

CP 05 Public Interest Disclosure Policy and Procedure

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Policy Objective

- To ensure the Council is fully compliant with its obligations under the *Public Interest Disclosures Act 2012* (PID Act) and the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act).

Introduction

The PID Act protects people who make disclosures about improper conduct in the public sector or from detrimental action taken in reprisal for a previous disclosure.

It is the Council's responsibility to encourage and facilitate disclosures of improper conduct by public officers and public bodies by providing protection for persons making those disclosures and persons who may suffer detrimental action as a result of those disclosures.

Staff should believe that they will be adequately supported in the event they make a disclosure. This belief will primarily be based on their understanding of the nature and level of support available to them and their knowledge as to whether other staff have been appropriately supported.

To support the commitment to compliance under the PID Act and the IBAC Act the Council will:

- identify a person to act as the Public Interest Disclosures Coordinator (PIDC)
- identify a person to act as the Welfare Officer to support people who make disclosures
- have processes that maintain confidentiality
- have procedures to manage the secure receipt, storage, initial assessment and notification to IBAC of information related to protected disclosures
- raise awareness of all staff regarding their responsibilities to disclose, their rights if they do disclose and how to make disclosures

- provide a process to manage the welfare of people who have made a disclosure, those who are the subject of a disclosure and potential witnesses
- educate all staff in relation to the welfare supports available
- make the policy and procedure available for public inspection including publication on the Council website
- collect statistics on protected disclosures to include in the Annual Report.

Protections provided under the PID Act to disclosers

A person who makes a public interest disclosure is:

- not subject to any civil or criminal liability or any liability arising by way of administrative process (including disciplinary action) for making the disclosure
- exempted from confidentiality provisions in any other Act, oath, rule of law or agreement restricting the disclosure of information
- protected from defamation action
- protected from detrimental action if the disclosure forms a part of the reason for the detrimental action
- limited liability for legal costs

A reporting individual is still responsible for their own conduct if corrupt.

Outline of process for making a disclosure

Detailed information regarding the making, handling and assessing disclosures is provided in the companion document *Public Interest Disclosures Procedure*.

For a disclosure to be a public interest disclosure it must be made in accordance with the requirements of Part 2 of the PID Act and in accordance with the procedure outlined below:

Who can make a disclosure	Disclosures can only be made by natural person(s), not companies, businesses
How to make a disclosure	Must be made verbally, in writing, or in some cases, online. It may be made anonymously. It must be made in private.
Who to make a disclosure to	Disclosures can only be made to specified persons
Who disclosures can be made about	Must be made only about the conduct of public bodies or public officers performing public functions
What disclosures can be made about	Must be about improper conduct or detrimental action taken against a person in reprisal for making a disclosure

When there is an immediate threat to health and safety, the need to preserve property or allegations of serious criminal conduct, disclosure can be directly made to Victoria Police and the protections of the PID Act still apply.

Source documents

- *Public Interest Disclosures Act 2012*
- *Independent Broad-based Anti-corruption Commission Act 2011*
- *Independent Broad-based Anti-corruption Commission Victoria – Guidelines for making and handling protected disclosures, 2019*
- *Independent Broad-based Anti-corruption Commission Victoria – Guidelines for protected disclosure welfare management, 2019*
- *Independent Broad based Anti-corruption Commission Victoria – Directions for making mandatory notifications of suspected corruption 2016*
- www.ibac.vic.gov.au

Procedure

The Council is required to establish and publish procedures under the *Public Interest Disclosures Act 2012* (PID Act) and the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act). The procedures must be available to councillors, staff, contractors and members of the public.

The Council encourages the disclosure of improper conduct by public officers or public bodies in accordance with the PID Act.

Making a disclosure

What is a disclosure?

A public interest disclosure is a disclosure by a person of information which shows or tends to show, or which the person reasonably believes shows or tends to show, improper conduct. It can also be about detrimental action against a person in reprisal for making a protected disclosure.

For a complaint to be a protected disclosure it must fit all the criteria nominated in Part 2 of the PID Act.

Who can make a disclosure?

Any natural person (or group of persons) can make a disclosure. A company or business cannot make a protected disclosure.

About what can a disclosure be made?

A disclosure must be made about the conduct of a person, public officer or public body in their capacity as a public body or officer.

How can a disclosure be made?

Disclosures may be made, and may be made anonymously, in the following ways:

Verbally:

- Must be in private
- In person
- By telephone
- Voice mail message
- Any other form of electronic communication that does not require writing.

