



Procedure under the Public Interest Disclosure Act 2018

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| File Number | 18.8.11 |
| Date Implemented: | 1 July 2019 |
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| Responsible Manager/s or Department: | Chief Executive Officer |
| Related Policies / Codes: | <i>Public Interest Disclosure Act 2018;</i> <i>Local Government Act 1999: Section 270;</i> <i>Freedom of Information Act 1991;</i> <i>Local Government (General) Variation Regulations 2013;</i> <i>Independent Commission Against Corruption Act 2012;</i> Public Interest Disclosure Policy; Privacy Policy; Fraud & Corruption Prevention Policy; Code of Conduct for Council Employees; Complaints Against Council Employees Policy; and Code of Conduct for Elected Members; Internal Review of Council Decisions Policy. |
| Related Procedure(s): | Procedure for Council Member's Code of Conduct (Complaints Handling); Fraud and Corruption Prevention Procedure. |
| Related Document(s): | NA |

Principal Officer's Statement

As the Chief Executive Officer of the Kangaroo Island Council (the **Council**), I am also the *Principal Officer* of the Council for the purposes of the *Public Interest Disclosure Act 2018* (the **PID Act**).

In giving effect to my role as Principal Officer, I have caused the preparation of this Procedure, setting out the process for a person (an informant) who wishes to make an *appropriate disclosure of public interest information* to the Council.

This Procedure also sets out the process for Officers, employees and Elected Members of the Council in received and dealing with such disclosures made to them.

The Council is committed to the protection of informants, as well as to the genuine and efficient consideration and action of *appropriate disclosures of public interest information* made under the PID Act.

In my capacity as *Principal Officer*, I expect that all *appropriate disclosures of public interest information* made to a relevant authority at the Council will be dealt with in the strictest of confidence, so far as may be provided for under the Act, and with the utmost priority.

In preparing this Procedure, the Council is giving effect to its obligations under the PID Act to encourage and facilitate *Disclosures of Public Interest Information* by ensuring that appropriate procedures are in place for making and dealing with such disclosures, and by providing protections, in accordance with the Act, for persons who make disclosures.



Greg Georgopoulos
Chief Executive Officer

1. Introduction

- 1.1 The Council is committed to its obligations to act as a representative, informed and responsible public authority. The Council supports its Officers, employees and elected members to uphold the values of honesty, integrity, accountability and transparency, for the purposes of fostering community confidence and trust in the Council specifically, but also in Local Government generally.
- 1.2 This Procedure applies to all Officers, employees, and elected members of the Council, as well as to all persons who make an appropriate disclosure of public interest information to a relevant authority at the Council for the purposes of the PID Act.

2. Purpose

- 2.1 This Procedure has been developed to ensure that the Council meets its obligations under the PID Act. It encourages and facilitates appropriate disclosures of Public Interest Information and, in doing so, provides protections in accordance with the PID Act for persons making such disclosures.
- 2.2 This Procedure:
 - 2.2.1 sets out a process by which an appropriate disclosure of public interest information may be made by a person to a relevant authority at the Council;
 - 2.2.2 specifies the manner in which the relevant authority at the Council will receive such a disclosure, including the manner in which the information may be safely received and stored;
 - 2.2.3 sets out the criteria that will be applied in the assessment of a public interest information disclosure and the manner in which the details of the assessment will be securely stored; and
 - 2.2.4 specifies the manner in which an informant will be notified as to action taken in respect of an appropriate disclosure of public interest information.
- 2.3 The Council recognises its responsibilities under the PID Act, not only to support persons who make an appropriate disclosure of public interest information, but also to those persons to whom the information relates and the relevant authority to whom the disclosure is made.

3. Definitions

- 3.1 **Appropriate disclosure** means a disclosure of public interest information made in the manner described in clause 4 of this Procedure.
- 3.2 **Council** is a comprehensive term and is to be read, as necessary, as encompassing Officers, employees and elected members of the Council.

