

AP179 PUBLIC INTEREST DISCLOSURE PROCEDURE

OVERVIEW

Any person is entitled and encouraged to make a public interest disclosure about wrongdoing in the public sector relating to -

- a. a substantial and specific danger to the health and safety of a person with a disability; or
- b. an offence endangering the environment; or
- c. conduct which could be a reprisal.

Public officers are entitled to make the above public interest disclosures, as well as disclosures of information about -

- a. corrupt conduct; or
- b. maladministration that adversely affects a person's interest in a substantial and specific way; or
- c. a substantial misuse of public resources; or
- d. a substantial and specific danger to public health or safety; or
- e. a substantial and specific danger to the environment.

Council has a responsibility to ensure that public interest disclosures are dealt with in accordance with the *Public Interest Disclosure Act 2010*.

APPLICABILITY

This procedure applies to all Brisbane City Council Councillors and employees, regardless of their employment status, role or position – permanent, temporary, casual or part-time employees, managers, supervisors, team leaders, team members or individuals.

DEFINITIONS

The following definitions apply to this procedure:

the Act refers to the *Public Interest Disclosure Act 2010*

corrupt conduct by a public sector employee is conduct that constitutes or could constitute a criminal offence, or a disciplinary breach that provides reasonable grounds for the termination of an employee's employment and can involve:

- a. performance of duties in a dishonest way or a way which lacks impartiality; or
- b. a breach of the community's trust; or
- c. the improper dissemination of information.

detriment includes:

- a. personal injury or prejudice to safety; and
- b. property damage or loss; and
- c. intimidation or harassment; and
- d. adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business; and
- e. financial loss; and
- f. damage to reputation, including, for example personal, professional or business reputation.

discloser means a person making a public interest disclosure in accordance with the Act.

employee includes a contractor.

maladministration is administrative action that -

- a. was taken contrary to law; or
- b. was unreasonable, unjust, oppressive, or improperly discriminatory; or
- c. was in accordance with a rule of law or a provision of an Act or a practice that is or may be

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- d. was taken for an improper purpose; or
- e. was taken on irrelevant grounds; or
- f. was taken having regard to irrelevant considerations; or
- g. was an action for which reasons should have been given, but were not given; or
- h. was based wholly or partly on a mistake of law or fact; or
- i. was wrong.

proper authority means a public sector entity or a member of the Legislative Assembly.

public interest disclosure is a disclosure of information to a proper authority in accordance with the Act, and includes all information and help given by the discloser to the proper authority.

public sector entity has the meaning in the Act and includes a local government.

public health or safety includes health and safety of persons:

- a. under lawful care and control; or
- b. using community facilities or services provided by the public or private sector; or
- c. in employment places.

reprisal - where a person causes, or attempts, or conspires to cause, detriment to another person because, or in the belief that -

- a. the other person or someone else has made, or intends to make, a public interest disclosure; or
- b. the other person or someone else is, has been, or intends to be, involved in a proceeding under the Act against any person.

wrongdoing – is behaviour or an action that fails to conform to the standards of law or morality

PROCEDURE

1. Disclosing to Council

- (1) Within the Brisbane City Council, a public interest disclosure can be made to the —
 - a. Chief Executive Officer; or
 - b. Chief Legal Counsel; or
 - c. Ethical Standards Manager.
- (2) A discloser can make a public interest disclosure either orally or in writing. The discloser may identify themselves or remain anonymous. While not essential, the discloser should identify their report as a public interest disclosure. The likelihood of a successful outcome is increased greatly if, when making a disclosure, the discloser's identity is known. Also, where an anonymous disclosure is made, it will not be possible for Council to keep the discloser informed on the progress in handling the disclosure and the discloser could experience difficulties in relying upon the protections afforded by the Act. If the disclosure is anonymous and enough information is provided, Council is committed to acting upon the disclosure.
- (3) The Ethical Standards Unit is responsible for the support of all disclosers under the *Public Interest Disclosure Act 2010*. This is to include the maintenance of the Queensland Ombudsman's database.

2. Disclosing to an External Agency

- (1) Employees may choose to make a disclosure to someone external to Council. This can be done as a first step or if employees are not satisfied with Council's response to a disclosure. While employees are urged to disclose to an appropriate person within Council, Council will respect and support employees making a disclosure to an appropriate external entity such as the Crime and Corruption Commission.
- (2) Employees should be aware when making a disclosure to an external entity, it is very likely that

authorised entity will discuss the case with Council. Council will make every effort to assist and cooperate with any entity dealing with a disclosure to work towards a satisfactory outcome.