In writing:

- Personal delivery to the CEO or Public Interest Disclosures Coordinator, Customer Service Centre, 1 Bridge St East, Benalla (marked confidential)

- Mail addressed to the CEO or Public Interest Disclosures Coordinator, Benalla Rural City, PO Box 227, Benalla 3671(marked confidential)
- Email to the PIDC: robert.barber@benalla.vic.gov.au (marked confidential in subject line)
- IBAC, the Ombudsman and the Victorian Inspectorate can receive disclosures online.
- Facsimile (fax) is not an acceptable method.

About whom can a disclosure be made?

Disclosures can be made about public bodies or public officers acting in their public role. This includes a Council and Council employees.

Refer to the *Independent Broad-based Anti-corruption Commission Victoria – Guidelines for making and handling protected disclosures, 2019* (p.4) for a complete definition.

To whom can a disclosure be made?

The PID Act is specific about who can receive disclosures depending on who is the subject of the disclosure.

Within a council the people who can receive a disclosure are:

- The Chief Executive Officer
- The Public Interest Disclosures Coordinator
- A direct or indirect manager or supervisor of the discloser or of the person about whom a disclosure is being made.

If the subject of the disclosure is a Councillor the disclosure must be made directly to the IBAC or the Victorian Ombudsman.

IBAC, the Ombudsman, the Victorian Inspectorate, the Chief Commissioner of Police, the Judicial Commission of Victoria, the Chief Municipal Inspector, the Information Commissioner and the parliamentary Integrity and Oversight Committee can receive specific types of disclosures.

Misdirected disclosures

If the Council receives a misdirected disclosure, but the discloser believed the council to be the correct place for that particular disclosure, the Council can still notify the disclosure to IBAC for assessment as a public interest complaint.

Mandatory Disclosures by the Principal Officer

Under s 57 of the IBAC Act CEOs of councils are required to make mandatory notifications if they suspect corruption is occurring. Where this obligation overlaps with a potential protected disclosure, the Council should first deal with the matter in accordance with the PID Act. If the matter is not notified to IBAC in accordance with the PID Act, the Council should consider whether the CEO may be required to notify the matter to IBAC.

Confidentiality

The PID Act imposes confidentiality obligations regarding disclosures. It is however lawful for a discloser to disclose that a PID has been made to IBAC in the following circumstances:

- to seek support from medical practitioners, confidential employee assistance programs and trade unions.
- to make a workers' compensation claim to WorkCover
- to make an application to Fair Work Commission or related legal proceedings

If a confidentiality notice has been issued by IBAC, a discloser may nonetheless still share information with:

- a spouse or domestic partner
- employer or manager
- additional support and legal bodies as listed above

Improper conduct

Improper conduct means:

- Corrupt conduct
- 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 any of the following:
 - a criminal offence
 - serious professional misconduct
 - dishonest performance of public functions
 - an intentional or reckless breach of public trust
 - 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
 - a substantial mismanagement of public resources
 - a substantial risk to the health or safety of one or more persons
 - a substantial risk to the environment.

- Conduct of any person that:
 - adversely affects the honest performance by a public officer or public body of their functions
 - is intended to adversely affect the effective performance or exercise by a public officer or public body of their functions or powers and results in the person or an associate obtaining:
 - a licence, permit, approval, authority or other entitlement
 - an appointment to a statutory office or as a member of the board of any public body
 - a financial benefit or real or personal property
 - any other direct or indirect monetary or proprietary gainthat the person or associate would not have otherwise obtained.
 - Conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to above.