- 3.3 **Detriment** takes its meaning from section 9(7) of the PID Act and includes loss or damage (including damage to reputation); or injury or harm (including psychological harm); or intimidation or harassment; or discrimination, disadvantage or adverse treatment in relation to a person's employment; or threats of reprisal.
- 3.4 **Environmental and Health Information** is information that raises a potential issue of a substantial risk to the environment, or to the health or safety of the public generally, or a significant section of the public, whether occurring before or after the commencement of the PID Act.
- 3.5 **Guidelines** is a reference to the Guidelines published by the Commissioner pursuant to section 14 of the PID Act, which are available on the Commissioner's website (www.icac.sa.gov.au).
- 3.6 **ICAC Act** means the Independent Commission Against Corruption Act 2012.
- 3.7 **Informant** means a person who makes an appropriate disclosure of public interest information to a relevant authority under the PID Act.
- 3.8 **Ombudsman** means the person holding or acting in the office of the Ombudsman under the Ombudsman Act.
- 3.9 **Ombudsman Act** means the Ombudsman Act 1972.
- 3.10 **Office for Public Integrity (OPI)** means the office established under the ICAC Act.
- 3.11 **PID Act** means the *Public Interest Disclosure Act 2018*.
- 3.12 **Principal Officer** for the purposes of the PID Act means the Chief Executive Officer of the Council.
- 3.13 **Public Administration Information** is information that raises a potential issue of corruption, misconduct or maladministration in public administration whether occurring before or after the commencement of the PID Act.
- 3.14 **Public Interest Disclosure and Disclosure** are used interchangeably in this Procedure and mean an appropriate disclosure of public interest information made to a relevant authority under the PID Act.
- 3.15 **Public Interest Information** means:
- 3.15.1 Environmental and Health Information; and/or
 - 3.15.2 Public Administration Information.
- 3.16 **Public Officer** has the same meaning given by section 4 and Schedule 1 of the ICAC Act and includes Officers, employees, and Elected Members of the Council.

3.17 **Recipient** is a relevant authority to whom a disclosure has been made, a relevant authority to whom such a disclosure is referred (which includes a Responsible Officer or the Principal Officer of the Council), or a person who otherwise knows that such a disclosure has been made.

3.18 **Regulations** means the Public Interest Disclosure Regulations 2019

3.19 **Relevant Authority** is defined at section 5(5) of the PID Act and includes, but is not limited to;

3.19.1 where the information relates to a public officer, a person who is responsible for the management or supervision of the public officer, or a Responsible Officer; and

3.19.2 where the information relates to a location within the area of the Council, a Member, Officer or employee of the Council.

3.20 **Responsible Officer** is a person who has completed any training course(s) approved by the Commissioner for the purposes of the Regulations and who has been designated by the Principal Officer as a Responsible Officer under section 12 of the PID Act

3.21 Victimisation has the same meaning given by section 5 of the ICAC Act.

4. Appropriate Disclosures

4.1 The PID Act establishes a scheme to encourage and facilitate the appropriate disclosure of public interest information to a relevant authority.

4.2 Subject to the provisions of the PID Act, an informant who makes an appropriate disclosure of public interest information to a relevant authority under the PID Act is entitled to:

4.2.1 immunity from criminal or civil liability;

4.2.2 a prohibition on the disclosure of his/her identity, other than in limited specific circumstances, as set out under section 8 of the PID Act and Guideline 3 of the Guidelines;

4.2.3 protection against Victimisation; and

4.2.4 a prohibition against hindering, obstructing or preventing an Informant from making an appropriate Disclosure,.

4.3 Public Interest Information means:

- Environmental and Health Information; and
- Public Administration Information.

