District Council of
Loxton Waikerie

PUBLIC INTEREST DISCLOSURE POLICY

Responsible Officer/s	Director Commercial and Community Services Strategy and Governance
Relevant Legislation / Documents	Public Interest Disclosure Act 2018 Public Interest Disclosure Procedure
Adopted	15 May 2020
Reviewed	19 June 2024
Next Review	June 2028

A. Purpose

To ensure that Council has in place a scheme that encourages and facilitates the disclosure of public interest information to certain persons or authorities to comply with the Public Interest Disclosure Act.

The District Council of Loxton Waikerie (the '**Council'**) is committed to upholding the principles of transparency and accountability in its administrative and management practices and, therefore, encourages the making of disclosures that reveal public interest information.

B. Objective

The purpose of this Policy is to ensure that the Council:

- Properly fulfils its responsibilities under the Public Interest Disclosure Act 2018 (PID Act);
- Encourages and facilitates Disclosures of Public Interest Information in accordance with the objects and requirements of the PID Act;
- Ensures there is appropriate oversight of public interest disclosures about corruption, misconduct and maladministration in public administration;
- Provides appropriate protection for those who make Disclosures in accordance with the Act; and
- Acknowledges the need to appropriately support Informants, the Responsible Officer and, as appropriate, those Public Officers affected by any appropriate Disclosure.

The Council will review and update this Policy each year as part of its annual policy review.

C. Policy

This Policy applies to appropriate Disclosure of Public Interest Information that are made in accordance with the PID Act by Council Members, Employees of the Council, and members of the public, and is intended to complement the reporting framework under the ICAC Act.
This Policy is also designed to complement the existing communication channels within Council, and operate in conjunction with other existing policies, including:

- Fraud and Corruption Prevention Policy;
- Code of Conduct for Council Employees;
- Code of Conduct for Council Members; and
- Internal Review of Council Decisions Policy under section 270 of the Local Government Act 1999.

The Council is committed to:

- Referring, as necessary, appropriate Disclosures to another Relevant Authority;
- Where the Disclosure relates to Corruption, or serious or systemic Misconduct or Maladministration in public administration, reporting the Disclosure directly to the OPI in accordance with the Guidelines and the requirements of the ICAC Act;
- Otherwise facilitating the investigation of appropriate Disclosures in a manner which promotes fair and objective treatment of those involved; and
- Rectifying any substantiated wrongdoing to the extent practicable in all the circumstances.

1. Definitions

For the purposes of this Policy the following definitions apply:

1.1. **Commissioner** means the person holding or acting in the office of the Independent Commissioner Against Corruption.

1.2. **Corruption in public administration** is defined in section 5(1) of the ICAC Act and means:

1.2.1. an offence against Part 7 Division 4 (Offences relating to public officers) of the Criminal Law Consolidation Act 1935, which includes the following offences:

I. bribery or corruption of public officers;
II. threats or reprisals against public officers;
III. abuse of public office;
IV. demanding or requiring benefit on basis of public office;
V. offences relating to appointment to public office; or
VI. an offence against the Public Sector (Honesty and Accountability) Act 1995 or the Public Corporations Act 1993, or an attempt to commit such an offence;

1.2.2. an offence against the Lobbyists Act 2015, or an attempt to commit such an offence; or

1.2.3. any other offence (including an offence against Part 5 (Offences of Dishonesty) of the Criminal Law Consolidation Act 1935 committed by a public officer while acting in his or her capacity as a public officer or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or an attempt to commit such an offence; or

1.2.4. any of the following in relation to an offence referred to in a preceding paragraph:

i. aiding, abetting, counselling or procuring the commission of the offence;
ii. inducing, whether by threats or promises or otherwise, the commission of the offence;

iii. being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
iv. conspiring with others to effect the commission of the offence:

1.3 **Council** means the District Council of Loxton Waikerie:

1.4 **Detriment includes:**

- Injury, harm (including psychological harm), damage (including damage to reputation) or loss;
- Intimidation or harassment;
- Discrimination, disadvantage or adverse treatment in relation to a employment; and/or
- Threats of reprisal (which may be express or implied, and/or conditional or unconditional):

1.5 **Directions and Guidelines** is a reference to the Directions and Guidelines issued pursuant to section 20 of the ICAC Act and/or section 14 of the PID Act, which are available on the (www.icac.sa.gov.au).

1.6 **Disclosure** means an appropriate disclosure of public interest information made by an Informant to a Relevant Authority.

A person makes an **appropriate disclosure of environmental and health information** if:

a. The person:

I. Believes on reasonable grounds that the information is true; or
II. Is not in a position to form a belief on reasonable grounds about the truth of the information, but 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; and

b. The disclosure is made to a Relevant Authority.