- (3) If employees make a disclosure to a person or an organisation other than one that can investigate and deal with the matter, disclosers will not receive the protections provided under the Act.

3. Information to Disclose

- (1) To ensure a comprehensive and successful investigation of a wrongdoing, disclosers are encouraged to provide all known information that might be relevant including:
- a. the circumstances of the incident/matter including dates, times, and locations;
 - b. the details of employees or others involved; and
 - c. possible sources of additional information or evidence, e.g. other people or records.

4. Deciding on What Action to Take

- (1) Once a public interest disclosure is received, the Chief Executive Officer or delegate, will assess the public interest disclosure to determine whether it requires:
- a. referral to another public sector entity; or
 - b. further enquiries to be made; or
 - c. investigation; or
 - d. finalisation; or
 - e. no action.
- (2) Where possible, the discloser will be advised of the outcome of this assessment.

5. When No Action is Required

- (1) Council may decide not to investigate or deal with a public interest disclosure if:
- a. the substance of the disclosure has already been investigated or dealt with by another appropriate process; or
 - b. Council reasonably considers that the disclosure should be dealt with by another appropriate process; or
 - c. the age of the information that is the subject of the disclosure makes it impracticable to investigate; or
 - d. Council reasonably considers that the disclosure is too trivial to warrant investigation and that dealing with the disclosure would substantially and unreasonably divert resources; or
 - e. there has been insufficient information or evidence provided by the disclosure to allow for a meaningful investigation to be undertaken; or
 - f. another entity that has jurisdiction to investigate the disclosure has notified Council that the investigation of the disclosure is not warranted.
- (2) If Council decides not to investigate or deal with a public interest disclosure, it will advise the discloser. A person dissatisfied with that decision may within 28 days after receiving the written reasons, apply in writing to the Chief Executive Officer for a review of the decision.

6. Commitment to Keeping the Discloser Informed

- (1) All disclosures received by Council will be acknowledged. In addition, Council will give the discloser reasonable information about their disclosure, including:
- a. a description of the action proposed to be taken, or taken, in relation to the disclosure and the reasons for the decision;

- b. likely timeframes;
 - c. if action has been taken in relation to the disclosure, a description of the results of the action; and
 - d. contact details for further information or in the event of a suspected reprisal.
- (2) Council may not give the aforementioned information if giving the information would be likely to adversely affect:
- a. anybody's safety; or
 - b. the investigation of an offence or possible offence; or
 - c. necessary confidentiality about an informant's existence or identity.

7. Commitment to Providing Support

- (1) Council will initiate and coordinate action to support disclosers making a public interest disclosure, particularly if they are suffering detriment as a result. Actions may include:
- a. providing moral and emotional support;
 - b. advising the discloser about the resources available in Council to handle any concerns the discloser may have as a result of making a public interest disclosure;
 - c. appointing a mentor, confidante or other support officer to assist the discloser throughout the process;
 - d. referring the discloser to the Employee Assistance Program or arranging for other professional counselling;
 - e. generating support for the discloser in the work unit if appropriate;
 - f. ensuring that any suspicions of victimisation or harassment are dealt with;
 - g. maintaining contact with the discloser; and
 - h. negotiating with the discloser and the relevant support officer and case manager a formal end to the discloser's involvement with the support program, when it is agreed that the discloser no longer needs assistance.
- (2) If employee disclosers feel they may need support as a result of making a disclosure, they are urged to contact the Ethical Standards Manager or Chief Human Resources Officer.