- 4.3 Immunity is provided for an appropriate disclosure of public interest information where:
- 4.3.1 a person makes an appropriate disclosure of environmental and health information; or
- 4.3.2 a public officer makes an appropriate disclosure of public administration information.
- 4.4 Whilst any person can make a disclosure of public administration information, **only public officers** who make a disclosure of public interest information are entitled to the protections provided under the PID Act.
- 4.5 Environmental and Health Information
- 4.5.1 A person makes an appropriate disclosure of environmental and health information for the purposes of the PID Act if the disclosure is made to a relevant authority and the person:
- believes on reasonable grounds that the information is true; or
 - not being in a position to form such a belief, believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated.
- 4.6 Public Administration Information
- 4.6.1 A public officer makes an appropriate disclosure of public administration information for the purposes of the PID Act if the disclosure is made to a relevant authority and the public officer reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration, as those terms are defined under the ICAC Act and Ombudsman Act.
- 4.6.2 Where the information relates to a public officer, a person who is designated under the Guidelines, or a person who is responsible for the management or supervision of that public officer or a Responsible Officer, are relevant authorities for the purposes of the PID Act.
- 4.7 For the avoidance of doubt, where the public interest information (being either environmental and health information or public administration information) relates to a location within the area of the Council, an Elected Member, Officer or employee of the Council **are each also** a relevant authority for the purposes of the PID Act.

5. Assessment of a Disclosure

- 5.1 A relevant authority of the Council to whom an appropriate disclosure of public interest information is made, **must** assess the information as soon as practicable after the disclosure is made to them.
- 5.2 If the disclosure gives rise to a concern of imminent risk of serious physical injury or death to any person, or the public generally, the relevant authority **must** give immediate consideration to the matters set out at clause 5.8.
- 5.3 The criteria that will be applied to the initial assessment of the disclosed information will include, (but not necessarily be limited to), whether it:
 - 5.3.1 relates to information within the scope of the PID Act, namely whether it pertains to environmental and health information and/or public administration information;
 - 5.3.2 raises matters that are within the Council's scope of authority, including if the information relates to a location within the area of the Council, or to an Officer, employee or Elected Member of the Council; and
 - 5.3.3 justifies the taking of further action, or relates to a matter that has already been investigated or acted upon by a relevant authority (whether by the Council or any other relevant authority) and there is no reason to re-examine the matter, or there is other good reason why action should not be taken in respect of the matter.
- 5.4 If the relevant authority of the Council who receives the disclosure, being an Officer, employee or Elected Member, determines that they **require assistance** with the appropriate assessment and management of the disclosure, the recipient is **encouraged to seek the assistance of a Responsible Officer** (or the Principal Officer, in circumstances where the disclosure relates to the Responsible Officer(s)), who are also each relevant authorities for the purposes of the PID Act.
- 5.5 It is also open for the relevant authority who receives the disclosure, to determine, based on the training, expertise, access to resources and appropriate support mechanisms in place at the Council, that it is appropriate, in all of the circumstances, **to refer the disclosure to the Responsible Officer** (or the Principal Officer) for action, in accordance with section 7(3) of the PID Act.
- 5.6 Nothing in this Procedure, or under the PID Act, prevents a relevant authority of the Council who has received a disclosure, or who is assisting in the assessment and management of a disclosure, from obtaining legal advice from one of the Council's legal advisors.