Initial assessment of a disclosure

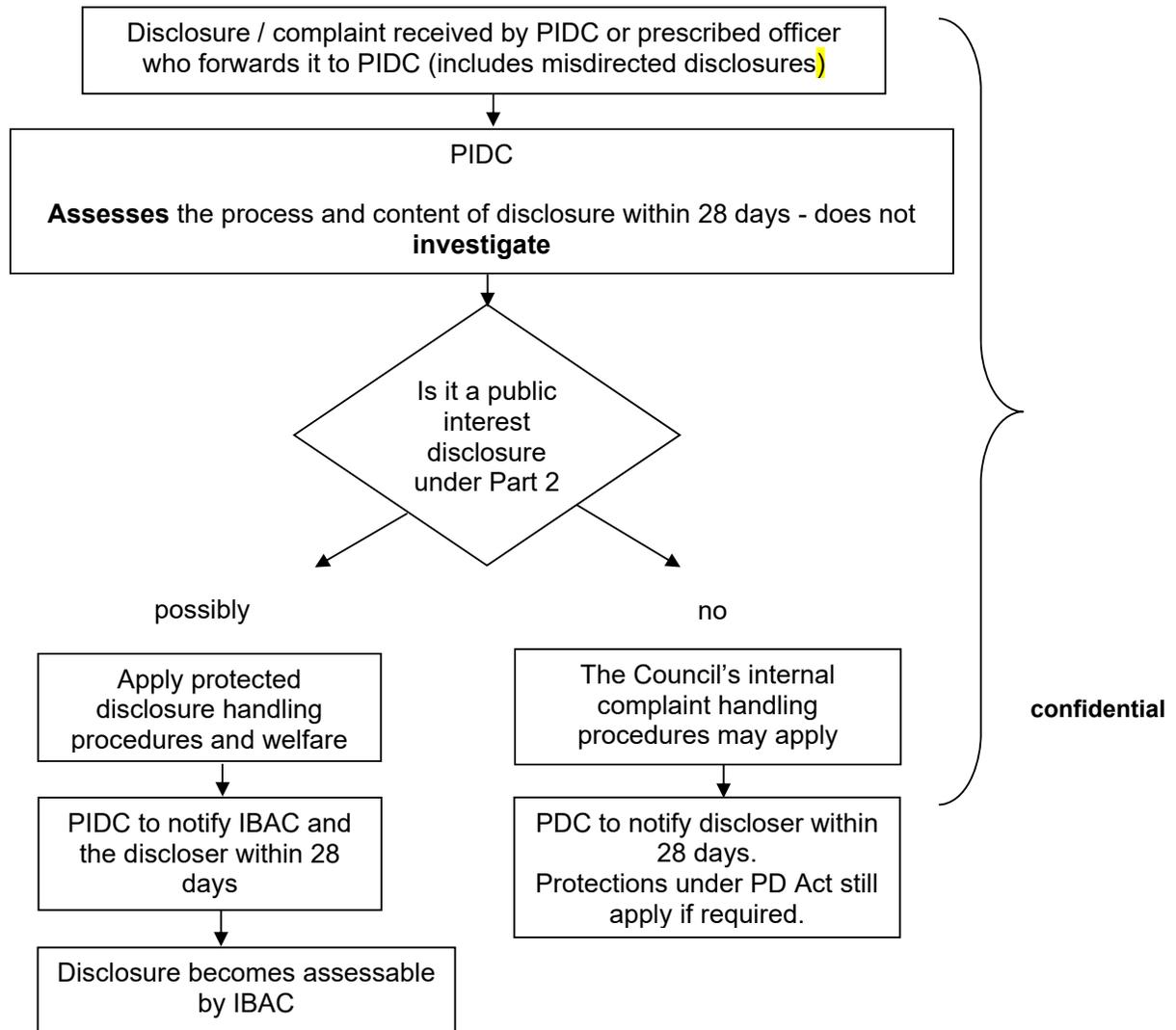
For a disclosure to be considered assessable by IBAC it must meet all the requirements for a public interest disclosure in Part 2 of the PD Act. If it does not meet all the requirements then it is not a public interest disclosure and should be dealt with under the Council's complaint handling process. See page four of this policy for the requirements of a protected disclosure.

When a complaint or disclosure is by any other prescribed officer (see *To whom can a disclosure be made?* on page four) it should immediately be forwarded to the PIDC. On receipt of a disclosure, the PIDC will determine if it is required to be forwarded to IBAC for assessment. **See Figure 1** for a summary of the process.

IBAC may delay its determination of a PID, allowing action already in train to deal with the matter to be completed if appropriate, before it is determined as a PIC.

IBAC has the power to refer a PIC to any body for action if the complainant agrees with the referral and the body to which the PIC is to be referred agrees.

Figure 1 – Internal Council procedure for dealing with disclosures



Investigation

During an investigation, an investigating entity may disclose information where it is necessary for the purpose of the investigation, and/or where it is relevant to certain other bodies' functions and is appropriate to pass on. The bodies an investigating agency may pass information to include IBAC, the Victorian Inspectorate, the Victorian Ombudsman, the Victorian Auditor-General, Victoria Police, the Office of Public Prosecutions, the Commission for Young People, and the Australian Federal Police.

