

Public Interest Disclosure (Whistleblowers) Policy

Date adopted by Council:	6 December 2023
Commencement Date:	7 December 2023
Review Date:	December 2026
Responsible Department	Governance and Strategy

1. Introduction

Council is committed to fostering an ethical, transparent culture. In pursuit of this, Council values the disclosure of information about suspected wrongdoing within the organisation so that it can be properly assessed and, if necessary, appropriately investigated.

Council will provide support to any employee, Councillor or other person who makes a disclosure about matters in the public interest.

2. Context

This policy forms part of Councils Public Interest Disclosures framework and is an integral part of Councils procedures for the purposes of section 58 of the Public Interest Disclosures Act 2012 (Vic) (PID Act).

This policy outlines Council expectations for the:

- a) facilitation of disclosures about the improper conduct of Councillors and Council officers under the PID Act
- b) handling of disclosures and the notification the Independent Broad-based Anti-corruption Commission (IBAC), the Victorian Inspectorate or other relevant integrity agencies.

It also sets out Councils expectations for supporting people from 'detrimental action' taken in reprisal for such disclosures.

2.1 Alignment

This Policy is aligned with and inform the application of Councils Public Interest Disclosure Procedure and Guidelines (parts 1 - 4).

3. Objective

The objective of this Policy is to outline Council's commitment to managing disclosures about serious wrongdoing at Council, relating to corrupt conduct or improper conduct, and to provide protections for people who make disclosures.

4. Policy details

This Policy, along with the associated Guidelines and Procedure as approved by the CEO, sets out how Council will meet its obligations under the Public Interest Disclosure Act 2012 in responding to Public Interest Disclosures made about Council or Public Officers. The Guidelines and Procedure underpin Council's commitment and ensure practical and effective guidance is available. This policy and Council's Public Interest Disclosure Guidelines are available for public viewing at www.merri-bek.vic.gov.au.

5. Management of Conduct and Integrity

The operational measures in place to inform expectations of conduct at Council include, but are not limited to:

- Codes of conduct (employee and Councillor);

- Council's Values;
- Position Descriptions;
- Enterprise Agreement;
- Employment contracts;
- Contracts;
- Internal CEO endorsed policies;
- Contract management framework;
- Guidelines and procedures;
- Performance and Development Reviews; and
- Learning and development program.

5.1 Wrongdoing

Serious Wrongdoing

Serious wrongdoing includes corrupt conduct and improper conduct and should be reported immediately, following the guidance provided in the Guidelines available on Council's website.

Corrupt conduct is the dishonest or partial exercise of official functions by a Public officer including conduct:

- That adversely affects their or Council's honest performance of its functions
- Dishonest performance of public functions
- Intentional or reckless breach of public trust
- Misuse of information or material acquired in the course of public functions
- That results in a benefit to them directly or indirectly through a relative, an entity which they or a relative holds a financial interest or holds an agreement with.

Examples include:

- A permit, an approval, a licence, an appointment, a financial benefit or real or personal property or any other direct or indirect monetary or proprietary gain that they would not otherwise have gained
- That could constitute a conspiracy or an attempt to engage in any conduct referred to in the above points.

Improper conduct includes any of the following:

- Corrupt conduct
- Criminal offence
- Serious professional misconduct (see definitions)
- Dishonest performance of public functions
- Intentional or reckless breach of public trust
- Intentional or reckless misuse of information
- Substantial mismanagement of public resources
- Substantial risk to health or safety of a person
- Substantial risk to the environment
- Conduct of any person that adversely affects the honest performance by a public officer of their functions
- Conduct of any person that is intended to adversely affect the effective performance by a public officer of their functions for the benefit of the other person.

5.2 Other Wrongdoing

Council is committed to addressing any wrongdoing and this should always be reported in a timely manner so that it can be addressed.

Examples such as:

- Conflict of interest (that has not met the threshold to be corrupt or improper conduct)
- Harassment or unlawful discrimination
- Reprisal action against a person who has reported wrongdoing; or
- Practices that endanger the health or safety of staff or the public.

6. Management of Disclosures

6.1 Reporting a Public Interest Disclosure

Council expects that any instances of corrupt conduct, improper conduct or other wrongdoing will be reported without delay. To support the reporting of serious wrongdoing and protection for the individual reporting, Council encourages reporting such activity as a Public Interest Disclosure.

Operational guidelines available on Council's website provide guidance on the type of conduct that would be reported as a public interest disclosure, how to make a public interest disclosure and what happens after you have made a public interest disclosure.

Confidential guidance is also available by contacting the Public Interest Disclosure Coordinator or a Public Interest Disclosure Officer.

