



**Policy Subject/Title:** Public Interest Disclosure Policy

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**Policy Number:** C019

**Responsible Officer:** Director Corporate and Community Services

**Legislative or Regulatory Reference:** *Public Interest Disclosure Act 2010*

**Related Policies / Procedures:** HR001 Code of Conduct and C018  
Administrative Action Complaints

**Authorised by:** Somerset Regional Council

**Authorised on:** 26 July 2011 [Doc Id 572889]

**Review / Amendment dates:** 11 July 2013 [Doc Id 711676]  
12 June 2019 [Doc Id 1120235]  
08 May 2024 [Doc Id 1618156]

## 1. OBJECTIVE

As a public sector entity, Council is subject to the requirements of the *Public Interest Disclosure Act 2010* (the Act) and all employees and elected members are public officers for the purpose of the legislation.

Council has obligations under this Act in relation to the receiving of public interest disclosures and ensuring that persons making such disclosures are protected from reprisals.

The objective of this policy is to comply with the *Public Interest Disclosure Act 2010* by providing a consistent and **professional response to any public interest disclosures (PID's)** made to Council in accordance with the Act.

In addition, the policy is intended to ensure all elected members and Council employees are aware of their responsibilities by reporting serious misconduct and other important matters adversely affecting the public interest or Council operations.

## 2. POLICY

Council will adopt a Public Interest Disclosure Policy to assist Council, management and **staff by clearly outlining Council's approach to** addressing a PID and to provide direction to all employees contemplating making a disclosure. This policy is also intended to support other Council reporting mechanisms in relation to any alleged wrongdoing or fraud.

This policy provides Councillors and employees with protection in accordance with the Act, by protecting persons who disclose unlawful, negligent or improper public sector conduct, or conduct which endangers public health or safety or the environment.

Council will support individuals making a PID which promotes the public interest, together with those reporting wrongdoings internal to Council. Overall, the proper approach is for all employees to be accountable for their actions and to maintain high standards of professional conduct and service.

## 3. AUTHORITIES AND RESPONSIBILITIES

- Council is responsible for ensuring that appropriate measures are in place to support persons who disclose unlawful, negligent or improper public sector conduct or conduct which endangers public health or safety or the environment.
- The Chief Executive Officer or Mayor are the responsible officers for receiving disclosures and acting on them. The Chief Executive Officer has primary responsibility for receiving disclosures. Where a disclosure may involve the Chief Executive Officer, these should be referred to the Mayor.
- Managers and supervisors are responsible for the implementation and support of this policy and procedures within their areas of responsibility.
- Employees are responsible for the detection and reporting of fraud or wrongdoing within their areas of responsibility.

#### **4. SCOPE AND ACTIVITIES**

This policy applies to public interest disclosures within the meaning of the *Public Interest Disclosure Act 2010*.

#### **5. DISCLOSURE BY ANY PERSON**

Section 12 of the Act applies if a person (whether or not the person is a public officer) has information about:

1. A substantial and specific danger to the health or safety of a person with a disability; or
2. The commission of an offence against a provision mentioned in Schedule 2 of the Act, if the commission of the offence is or would be a substantial and specific danger to the environment; or
3. A contravention of a condition imposed under a provision mentioned in Schedule 2 of the Act, if the contravention is or would be a substantial and specific danger to the environment; or
4. The conduct of another person that could, if proved, be a reprisal.

The person may make a disclosure under Section 17 of the Act in relation to the information to a proper authority. For the above, a person has information about the conduct of another person or another matter if:

- The person honestly believes on reasonable grounds that the information tends to show the conduct or other matter; or
- The information tends to show the conduct or other matter, regardless of whether the person honestly believes the information tends to show the conduct or other matter.

#### **6. DISCLOSURE BY A PUBLIC OFFICER**

Section 13 of the Act applies if a person who is a public officer has information about:

1. The conduct of another person that could, if proved, be:
  - Official misconduct
  - Maladministration that adversely affects a person's interests in a substantial and specific way; or
2. A substantial misuse of public resources (other than an alleged misuse based on mere disagreement over policy that may properly be adopted about amounts, purposes or priorities of expenditure); or
3. A substantial and specific danger to public health or safety; or
4. A substantial and specific danger to the environment.