IBAC may determine on receiving a PID that it is appropriate to refer the matter to another relevant body. This requires the consent of both the discloser and the notifying agency.

Conclusion of investigation

At the conclusion of its investigation IBAC must provide the discloser with information about the results of the investigation and any action taken by IBAC or any recommendation by IBAC that further action be taken. IBAC may provide information about the conduct and result of the investigation to the Council but it must not provide any information that might lead to the identification of a discloser. The provision of such information to the discloser or the Council is not compulsory if it is likely to lead to an adverse outcome as specified in the IBAC Act section 163(4).

External disclosures

Where a disclosure has not been adequately addressed, a discloser may make a further disclosure to external parties (such as journalists or politicians). The conditions under which this may happen are:

- The original disclosure was not made anonymously.
- The original disclosure was determined to be a public interest complaint.
- One of the following applies:
 - the discloser has not been notified of any action taken within six months of a determination that a disclosure was a public interest complaint, and has not received a response 30 days after requesting an update on progress
 - An investigation has not been completed 12 months after determination that a disclosure was a public interest complaint, and has not received a response 30 days after requesting an update on progress; or they receive a response but receive no further update advising the investigation has been completed six months after that response.

The protections under Part 6 of the PID Act apply to these disclosures.

Any external disclosure must not contain information that may prejudice a criminal investigation or other legal proceedings and must not contain information that is likely to disclose investigative methods used by IBAC or Victoria Police.

Freedom of Information Act

The Freedom of Information Officer will inform the PIDC of requests under the *Freedom of Information Act 1982* to ensure disclosure under the FOI Act is not applied to any document that relates to a protected disclosure, an assessable disclosure or that is likely to lead to the identification of a person who has made an assessable disclosure.

Managing welfare

The Council acknowledges the protection of genuine persons making protected disclosures against detrimental action is essential for the effective implementation of the

Act and is, therefore, responsible for ensuring persons making a protected disclosure and a person cooperating with an investigation into a PID complaint are entitled to be protected from direct and indirect detrimental action and encourages a culture supportive of protected disclosures being made. Council employees are protected under OH&S legislation, the *Charter of Human Rights and Responsibilities Act 2006*, the *Public Administration Act 2004*, the Victorian Public Sector Code of Conduct and the PID Act.

Protections provided under Part 6 of the PD Act:

- Discloser not subject to any civil or criminal liability or administrative action for making the disclosure
- Discloser is not committing an offence under the *Constitution Act 1975* or any other oath, rule of law or practice for breaching confidentiality
- Discloser cannot be held liable for defamation in relation to information included in a protected disclosure
- Discloser is protected from detrimental action in response to making the disclosure.

What is detrimental action?

Detrimental action is any action taken against a discloser in reprisal for making a public interest disclosure, or which incites another person to take detrimental action. If adverse action is taken against an employee and a PID forms any part of the reason for the adverse reaction, it is detrimental action and is a criminal offence.

Nevertheless, management actions which do not relate to the disclosure may still be taken with a discloser in respect of performance development, conditions of employment or discipline or to ensure the safety of the workplace.

An employee who has made a PID and believes on reasonable grounds that detrimental action is being or has been taken against them may request a transfer of employment.

Persons who are the subject of public interest disclosures

The Council recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures.

The Council will take all reasonable steps to ensure the confidentiality of the person who is the subject of the disclosure during the assessment and investigation process. Where investigations do not substantiate disclosures, the fact that the investigation has been carried out, the results of the investigation, and the identity of the person who is the subject of the disclosure will remain confidential. The Protected Disclosure Coordinator will ensure the person who is the subject of any disclosure investigated by or on behalf of a public body is:

- informed as to the substance of the allegations

- given the opportunity to answer the allegations before a final decision is made
- informed as to the substance of any adverse comment that may be included in any report arising from the investigation
- provided the opportunity for his or her defense to be set out fairly in any report.

Where the allegations in a disclosure have been investigated, the Protected Disclosure Coordinator will formally advise the person who is the subject of the disclosure of the outcome of the investigation.