- 5.7 In giving effect to the above, consideration must be carefully given as to whether the identity of the informant is required or is able to be disclosed, noting that section 8 of the PID Act requires that the identity of an informant is to be kept confidential, **except so far as may be necessary to ensure that the matters to which the information relates are properly investigated**. It is recommended that this exception be considered and treated as being of very limited application.
- 5.8 Following the assessment of the information, the subject of the disclosure:
- 5.8.1 if the content gives rise to a concern of imminent risk of serious physical injury or death to any person, or the public generally, the recipient must immediately communicate such information as may be necessary to mitigate that risk to the most appropriate agency, such as SAPOL, SafeWorkSA, SA Ambulance or the Environment Protection Authority; and
 - 5.8.2 if the recipient of the public interest disclosure forms a reasonable suspicion that the matter(s), the subject of the disclosure, involves corruption, misconduct or maladministration in public administration, the recipient of the disclosure **must** also comply with his or her reporting obligations under the ICAC Act and the Ombudsman Act.
- 5.9 If the recipient of a public interest disclosure, or other relevant authority of the Council to whom a disclosure has been referred, assesses the content of the disclosure as **requiring no further action**, the recipient of the disclosure must notify the informant (if his or her identity is known) **within thirty (30) days** that:
- 5.9.1 an assessment of the information has been made;
 - 5.9.2 no action is being taken in relation to the information; and
 - 5.9.3 the reasons why no action is being taken in relation to the information.
- 5.10 If the recipient of a public interest disclosure assesses the content of the disclosure as **requiring further action**, the recipient of the disclosure must ensure that:
- 5.10.1 such action as is appropriate in the circumstances is taken to ensure the matter(s), the subject of the public interest disclosure, are properly addressed;
 - 5.10.2 if such action consists of referring the disclosure (whether to a Responsible Officer, or to the Principal Officer of the Council, or to another relevant authority), such information as is necessary to enable action to be taken is communicated to the most appropriate person or relevant authority to take such action; or

- 5.10.3 if the recipient has assessed the disclosure as requiring further action, the recipient of the disclosure must notify the informant (if his or her identity is known) within thirty (30) days of the action being taken in relation to the information.
- 5.11 If the action taken does not consist of referring the disclosure to another relevant authority, the relevant authority at the Council who is responsible for the management of the disclosure must, **within ninety (90) days** of receiving the disclosure, take reasonable steps to notify the informant (if his or her identity is known) of the outcome of that action taken by the Council.
- 5.12 Notification to the informant can occur by personal meeting, telephone, email or letter, on election at the absolute discretion of the informant.

6. Management of Disclosure

- 6.1 If an informant is dissatisfied with the manner in which his or her disclosure has been managed, or otherwise believes that his or her disclosure has been dealt with inappropriately, the informant may contact a Responsible Officer at the Council, (or the Principal Officer if their concern pertains to the Responsible Officer(s)) to express their concern at the first instance.
- 6.2 Following which, the Responsible Officer (or Principal Officer), will review the disclosure and confirm with the informant the assessment made and the action to be taken.
- 6.3 If the informant remains dissatisfied following the further assessment made by a Responsible Officer (or Principal Officer, as the case may be), it is open to the informant to make the public interest disclosure to an alternative relevant authority, such as the Ombudsman or the OPI.

7. Notifying the OPI

- 7.1 Following receipt, and assessment, of a public interest disclosure, irrespective of whether the relevant authority at the Council responsible for the disclosure determines that further action is, or is not, required, the recipient of the public interest disclosure **must** notify the OPI as soon as reasonably practicable that they are in receipt of a public interest disclosure.
- 7.2 Notification to the OPI is to occur by way of the notification form (form 1) on the OPI website (www.publicintegrity.sa.gov.au/public-interest-disclosure) and must include the information as required by the form 1.
- 7.3 The recipient of the disclosure must retain the unique reference number issued by the OPI upon making a notification and must provide this to any other person or authority to whom the disclosure is referred, including the Responsible Officer where relevant.

- 7.4 In any other circumstance, where a public officer makes a report to the OPI or the Ombudsman based on information received from another person, the public officer should consider whether the PID Act requires them to keep the identity of the informant confidential.