8. Commitment to Confidentiality

- (1) Maintaining confidentiality is very important in the handling of a disclosure. Everyone involved in the administration of disclosures is to maintain confidentiality. Confidentiality not only protects the discloser against reprisals, but any other people affected by the disclosure.
- (2) The Act does not expressly require that information relating to a public interest disclosure, such as the allegations and evidence, be maintained as confidential. However, such information must be treated confidentially except where the investigation process requires this information to be disclosed, e.g. where the evidence must be put to the subject person.
- (3) Confidential information includes:
- a. the fact a disclosure has been made;
 - b. any information that may identify the discloser or any person who may be the subject of a disclosure;
 - c. the actual information that has been disclosed; and
 - d. information relating to the disclosure that, if known, may cause detriment.
- (4) In protecting the discloser's confidentiality, Council will ensure that the details of the disclosure, the investigation and related decisions will be kept secure. However, while every attempt to protect confidentiality will be made, there will be occasions when disclosure of the discloser's identity may be necessary. These include but are not limited to:
- a. providing natural justice to the subject officer;

- b. responding to a court order or legal directive (e.g. subpoena, notice to produce); or
 - c. court proceedings.
- (5) Council will advise the discloser if their identity needs to be revealed for any reason and seek consent if possible. Council will attempt as far as possible to avoid a situation where the discloser's identity will need to be revealed.
- (6) While Council is prepared to take all steps necessary to protect the confidentiality of the information that is disclosed, the discloser has some confidentiality obligations. The fewer people who know about the disclosure — both before and after it is made — the more likely it is that Council will be able to keep identities confidential and protect persons from any detrimental action in reprisal. Council encourages disclosers not to talk about their disclosure to their colleagues or any other unauthorised person.

9. Commitment to Provide Protection & Respond to Reprisals

- (1) Employee disclosers should not suffer any form of detrimental action as a result of making a disclosure, including:
- a. unfair treatment;
 - b. harassment;
 - c. intimidation;
 - d. victimisation; or
 - e. unlawful discrimination.
- (2) Council is committed to ensuring that no disciplinary or adverse action, including workplace reprisals by managers, occurs as a result of an individual making a disclosure. On receipt or referral of a disclosure, the Ethical Standards Unit will assess the risk to the discloser of reprisal including if the disclosure is referred to another party to deal with.
- (3) If adverse action does occur to a discloser, that person has the right to request that Council takes positive action to protect them. The discloser should immediately contact the Ethical Standards Unit and advise of the adverse action.
- (4) Disclosers should be aware that the submission of a public interest disclosure does not prevent disciplinary action being taken against the discloser, if that action is warranted for a disciplinary breach.
- (5) All managers and team leaders in the organisation are under an obligation to notify the Ethical Standards Manager if it is reported, or they suspect, that employees are suffering reprisal as a result of making a disclosure.
- (6) Reprisal by Council employees may constitute corrupt conduct and will be referred to the Crime and Corruption Commission. Reprisals are indictable offences which can carry a maximum penalty of \$16,700 or two years imprisonment.
- (7) Disclosers are able to seek compensation if they have suffered a reprisal. Legal advice should be sought from disclosers in these circumstances.

10. Disclosure to Journalists

- (1) The discloser can make a disclosure to a journalist if the person has already made that disclosure to an appropriate agency and the agency has:
- a. decided not to investigate or deal with the disclosure; or
 - b. investigated the disclosure but did not recommend any action be taken; or
 - c. did not notify the person within 6 months whether or not the disclosure would be dealt with or investigated.
- (2) Where a discloser makes a disclosure to a journalist, the disclosure is to be substantially the same information that was provided to the appropriate agency.

11. False or Misleading Information

- (1) A person, who gives information to an appropriate entity, knowing that it is false or misleading and intending that it be acted upon as a public interest disclosure, may face disciplinary action and criminal prosecution. Knowingly providing false or misleading information is different from information that turns out to be incorrect or unable to be substantiated.
- (2) A person giving false or misleading information to an appropriate entity, with the intention of having that disclosure acted on as a public interest disclosure can commit an offence that carries a maximum penalty of \$16,700 or two years imprisonment.
- (3) While any assessment of whether a disclosure is false or misleading will take into account the circumstances of the individual case, indicators of a false or misleading disclosure include:
 - a. the discloser has a history of making false or unsubstantiated complaints;
 - b. there is no information to support the allegation in any way;
 - c. the allegation is not serious or sensible, and is of such a nature that a reasonable person could not treat it as being genuine; or
 - d. the allegation appears, on face value, to be without foundation and designed to harass, annoy or embarrass the subject person.

12. Reporting to the Queensland Ombudsman

- (1) Council must provide the Ombudsman with information about all Public Interest Disclosures received. This is done by updating the Ombudsman's data base with the required information. Names and other personal identifying factors are not reported. Updating the database is the responsibility of the ESU and is normally done once action regarding a specific disclosure has been finalised.