The Council will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are clearly wrong or unsubstantiated. If the matter has been publicly disclosed, the Chief Executive Officer will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

Limitation on protection

- If the discloser has made a false disclosure or provided false information, he/she is not protected.
- There is no protection for a discloser against legitimate management action if the person is implicated in misconduct whether that misconduct is related to the PID or not. A discloser will still be held liable for their own conduct.
- A discloser is restricted from sharing information they receive from IBAC about whether their PID has been dismissed, referred or investigated and from disclosing any information they receive about the results of any investigation. Exceptions apply if it is necessary to seek legal advice, get the support of a health practitioner or trade union or make a compensation claim to WorkCover.

Appointment of Protected Disclosure Coordinator

The Chief Executive Officer appoints the General Manager Corporate to act as the public Interest Disclosure Coordinator (PIDC) to:

- impartially assess each disclosure to determine whether it is a protected disclosure
- coordinate the centralised reporting system used by the Council
- be a contact point for general advice about the operation of the Act and for integrity agencies such as IBAC
- be responsible for ensuring the Council carries out its responsibilities under the Act and the Guidelines
- liaise with IBAC in regard to the Act
- advise the person making the protected disclosure of the progress of an investigation into the disclosed matter
- collate statistics on disclosures made

- take all necessary steps to ensure the identity of the person making a protected disclosure and the identity of the person who is the subject of the disclosures are kept confidential
- establish and manage a confidential filing system
- liaise with the Chief Executive Officer.

Appointment of Welfare Officer

The Chief Executive Officer appoints the Manager People and Performance to act as the Welfare Officer to:

- examine and respond to the needs of the discloser and the subject of the disclosure (welfare and protection)
- provide information about the processes and outcomes
- provide reassurance
- manage discloser's expectations
- proactively work to prevent detrimental action from occurring
- manage gossip and rumours about a disclosure
- advise all parties of their rights
- record 'Case Management' information
- ensure expectations are realistic.

If the disclosure is in relation to the General Manager Corporate and Community then the Chief Executive Officer will retain the authority for all aspects of the Acts or appoint an officer to advise on the process.

If the disclosure is in relation to the Welfare Officer then the General Manager Corporate and Community will act as the Welfare Officer or appoint an officer to act as the Welfare Officer.

DEFINITIONS

assessable disclosure – a disclosure that must be forwarded to IBAC or the Victorian Inspectorate

corrupt conduct – is conduct that would, if proved beyond reasonable doubt at trial, constitute an indictable offence or the common law offence of attempting to pervert the course of justice or bribery of a public official

detrimental action - any action taken against a discloser in reprisal for making a public interest disclosure, or which incites another person to take detrimental action.

IBAC – Independent Broad-based Anti-corruption Commission

improper conduct – the combination of both corrupt conduct as defined in s of the *IBAC Act* and specified conduct as defined s 4(2) in the *PD Act*

investigating entity – IBAC, Victorian Ombudsman, Chief Commissioner of Police, Victorian Inspectorate, Judicial Commission of Victoria, Chief Municipal Inspector, Information Commissioner, Racing Integrity Commissioner, Integrity and Oversight Committee. Only these entities can investigate a protected disclosure complaint.

public interest disclosure – a report made by a person or group of persons about improper conduct of public officers or public bodies

public interest complaint – a disclosure that has been determined by IBAC to be a protected disclosure complaint

public interest disclosure coordinator – Council Officer appointed by the Chief Executive Officer to receive and make initial assessment on protected disclosures

public body – includes Councils among others

public officer – includes among others a member of Council staff that is performing a public function on behalf of the State or a public officer or public body (whether under contract or otherwise); an employee of, or any person otherwise engaged by, or acting on behalf of, or acting as a deputy or delegate of, a public body or a public officer

Serious professional misconduct – a serious failure to exhibit the skills and experience required to perform the functions of the office, and / or conduct that constitutes a serious breach of an established professional code of conduct or the policies, procedures and laws that govern behavior in the public sector and the workplace.

urgent action – when there is immediate threat to personal health and safety, property or the disclosure refers to serious criminal conduct

Source documents

- *Public Interest Disclosure Act 2012*
- *Independent Broad-based Anti-corruption Commission Act 2011*
- *Independent Broad-based Anti-corruption Commission Victoria – Guidelines for making and handling protected disclosures, 2019*
- *Independent Broad-based Anti-corruption Commission Victoria – Guidelines for protected disclosure welfare management, 2019*
- *Independent Broad-based Anti-corruption Commission Victoria – Directions for making mandatory notifications of suspected corruption 2016*
- www.ibac.vic.gov.au
- *CP4 Fraud and Prevention Policy 2018*
- *AP51 Complaints Handling*