8. Action Taken on a Disclosure

- 8.1 Informants who make an appropriate disclosure of public interest information must provide sufficient detail and evidence for the matter to be assessed. If the relevant authority determines that there is not sufficient evidence to facilitate an assessment of a disclosure of public interest information, no action can be taken on the disclosure, and the OPI will be advised accordingly.
- 8.2 Relevant authorities at the Council **will not** be responsible for investigating disclosures of public administration information (being information that raises a potential issue of corruption, or serious/systemic misconduct or maladministration in public administration) **in the absence of a direction to do so from the Director of the OPI or the Ombudsman.**
- 8.3 Conversely, appropriate disclosures of environmental and health information **may be** assessed and subsequently investigated by or on behalf of a relevant authority at the Council where appropriate.
- 8.4 The outcomes of any investigation into a disclosure of environmental and health information will be reported to the Principal Officer. The relevant authority of the Council, responsible for the management of the investigation, will notify the informant of the outcome (where his or her identity is known).
- 8.5 If a relevant authority at the Council takes action in response to the receipt of a public interest information disclosure (which does not consist of a referral), the relevant authority responsible for the management of the disclosure, must, as soon as reasonably practicable, provide the OPI with information in relation to the outcome of the action taken in accordance with the Guidelines published by the Commissioner.

9. Confidentiality

- 9.1 In accordance with section 8 of the PID Act, it is a **criminal offence** for the identity of an informant to be disclosed in the absence of his or her consent unless:
- 9.1.1 it is necessary to divulge the identity of the informant to ensure that the matters to which the information relates are properly investigated; or
- 9.1.2 the recipient believes, on reasonable grounds, that it is necessary to divulge the identity of the informant to prevent or lessen an imminent risk of serious harm to any person; and

- 9.1.3 the identity of the informant is divulged to a person or authority that the recipient believes on reasonable grounds is the most appropriate authority or person to be able to take action to prevent or minimise the imminent risk of serious harm; or
- 9.1.4 the recipient has been issued with a notice from the OPI advising that the identity of the informant is required by the OPI, in which case the recipient may disclose the identity of the informant to the OPI.
- 9.2 The details of the public interest disclosure and its assessment, will be securely stored in confidential electronic and hard copy files at the Council and will only be accessible by the recipient, or another relevant authority of the Council, involved in the assessment and management of the disclosure.
- 9.3 The Responsible Officer(s) of the Council are required to ensure, so far as reasonably practicable, that all information in relation to public interest disclosures is received and maintained in a confidential manner.
- 9.4 In giving effect to this responsibility, a Responsible Officer may employ security measures including, but not limited to:
 - 9.4.1 keeping all printed material in secure files that are clearly marked as "CONFIDENTIAL", and which warn of the criminal penalties that apply to any unauthorised access, use or divulging of information concerning a public interest disclosure;
 - 9.4.2 keeping all printed material in a locked cabinet that is only accessible to the relevant authority at the Council who is responsible for the management of the assessment and/or action of the disclosure;
 - 9.4.3 assigning specific password protections to all electronic material, which are provided to only the relevant authority at the Council who is responsible for the management of the assessment and/or action of the disclosure;
 - 9.4.4 ensuring that all electronic material is only accessible by the relevant authority at the Council who is responsible for the management of the assessment and/or action of the disclosure;
 - 9.4.5 conducting all telephone calls and meetings in relation to a public interest disclosure privately and in the strictest of confidence; and
 - 9.4.6 keeping all electronic material in secure files with restricted access, marked as "CONFIDENTIAL", and which warn of the criminal penalties that apply to any unauthorised access, use or divulging of information concerning a public interest disclosure.

9.5 A public interest disclosure can also be securely received by a Responsible Officer at the Council in the first instance, in person, by telephone, by text, in writing or via email.

9.6 Written disclosures should be addressed as follows:

Confidential

Responsible Officer

Kangaroo Island Council

43 Dauncey Street

KINGSCOTE SA 5223

9.7 Additional contact details for the Council's Responsible Officer(s) are as follows:

Telephone: 08 8553 4500 or 08 85534500

Email: publicdisclosure@kicouncil.sa.gov.au

10. Subject of a Public Interest Disclosure

10.1 In accordance with section 12 of the PID Act, the Principal Officer must ensure there are risk management steps for assessing and minimising detriment to people against whom allegations are made in a public interest disclosure.