A person makes an **appropriate disclosure of public administration information** if

c. The person:

I. Is a public officer;
II. Reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration; and

d. The disclosure is made to a Relevant Authority:

1.7 **Employee** refers to all the Council's employees and includes trainees, work experience students, volunteers, and contractors whether they are working in a full-time, part-time or casual capacity;

1.8 **Environmental** and health information means information that raises potential issue of a substantial risk to the environment or the health and safety of the public generally or a significant section of the public;

1.9 **Fraud** is an intentional dishonest at or omission done with the purpose of deceiving;

1.10 **ICAC Act** is the Independent Commissioner Against Corruption Act 2012;

1.11 **Independent Assessor** means the person designated by the Responsible Officer as being responsible for investigating a disclosure made to the District Council of Loxton Waikerie in accordance with the Public Interest Disclosure Procedure;

1.12 **Informant** means a person who makes an appropriate disclosure of public interest information to a Relevant Authority;

1.13 **Maladministration in public administration** is denied in section 5(4) of the ICAC Act and

1.13.1 means:

I. conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or
II. conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and

1.13.2 includes conduct resulting from impropriety, incompetence or negligence; and

1.13.3 is to be assessed having regard to relevant statutory provisions and administrative instructions and directions

1.14 **Misconduct in public administration** is defined in section 5(3) of the ICAC Act and means;

1.14.1 contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or
1.14.2 other misconduct of a public officer while acting in his or her capacity as a public officer;

1.15 **Office for Public Integrity (OPI)** is the office established under the ICAC Act that has function to:

1.15.1 receive and assess complaints about public administration from members of the public;
1.15.2 receive and assess reports about corruption, misconduct and maladministration in public administration from the Ombudsman, the Council and public officers;
1.15.3 refer complaints and reports to inquiry agencies, public authorities and public officers in circumstances approved by the Commissioner or make recommendations as to whether and by whom complaints and reports should be investigated;
1.15.4 give directions or guidance to public authorities in circumstances approved by the Commissioner;
1.15.5 perform other functions assigned to the Office by the Commissioner;

1.16 **Public administration** defined at section 4 of the ICAC Act and, without limiting the acts that may comprise public administration, an administrative act within the meaning of the Ombudsman Act 1972 will be taken to be carried out in the course of public administration;

1.17 **Public administration information** means information that raises a potential issue of corruption, misconduct or maladministration in public administration;

1.18 **Public interest information** means environmental or health information, or public administration information;

1.19 **PID Act** means the Public Interest Disclosure Act 2018;

1.20 Principal Officer for the purposes of the PID Act means the Chief Executive Officer of the Council;

1.21 Public Officer has the meaning given by section 4 and Schedule 1 of ICAC Act, and includes:

- A Council Member; and
- An Employee or Officer of the Council;

1.22 Relevant Authority means the person or entity that receives an appropriate disclosure of public interest information in accordance with the PID Act, as set out in Appendix A to this Policy;

1.23 Responsible Officer is a person who has completed any training courses approved by the Commissioner for the purposes of the Public Interest Disclosure Regulations 2019 and has been designated by the Council as responsible officer under section 12 of the PID Act.

1.24 Victimisation occurs when a person causes detriment to another on the ground, or substantially on the ground, that the other person (or a third person) has made or intends to make an appropriate disclosure of public interest information.

2. Confidentiality

2.1 The identity of an Informant will be maintained as confidential in accordance with the PID Act.

2.2 A recipient of an appropriate Disclosure may only divulge the identity of an Informant where:

2.2.1 the recipient believe on reasonable grounds that it is necessary to divulge the identity of the Informant in order to prevent or minimise an imminent risk of serious physical injury or death to any person, and the identity of the Informant is then 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 physical injury or death to any person;

2.2.2 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 must disclose the identity of the Informant to the OPI;

2.2.3 doing so is necessary for the matter to be properly investigated (but only to the extent necessary to ensure proper investigation); or

2.2.4 the Informant consents to his/her identity being disclosed;

2.3 The PID Act does not expressly require any other information relating to a Disclosure (including, for example, the nature of the allegations) to be maintained as confidential, but in considering whether to further disclose other information provided as part of an appropriate Disclosure the Council should be mindful of the prohibition against victimisation in the PID Act.

2.4 An Informant may wish to remain anonymous, but in that event must ensure that the allegation is sufficiently supported by the provision of necessary details and evidence to enable the matter to be properly investigated.

3. Disclosure Process

3.1 Disclosures are to be handled by the Council in accordance with the Public Interest Disclosure Procedure; he identity of an Informant will be maintained as confidential in accordance with the PID Act.

3.2 Nothing in this Policy prevents a person from making a Disclosure to a Relevant Authority external to the Council (i.e. the Ombudsman or the OPI). This is a choice to be made by the Informant at his/her discretion. The Council recommends an Informant have regard to the factors at clause 6.4 of the Public Interest Disclosure Procedure when deciding where to direct a Disclosure.