6.2 Handling of Public Interest Disclosures

Council expects the disclosure of corrupt conduct or improper conduct will be handled respectfully, confidentially and in accordance with the requirements of the Act, this Policy and the associated Guidelines and Procedure. The Procedure for the handling of Public Interest Disclosures sets out the expectations and key steps for the person who has received the disclosure and how the disclosure should be managed. The Guidelines, available on Council's website, provide guidance to a Discloser on what happens after a Public Interest Disclosure has been reported.

Information that is confidential relating to a Public Interest Disclosure includes:

- Information about the identity, occupation, residential or work address or whereabouts of a person who makes a public interest disclosure or against whom a disclosure has been made
- Information disclosed in a report of a public interest disclosure
- Information about an individual's personal affairs
- Information that, if disclosed, may cause detriment to a person.

6.3 Reporting to the wrong entity (Misdirected Report)

Should an attempt to report a Public Interest Disclosure be made to Council where Council is not the appropriate entity, the Discloser will be referred to the appropriate agency. Should Council receive a misdirected report - where Council is not the appropriate entity to receive

the report - Council will refer the matter to the appropriate entity and inform the Discloser of the action taken.

6.4 Detrimental Action (Reprisals)

Council will not tolerate any reprisal action against public officers or members of the community who report wrongdoing. Council will act to protect Public Officers (Councillors, employees, contractors, volunteers, advisory committee members) who report wrongdoing from detrimental action. In practical terms, this means if the fact that a Public Officer has made a disclosure forms any part of the reason for which action is taken against them, it will constitute detrimental action and be reportable under the Public Interest Disclosure scheme as well as being a criminal offence. Detrimental action is also misconduct that justifies disciplinary action.

6.5 Mandatory Reporting

The CEO has a mandatory reporting obligation under the Independent Broad-based Anti-Corruption Commission Act 2011 to notify IBAC of any matter they suspect on reasonable grounds to involve corrupt conduct occurring or having occurred.

7. Legislation

- Local Government Act 1989
- Local Government Act 2020
- Public Interest Disclosures Act 2012
- Independent Broad-based Anti-corruption Commission Act 2011
- Public Administration Act 2004
- Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019

8. Roles and Responsibilities

Party/parties	Roles and responsibilities	Timelines
Councillors	Councillors are responsible for ensuring good governance and ethical conduct of themselves and all Public Officers.	Ongoing
CEO	The CEO is responsible for: <ul style="list-style-type: none"> • Ensuring the Public Interest Disclosure Procedure and Guidelines that support this policy are approved. • Mandatory reporting of corrupt conduct to IBAC (suspected or otherwise). • Supporting a culture of disclosure and zero tolerance for corruption or improper conduct. 	Ongoing
Public Interest Discloser (PID) Coordinator	Responsibilities include: <ul style="list-style-type: none"> • Principal contact for Public Interest Disclosures within Council. • document and manage the implementation of Public Interest Disclosures Act 2012. 	Ongoing

This is the Manager Governance and Strategy	<ul style="list-style-type: none"> • Review and update Public Interest Disclosure Guidelines and Procedure annually. • Receive disclosures, including phone calls, emails and letters from staff or Councillors. • Assess disclosures in accordance with the Act. • Provide acknowledgment of receipt of Public Interest Disclosure to Discloser. • Undertake risk assessments in consultation with Disclosers and other relevant officers. • Liaise with other agencies about referral of Public Interest Disclosures. • Allocate Investigator and Welfare Officer to each Public Interest Disclosure matter. • Notify all assessable disclosures to IBAC within 28 days. • Establish and managing a secure filing system and processes to ensure confidentiality. • Manage the welfare of a Discloser and advising them of protections available under the Act. • Track the actions taken in relation to disclosures. 	
<p>Public Interest Discloser (PID) Officers</p> <p>These are:</p> <ul style="list-style-type: none"> • Manager People and Safety • Manager City Services, • Unit Manager Governance • Unit Manager Integrity, Risk and Resilience 	<p>Responsibilities include:</p> <ul style="list-style-type: none"> • Contact for Public Interest Disclosures within Council; • Receive disclosures, including phone calls, emails and letters from staff or Councillors; • Assess disclosures in accordance with the Act; • Provide acknowledgment of receipt of Public Interest Disclosure to Discloser; • Undertake risk assessments in consultation with Disclosers and other relevant officers; • Liaise with Public Interest Disclosure Coordinator; • Establish and manage a secure filing system and processes to ensure confidentiality; • Manage the welfare of a Discloser and advising them of protections available under the Act. 	Ongoing
Public Interest Discloser Welfare Officer	<ul style="list-style-type: none"> • Provide advice and information to Discloser on the Public Interest Disclosure Guidelines and Procedures. • Provide personal support and referral to other sources of advice or support as required. • Facilitate updates on progress of the investigation. • Proactively contact Discloser throughout the Public Interest Disclosure management process. • An appropriate officer will be assigned to support the Discloser of each Public Interest Disclosure. 	Duration of Public Interest Disclosure and beyond if required.
Investigator	<ul style="list-style-type: none"> • Conduct investigation of information in Public Interest Disclosure in accordance with terms of reference/delegation. • Prepare report for Public Interest Disclosure 	On engagement