The person may make a disclosure under Section 17 of the Act in relation to the information to a proper authority, as outlined above.

## **7. PROCEDURAL ISSUES**

### **a. Sources of Disclosures**

Council may receive disclosures from a range of sources, including:

- Verbally from members of the public
- In writing, via mail or email, from members of the public
- Via the Administrative Action Complaints process
- From the Ombudsman's Office, Crime & Misconduct Commission or other external agency referring a matter to Council
- Via external or internal public interest disclosures
- Via internal complaints lodged by Council staff.

Any complaints of this nature would be directly referred to the Chief Executive Officer, Mayor or external agency depending on the nature of the complaint.

### **b. How a Disclosure May be Made**

A person may make a disclosure in any way, including anonymously. If a disclosure is made anonymously, it is difficult to protect the person making the disclosure from any retributive action or reprisal. As such, anonymous disclosures, although permitted, are to be discouraged.

Disclosures should be made directly to the Chief Executive Officer, however, an employee may make a public interest disclosure to their supervisor, Manager, Chief Executive Officer or the Mayor, being appropriate entities. In the case of a matter relating to alleged official misconduct, disclosures can be made directly to the Crime & Misconduct Commission.

When a disclosure is made to a supervisor, the supervisor must communicate the disclosure immediately to the Chief Executive Officer. Where a disclosure may involve the actions of the Chief Executive Officer, these should be referred to the Mayor. Unless specifically reported as a "public interest disclosure", the Chief Executive Officer or the Mayor will assess whether the reported matter is such a disclosure within the meaning of the Act and may, where reasonable, communicate this determination to the discloser.

A disclosure should be in writing, although it may be made verbally. A person receiving a disclosure should encourage the discloser to put the information in writing. If the discloser does not, the supervisor must promptly make a written record of the precise matters raised and refer this to the Chief Executive Officer or Mayor.

### **c. Investigation Procedure**

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

If a disclosure is considered a public interest disclosure, the Chief Executive Officer or Mayor may develop an investigation and protection plan (in consultation with the discloser) in order to ensure the information is investigated and the discloser is protected from reprisals. The plan will address whether immediate action needs to be taken to halt the conduct or remedy the danger to which the disclosure relates and will recommend action to be taken to avoid reprisals against the discloser.

The Chief Executive or Mayor may consult with other relevant Council officers (while maintaining the confidentiality of the discloser). Council may choose to appoint an internal or external investigator, as appropriate. However, the disclosure will not be referred outside Council without first consulting the discloser.

Any person (whether internal or external to the Council) involved in the investigation will be fully briefed on their obligations under the Act and the consequences of any breach of the obligations. The discloser may, also, request information about the progress of any investigation, and any action taken on the disclosure. Council will provide such information where it is reasonable to do so.

Once a report has been investigated, a report of the investigation will be delivered to the Chief Executive Officer or the Mayor. The report may contain recommendations for further action. Where reasonable, the report (or an edited extract of the report) will be forwarded to the discloser. The Chief Executive Officer or Mayor will decide what further action (if any) will be taken on the disclosure.

In some cases, the Chief Executive Officer may be bound to inform other agencies about the contents of the disclosure. In other cases, the Chief Executive Officer or Mayor may be of the view that it is appropriate for other staff to be informed. In all cases, the confidentiality of the identity of the person making the disclosure will be protected to the greatest extent permitted by law.

#### **d. Recording and Reporting Standards**

The Chief Executive Officer must:

1. Establish reasonable procedures to ensure that:

Employees who make public interest disclosures are given appropriate support; and

- Public interest disclosures made to Council are properly assessed and, when appropriate, properly investigated and dealt with; and
- Appropriate action is taken in relation to any wrongdoing that is the subject of a public interest disclosure to Council; and
- A management program for public interest disclosures made to Council, consistent with any standard made under s60 of the Act, is developed and implemented; and
- Employees are offered protection from reprisals by the Council or other employees or Councillors.

2. Ensure the procedures are published, as soon as practicable after the procedures are made, on the Council website.

3. When a public interest disclosure is made, must keep a proper record of the disclosure, including:

- The name of the person making the disclosure, if known, and
- The information disclosed, and
- Any action taken on the disclosure, and
- Any other information required under a standard made under s60 of the Act.

