “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”.

IBAC guidelines state that in disclosing the content of a disclosure, this does not mean the identity of the discloser is to be revealed. 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.

2.2.4 Assessment Decisions

If Council decides that the disclosure may be a public interest disclosure, it must notify the IBAC of the disclosure. If the matter is considered not to be an assessable disclosure, then the Public Interest 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

2.3.1 If Council does not consider the disclosure to be a Public Interest Disclosure

If the Public Interest 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 public interest disclosure;
- The disclosure has not been notified to the IBAC for assessment;
- The protections under Part 6 of the Act apply, regardless of whether the disclosure is notified to IBAC for assessment; and
- There are options available to pursue the matter further, including making the disclosure directly to the IBAC, or making a complaint/report/allegation through Council’s complaints policy, grievance procedure or other appropriate avenue.

2.3.2 If Council considers the disclosure may be a Public Interest disclosure

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

1. The Public Interest Disclosure Coordinator will notify IBAC that:
 - The Council is notifying the disclosure to the IBAC for assessment under s21 of the Act; and
2. Notify the discloser that:

The disclosure has been notified to IBAC for assessment under the Act. In addition, at the time of notifying IBAC under s21 of the Act or at any later time, Council may also provide IBAC with any information obtained by the Council regarding the

disclosure in the course of its enquiries leading up to its notification of the disclosure to IBAC.

2.4 Protections for public officers

When a public officer acts in good faith and in accordance with the Act, Regulations and 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 and is immune from punishment.

3. Protections

3.1 Protections provided by the Act

Types of disclosures that are protected:

- Any disclosure assessed as public interest disclosure (where the assessment has been made by an organisation that is authorised to receive disclosures). The protections apply even if the public body receiving the disclosure does not notify IBAC; and
- Any notification that IBAC received and determines to be a public interest complaint.

How the discloser is protected:

- They cannot be fired, disciplined or bullied for making a disclosure;
- They are not subject to any civil or criminal liability for making a disclosure;
- They are not committing an offence against the *Constitution Act 1975* (Cth) or any other Act that imposes obligations of confidentiality or any other restriction on the disclosure of information;
- They will not be in breach of any other obligation (made by oath, rule of law or practice) requiring him or her to maintain confidentiality or otherwise restrict confidentiality; and
- They cannot be held liable for defamation in relation to information included in a public interest disclosure.

3.2 Commitment to protecting people making public interest disclosures

Council is committed to the protection of disclosers who make genuine disclosures against detrimental action taken in reprisal for the making of a public interest disclosure. Council will also ensure that persons who are the subject of allegations 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 public interest disclosure. Council will ensure its workplace culture supports disclosers and co-operators. 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, subject to Council's legislative responsibilities.

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

Part 6 of the Act sets out the protections provided to persons who make a public interest disclosure. These protections include:

- the discloser is not subject to any civil or criminal liability for making the public interest disclosure;
- the discloser is not subject to any administrative action (including disciplinary action) for making the public interest disclosure;
- by making the public interest 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 public interest 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 public interest disclosure made by him or her.

These protections 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 public interest disclosure is not a public interest complaint.

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

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

3.3 Support available to disclosers and co-operators

Council will support disclosers and co-operators 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; and
 - 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 co-operator that they have done the right thing, and Council acknowledges it;
 - providing clear and continuous 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(s) they seek;
 - whether their expectations are realistic; and
 - what Council will be able to deliver;
- maintaining confidentiality by:
 - ensuring as far as is possible that other people cannot establish the identity of the discloser or co-operator;
 - reminding the discloser or co-operator not to reveal themselves or to reveal any information that would enable others to identify them as a discloser or co-operator;
 - ensuring that hardcopy and electronic files relating to the disclosure are accessible only to those who are involved in managing disclosures in Council and are destroyed when legally allowed to do so;
- proactively assessing the risk of detrimental action being taken in reprisal by actively monitoring the workplace, anticipating problems and dealing with them before they develop as far as is possible;
- protecting the discloser or co-operator by:
 - examining the immediate welfare and protection needs of the person and establishing a supportive work environment; and
 - listening and responding to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions; and
- keeping contemporaneous records of all aspects of the case management of the person, including all communication and follow-up action(s).

3.4 Welfare Manager

The Welfare Manager's role is to monitor the specific needs of the discloser or co-operator and provide them with practical advice and support.

The Welfare Manager will:

- Examine the immediate welfare and protection needs of a witness and foster a supportive work environment, including assessing whether the

concerns a person may have about harassment, intimidation or victimisation might be due to other causes other than those related to the public interest disclosure;

- Listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a public interest disclosure, make notes and advise the Public Interest Disclosure Coordinator of the outcome;
- Organise professional counselling through Council's Employee Assist service provider if appropriate and if requested by the witness; and
- 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 Public Interest Disclosure Coordinator or the CEO. All meetings between the Welfare Manager and the witness must be conducted discreetly to protect the person's identity.