3.3 A Disclosure may be made to the Council's designated Responsible Officer in person, b telephone or in writing. The relevant contact details are:

- Telephone: 08 8584 8015
- Email: pid@lwdc.sa.gov.au
- Address: Confidential
  Responsible Officer, Public Interest
  Disclosure PO BOX 409
  LOXTON SA 5333

4. Role of the Responsible Officer

4.1 A person designated a Responsible Officer for the Council:

4.1.1 must:

4.1.1.1 receive appropriate Disclosures relating to the Council and ensure compliance with the PID Act, and the Public Interest Disclosure Procedure, in relation to any such Disclosures;

4.1.1.2 make appropriate recommendations to the principal officer of the Council in relation to dealing with Disclosures, including any suggested changes to this Policy or the Public Interest Disclosure Procedure; and

4.1.1.3 provide advice to officer and employees of the Council in relation to the administration of the PID Act; and

4.1.1.4 complete any training courses approved by the Commissioner for the purposes of the Public Interest Disclosure Regulations; and

4.1.2 may carry out any other functions relating to the PID Act;

4.2 Upon the receipt of a Disclosure, the Responsible Officer will deal with the disclosure in accordance with the Public Interest Disclosure Procedure;

4.3 In making any determination or taking any action under this Policy or pursuant to the Public Interest Disclosure Procedure;

4.3.1 the Responsible Officer may seek legal advice from lawyers and/or guidance from SAPOL or the Ombudsman in relation to the most appropriate course of action to pursue; and
4.3.2 is authorised to incur costs in accordance with the Budget for that purpose;

4.4 The Responsible Officer will liaise as required with the Informant and any Independent Assessor in relation to any investigation process undertaken in accordance with the Public Interest Disclosure Procedure and will ensure that the Informant is provided with support and protection as necessary and appropriate in the circumstances of the Disclosure.

5. Information to Elected Body

5.1 As a matter of discretion, the Chief Executive Officer may inform the elected body, on a confidential basis, of the fact that an investigation of a Disclosure took place and the outcome of the investigation.

5.2 Factors the Chief Executive Officer will take into account in determining whether to inform the elected body under paragraph 4.1 above and the level of detail provided in doing so are to include:

5.2.1 if known, the identity of the Informant, and whether the Informant has consented to his/her identity being divulged;
5.2.2 if applicable, the identity of any person the subject of the Disclosure;
5.2.3 the impact (if any) of the investigation upon the achievement of its objectives under its Strategic Plan and/or policies; and
5.2.4 the impact of any action taken to finalise the matter upon the Council's operations and/or budget;

5.3 In the event the Disclosure and/or any subsequent investigation process is confined to issues that impact only upon Council staff and human resource processes, the Chief Executive Officer will not inform the elected body of the fact of the Disclosure and/or investigation (since these matters fall outside the roles and responsibilities of elected members under the Local Government Act 1999).

6. Protection for the Informant

6.1 An Informant who makes an appropriate Disclosure is protected by:

6.1.1 immunity from criminal or civil liability as provided for in section 5(1) of the PID Act;
6.1.2 a prohibition on disclosure of his/her identity as provided for in section 8 of the PID Act;
6.1.3 a prohibition against victimisation as provided for in section 9 of the PID Act; and

6.1.4 a prohibition against hindering, obstructing or preventing an Informant from making an appropriate Disclosure as provided for in section 11 of PID Act.

6.2 The PID Act does not provide any protection to people who knowingly make disclosures that are false or misleading in a material particular (whether by reason of the inclusion or omission of a particular).

6.3 A person who knowingly makes a Disclosure that is false or misleading in a material particular is guilty of an offence and may be prosecuted.

6.4 A person who personally commits an act of victimisation against an Informant is guilty of an offence and may be prosecuted.

6.5 The Council will take action as appropriate in the circumstances of the relevant Disclosure/s to protect Informants from victimisation. Such action may include acting in accordance with the risk minimisation steps set out in the Public Interest Disclosure Procedure and/or referring the matter to the SA Police.

6.6 Any Council Member or employee or officer of the Council who:

6.6.1 knowingly makes a disclosure that is false or misleading in a material particular or
6.6.2 commits an act of Victimisation in relation to an Informant; or
6.6.3 acts otherwise than in accordance with this Policy or the Public Interest Disclosure Procedure (including with respect to divulging the identity of an Informant) in relation to a Disclosure

may also face disciplinary action by the Council or the Chief Executive Officer (as appropriate).

D. Availability

This Policy will be available for inspection at the Council Offices at Loxton or Waikerie during ordinary business hours at no charge.

Copies of this Policy will also be available from Councils website: www.loxtonwaikerie.sa.gov.au or postal copies may be obtained from the Council Office free of charge.

This policy will be available in Council's Electronic Document Management System (Content Manager).

E. Document history and version control

Date	Version	Authorisation	Amendment Details
15/04/2020	1.0	Senior Management Team	
15/05/2020	1.0	Council	
19/06/2024	1.1	Council	Minor formatting changes Update to new template

Appendix A
Relevant Authorities

Where the information relates to...	the relevant authority is...
a public officer* *as defined and set out in Schedule 1 of the Independent Commissioner Against Corruption Act 2012 - relevantly, this includes members, officers and employees of local government bodies	either: 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	either: the Commissioner for Public Sector Employment; or the responsible officer for the relevant public sector agency
an agency to which the Ombudsman Act 1972 applies	the Ombudsman
a location within the area of a particular council established under the Local Government Act 1999	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
public interest information - being: 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)	the OPI; a Minister of the Crown; or any other prescribed person or person of a prescribed class

[1] at this stage, no prescribed persons or classes have been identified