	Coordinator.	
Directors, Managers, Coordinators, Team Leaders, Supervisors	<ul style="list-style-type: none"> All leadership positions are responsible for ensuring good governance and ethical conduct of staff, contractors, volunteers or advisory committee members; Leadership roles are 'Permitted Persons' within Council and able to receive a report of a Public Interest Disclosure from staff who report to them. 	Ongoing
Permitted person	<p>Council officers permitted to receive a Public Interest Disclosure:</p> <ul style="list-style-type: none"> Public Interest Disclosures Coordinator Public Interest Disclosures Officers CEO Directors, Managers, Coordinators, Team Leaders, Supervisors 	Ongoing

9. Monitoring, Evaluating and review

This policy will be reviewed every three years or when any of the following occur:

- As required by legislation.
- The policy position is amended or replaced.
- Other circumstances as determined from time to time by a resolution of Council.

The guidelines and procedures within this policy will be monitored by the Manager Governance and Strategy (Public Interest Coordinator) on an ongoing basis and updated when any of the following occur or at least annually to review:

- Opportunities to improve the guidance provided are identified.
- The related information is amended or replaced.

10. Definitions

Term	Definition
Act	The Public Interest Disclosures Act 2012 (formerly the Protected Disclosure Act 2012, as amended on 5 March 2019 to take effect from 1 January 2020).
Conflict of interest	<p>Conflicts can be actual, potential or perceived:</p> <ul style="list-style-type: none"> An actual conflict of interest occurs when a Public Officer's duties actually conflict with their private interests. A potential conflict arises when a Public Officer's duties could conflict with their private interests. A Councillor or Council employee can anticipate potential conflicts by thinking about how their private interests and associations might influence their public duties.

	<ul style="list-style-type: none"> • Perceived conflicts stem from the reasonable view of the public or a third party that a Public Officer's private interests could improperly influence their decisions or actions, or the actions or decisions of their organisation.
Corrupt Conduct	Refer to section 4 of the Independent Broad-based Anti-Corruption Commission Act 2011 (IBAC Act).
Council	Merri-bek City Council
Discloser	Is a person who makes a Public Interest Disclosure in accordance with the Act.
Investigating Entity	<p>Is an entity that can investigate a Public Interest Disclosure. These are the:</p> <ul style="list-style-type: none"> • Independent Broad-based Anti-corruption Commission (IBAC) • Chief Commissioner of Police • Ombudsman • Victorian Inspectorate • Chief Municipal Inspector • Racing Integrity Commissioner • Information Commissioner.
Public Interest Complaint	Means a public interest disclosure that has been determined by IBAC, the Victorian Inspectorate or the Integrity Oversight Committee to be a Public Interest Complaint (previously a protected disclosure complaint) in accordance with the Act.
Public Interest Disclosure	Disclosure by a natural person of information that shows/tends to show or information that the person reasonably believes shows / tends to show improper conduct or detrimental action (previously a protected disclosure).
Public Body	Council is a 'Public Body' as defined through the IBAC Act 2011.
Public Officer	<p>Is defined by the IBAC Act 2011 and for Council means:</p> <ul style="list-style-type: none"> • a Councillor within the meaning of section 3(1) of the Local Government Act 1989 • a member of Council staff employed under the Local Government Act 1989 • a person that is performing a public function on behalf of a public officer or public body (Council), 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 (Council) or a public officer.

Serious Professional
Misconduct

A serious failure to exhibit the skills and experience required to perform the functions of the office, as well as a serious breach of professional codes of conduct or the policies, procedures and laws that govern behaviour in the public sector and workplace.

11. Associated Documents

- Employee Code of Conduct
- Councillor Code of Conduct
- Gifts, Benefits and Hospitality Policy for Employees and Agents
- Gifts, Benefits and Hospitality Policy for Councillors
- Procurement Policy
- Fraud and Corruption Prevention Policy
- Fraud and Corruption Prevention Control Plan
- Information Management Policy
 - Information Privacy and Health Records Policy
 - Complaint Resolution Policy
 - Recruitment Policy