3.4.1 Limits on protections

A number of the protections in the Act do not apply if a discloser:

- knowingly provides false or misleading information; or
- claims that a matter is the subject of a public interest disclosure knowing the claim to be false.

The Act states that a person is still liable for their own conduct even if they disclose that conduct.

A person who makes a disclosure is not protected against legitimate management action being taken in relation to them.

3.4.2 Disciplinary action against a person who has made a disclosure

Taking disciplinary or other action against a person who has made a public interest 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 Public Interest 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 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 public interest disclosure is not a substantial reason for the Council taking the action against the employee;
- there are good and sufficient grounds that would 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 public interest disclosures

Council will also meet the welfare needs of a person who is the subject of a public interest disclosure. It is important to remember that until a public interest 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 public interest disclosure involving an allegation made against him or her. The subject of the disclosure may not be told about the disclosure if it is determined not to be a public interest 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. 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 public interest 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 public interest complaint in the course of their investigation for the purposes of conducting that investigation or of any actions that they propose to take as a result of the investigation.

3.5.1 Confidentiality

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 remain confidential.

3.5.2 Natural justice

The subject of an allegation must be afforded natural justice before a decision is made about their conduct.

Natural justice means the person has the right to:

- 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; and
- Have his/her defense set out fairly in any report.

If the matter has been investigated, the investigating entity (e.g. the IBAC) is responsible for carrying out this consultation.

3.5.3 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, contractor or Councillor. 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 public interest 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 Public Interest Disclosure Coordinator will:

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

The taking of detrimental action in reprisal for the making of a public interest disclosure can be an offence against the Act as well as grounds for making a

further disclosure. Where such detrimental action is reported, the Public Interest 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 Public Interest Disclosure Coordinator will consider whether to report the matter to the police.

Where the Public Interest Disclosure Coordinator considers that the disclosure may be a public interest disclosure, he or she will refer it to the IBAC. If the IBAC subsequently determines the matter to be a public interest complaint, the IBAC may investigate the matter or refer it to another body for investigation in the manner 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 disclosers 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 Public Interest Disclosure Coordinator, Public Interest Disclosure Officer, the Welfare Officer or the CEO as applicable.

All printed material will be kept in files that are clearly marked as a '*Confidential Public Interest Disclosure Act* matter – Do not open' – (or words to the effect) on the cover and warn of the criminal penalties that apply to any unauthorised divulging of information concerning a public interest disclosure. Printed files must be kept in locked cabinets and sealed in an envelope marked '*Confidential Public Interest 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 public interest 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 Public Interest Disclosure Coordinator.

4.2.2 The Freedom of Information Act

Documents may not be subject to the *Freedom of Information Act 1982* (Cth) if they disclose information that:

- Relates to a public interest disclosure or police complaint disclosure; or
- Is likely to identify a person who has made a public interest disclosure

Council is required to contact the IBAC prior to providing any document originating from IBAC or relating to a public interest disclosure if requested under the Freedom of Information Act.

4.2.3 Limited exceptions permitted by the Act

The 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;
- Investigation 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; or
- 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 Public Interest 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. 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 and/or financial payments.

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 public interest disclosure without legislative authority;

- Disclosing that a disclosure has been notified to the IBAC for assessment under the Act; and
- Disclosing that a disclosure has been assessed by the IBAC or the Victorian Inspectorate to be a public interest disclosure.

Related Legislation

- Public Interest Disclosure Act 2012
- Public Interest Disclosure Regulations 2019
- 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 the IBAC guidelines or advice.

Appendix 1 - 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 or member of a Board of Inquiry appointed under the Inquiries Act 2014	
A judicial employee	
A Ministerial officer	
A Parliamentary advisor	
An electorate officer	
A Parliamentary officer	
Minister of the Crown who is not a member of Parliament	
A Councillor	IBAC or the Victorian Ombudsman
The Information Commissioner	
Health Complaints Commissioner	
The Chief Examiner or an Examiner appointed under the Major Crimes (Investigative Powers) Act 2004	IMAC or the Victorian Inspectorate
A Victorian Ombudsman officer	
A Victorian Auditor-General's Office officer	
Judicial Commissioner officer (other than a judicial member of the Board of the Judicial Commission)	

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
A Public Interest Monitor	Victorian Inspectorate
An IBAC officer	
A Victorian Inspectorate Officer	Integrity and Oversight Committee, the Speaker of the Legislative Assembly or the President of the Legislative Council
Judicial officer or a member of VCAT who is not a judicial officer	IBAC or the Judicial Commission

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² Independent Broad-based Anti-corruption Commission, *Guidelines for handling public interest disclosures, January 2020*