4. When a public interest disclosure is referred under Section 31 or 34 of the Act, must keep a proper record of the disclosure, including:
- The name of the person making the disclosure, if known; and
  - The information disclosed; and
  - The name of the public sector entity that referred the disclosure; and
  - Any action taken on the disclosure; and
  - Any other information required under a standard made under Section 60 of the Act.

The Public Service Commission, as the oversight agency, may make, under Section 60 of the Act, a standard that requires the Chief Executive Officer to give to the oversight agency all or any of the information mentioned above. The standard may provide for the way in which and the period within which the information is to be given.

#### **e. Communication**

Appropriate communication and consultation between key parties to an enquiry is the most effective method of ensuring all facets have been considered.

The key communication and consultation aspects of this procedure are as follows:

- The status or results of any investigation will be disclosed or discussed only with those persons who require knowledge of such in the performance of their office or function;
- People making public interest disclosures will be guaranteed strict confidentiality and advised of investigation outcomes;
- Council expects all employees to be familiar with and act in accordance with the Code of Conduct and expects similar standards from contractors, volunteers, agencies or organisations that do business with Council;
- An employee who has an interest in a matter in relation to which he/she is required or authorised to act in the course of official duties must disclose the interest to the Chief Executive Officer and must not, unless the Chief Executive Officer otherwise determines, act in relation to the matter;
- Consultation with employees to verify the integration of the Public Interest Disclosure Management requirements;
- Chief Executive Officer to be advised immediately upon receipt of a public interest disclosure;
- At the conclusion of any investigation, the investigating officer must submit a written report to the Chief Executive Officer;
- Matters relating to a criminal offence will be reported to the Police at the earliest opportunity to avoid jeopardising potential police investigation.

#### **f. Duties and Behaviour**

Council expects its elected members and employees to maintain a high standard of ethical conduct in all activities, in particular with respect to resources, information and authority.

The community rightly expects the Council to conduct its activities in a fair and honest manner.

Furthermore, Council is responsible for ensuring that appropriate measures are in place to support persons who disclose unlawful, negligent or improper conduct or danger to public health or safety or the environment.

## **8. DEFINITIONS**

*Administrative Action* – any action about a matter of administration including, for example, a decision and an act; a failure to make a decision or do an act, including a failure to provide a written statement of reasons for a decision; the formulation of a proposal or intention; the making of a recommendation, including a recommendation made to Council and an action taken because of a recommendation made to Council.

*Corruption* – is defined by the Crime and Misconduct Commission as behaviour that may involve fraud, theft, misuse of position or authority or other acts that are unacceptable to an organisation and which may cause loss to an organisation, its clients or the general community. It may, also, include such elements as breaches of trust and confidentiality. The behaviour need not necessarily be criminal.

*Detriment* – includes personal injury or prejudice to safety; property damage or loss; intimidation or harassment; adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business; financial loss and damage to reputation, including, for example, personal, professional or business reputation.

*Maladministration* – administrative action that was taken contrary to law; was unreasonable, unjust, oppressive, or improperly discriminatory; was in accordance with a rule of law or a provision of an Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory in the particular circumstances; was taken for an improper purpose or an irrelevant grounds or having regard to irrelevant considerations; was an action for which reasons should have been given, but were not given; was based wholly or partly on a mistake of law of fact; or was wrong.

*Official Misconduct* – any misconduct connected with the performance of an officer's duties that is dishonest or lacks impartiality, involves a breach of trust, or is a misuse of officially obtained information. To be considered official misconduct, the conduct must constitute a criminal offence or be serious enough to justify dismissal.

*Oversight Agency* – means the Public Service Commission. The main functions of the agency are to:

- Monitor the management of public interest disclosures
- Collect statistics about public interest disclosures, including monitoring trends
- Review the way in which public sector entities deal with public interest disclosures
- generally
- Perform an educational and advisory role.

*Public Funds* – funds available to, or under the control of a public sector entity including, for example, public moneys within the meaning of the *Financial Accountability Act 2009*.

**9. EFFECTIVE FROM**

This policy is effective from 26 July 2011.

**10. DATE OF RESOLUTION**

This original policy was approved by the Chief Executive Officer and adopted by the Somerset Regional Council at the Ordinary Meeting 26 July 2011. This policy was last reviewed and amended on 8 May 2024.

Signed:

Date: 8 May 2024