10.2 The Council commits to providing the same protections to persons who are the subject of a disclosure, as it does to informants, which will include, but not necessarily be limited to:

10.2.1 keeping the identity of the informant, and the subject of the disclosure, confidential, unless otherwise required under the PID Act;

10.2.2 flexibility as to when meetings are held, if and when necessary; and

10.2.3 the opportunity to make reasonable requests in relation to how and when the relevant authority of the Council, responsible for the management of the disclosure, makes contact with them, to minimise the potential for the person (being either the informant, or subject of the disclosure) to be subject to detriment.

10.3 The Council also commits to supporting each relevant authority at the Council who receives an appropriate disclosure of public interest information.

11. Reviews

11.1 This Procedure will be reviewed annually, or as required as a consequence of amendments to the PID Act, Regulations, Guidelines, or the statutory public integrity framework generally.

12. Availability of the Procedure

- 12.1 This Procedure is available for inspection at the Council offices during ordinary business hours, 9:00 am – 5:00 pm, Monday to Friday.
- 12.2 A copy of the Procedure will also be provided to the public upon request and upon payment of a fee in accordance with the Council's Schedule of Fees and Charges.
- 12.3 The Procedure is also available to download via the Council's website www.kangarooisland.sa.gov.au.

SIGNED:



Greg Georgopoulos

Chief Executive Officer

Date: 16 August 2022

| Date Reviewed: | Version: | Reason for Amendment: |
|----------------|-----------|--|
| 10/9/2019 | Version 1 | responsibilities under the <i>Public Interest Disclosure Act 2018</i> |
| 16/08/2022 | Version2 | Amendments made as a result of the commencement of the <i>Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021</i> |

Appendix A

Relevant Authorities

| Where the information relates to... | the Relevant Authority is... |
|--|---|
| <p>a public officer*</p> <p><small>*as defined and set out in Schedule 1 of the <i>Independent Commissioner Against Corruption Act 2012</i> - relevantly, this includes members, officers and employees of local government bodies</small></p> | <p>either:</p> <ul style="list-style-type: none"> the person who is designated by the Guidelines as being taken to be responsible for management or supervision of the public officer; or the person who is in fact responsible for the management or supervision of the public officer; or the relevant Responsible Officer (as designated by the Council in accordance with section 12 of the PID Act) |
| a public sector agency or public sector employee | <p>either:</p> <ul style="list-style-type: none"> the Commissioner for Public Sector Employment; or the Responsible Officer for the relevant public sector agency |
| an agency to which the <i>Ombudsman Act 1972</i> applies | the Ombudsman |
| a location within the area of a particular council established under the <i>Local Government Act 1999</i> | a member, officer or employee of that Council |
| a risk to the environment | the Environment Protection Authority |
| an irregular and unauthorised use of public money or substantial | the Auditor-General |
| the commission, or suspected commission, of any offence | a member of the police force |
| a judicial officer | the Judicial Conduct Commissioner |
| a member of Parliament | the Presiding Officer of the House of Parliament to which the member belongs |
| a person or a matter of a prescribed class ¹ | an authority declared by the regulations to be a relevant authority in relation to such information |

¹ presently, no prescribed persons or classes have been identified

KANGAROO ISLAND COUNCIL GOVERNANCE MANAGEMENT SYSTEM

| Where the information relates to... | the Relevant Authority is... |
|---|--|
| <p>Public Interest Information - being:</p> <ul style="list-style-type: none">• Environmental and Health Information (information that raises a potential issue of a substantial risk to the environment or to the health or safety of the public generally or a significant section of the public); or• Public Administration Information (information that raises a potential issue of corruption, misconduct or maladministration in public administration) | <ul style="list-style-type: none">• the OPI;• a Minister of the Crown; or• any other prescribed person or person of a prescribed class |

Appendix B

Notification Process Flowchart

