Public Interest Disclosure Procedure

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Related Documents:	Fraud, Corruption, Misconduct & Maladministration Prevention Policy Elected Member Behavioural Management Policy Employee Code of Conduct Internal Review of a Council Decision Policy Customer Feedback and Complaint Policy

CITY OF PROSPECT

1. Statement of Intent:

This procedure has been prepared in accordance with the requirements of section 12(4) and (5) of the *Public Interest Disclosure Act 2018* (PID Act).

As Chief Executive Officer of City of Prospect and designated Principal Officer for the purposes of the PID Act, I expect that the implementation and operation of the PID Act will encourage and facilitate:

- Further transparency and accountability in Council's administrative and management practices
- The Disclosure, in the public interest, of information about substantial risks to public health or safety, or to the environment, and about corruption, misconduct and maladministration in public administration.

This Procedure is designed to enable that to occur, by ensuring that proper procedures are in place for the making, receipt and management of such Disclosures of Public Interest Information and for dealing with such Disclosures, and by providing appropriate protections for those who make such Disclosures.

I, and other Employees, Officers and Council Members at Council remain deeply committed to the protection of Informants who make Public Interest Disclosures in accordance with the objectives of the PID Act, and to the genuine and efficient consideration and action in relation to information provided to Council via Public Interest Disclosure, as contemplated and demonstrated by this Procedure.

Any questions about this Procedure should be directed in the first instance to the Responsible Officers, whose details are included within this Procedure.

Chris White
Chief Executive Officer

2. Purpose:

2.1 This Procedure is intended to complement the reporting framework under the Guidelines prepared by the Commissioner in accordance with section 15 of the PID Act, and the reporting obligations of public officers under the *Independent Commission Against Corruption Act 2012* (ICAC Act) and the *Ombudsman Act 1972* (Ombudsman Act).

2.2 This Procedure aims to:

- Encourage and facilitate Disclosures of Public Interest Information in accordance with the requirements and responsibilities under the PID Act.
- Ensure appropriate oversight of Public Interest Disclosures of corruption, misconduct and maladministration in public administration.
- Provide appropriate protection for those who make Disclosures in accordance with the PID Act.
- Provide an appropriate level of support to Informants, the Responsible Officer and Public Officers affected by any appropriate Disclosures.

3. Scope:

3.1 This Procedure applies to Appropriate Disclosures of public interest information, that are made in accordance with the PID Act, by public officers including Council Members, officers and employees of the Council, and by members of the public.

4. Definitions:

Commission	Means the Independent Commission Against Corruption.
Corruption	As defined in section 5(1) of the ICAC Act, is conduct that constitutes— a) 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.
Detriment	As per section 9(7) of the PID Act detriment 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 (express or implied and/or conditional or unconditional).
Disclosure	For the purposes of the PID Act 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: a) the person is i. a public officer, and ii. reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration, and the disclosure is made to a Relevant Authority. **If a matter is deemed to be frivolous, vexatious or trivial, in accordance with the definitions in Council's Customer Feedback and Complaints Policy, it will not be found to constitute an Appropriate Disclosure.

Environmental and Health Information	Means 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.
Informant	Means a person who makes an appropriate Disclosure of public interest information to a Relevant Authority.
Maladministration in Public Administration	As per section 4(2) of the Ombudsman Act: a) 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 b) includes conduct resulting from impropriety, incompetence or negligence; and c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.
Misconduct in Public Administration	As per section 4(1) of the Ombudsman Act means an intentional and serious contravention of a code of conduct by a public officer while acting in their capacity as a public officer that constitutes a ground for disciplinary action against the officer.
Ombudsman Directions and Guidelines	Means the directions and guidelines issued pursuant to section 12D(1) of the Ombudsman Act relating to reporting matters of suspected misconduct or maladministration in public administration.
Office for Public Integrity (OPI)	Established by the ICAC Act.
OPI Directions and Guidelines	Is a reference to the directions and guidelines issued by OPI pursuant to section 18B of the ICAC Act in relation to reporting matters of suspected corruption in public administration.
Public Administration Information	Means information that raises a potential issue of corruption, misconduct or maladministration in public administration.
PID Guidelines	Is a reference to the Guidelines issued by ICAC pursuant to section 14 of the PID Act.
Principal Officer	For the purposes of the PID Act means the Chief Executive Officer of the Council.
Public Officer	Has the meaning given by section 4 and Schedule 1 of the ICAC Act and includes Council Members and employees or officers of Council.
Relevant Authority	Means the person or entity that receives an appropriate Disclosure of public interest information in accordance with the PID Act.
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,* has been designated by the Chief Executive Officer as the responsible officer under section 12 of the PID Act and is designated to undertake the duties as per section 13 of the PID Act.
Victimisation	As per section 9(1) of the PID Act, 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. Refer to definition of 'detriment' in this table and section 9(7) of the PID Act.

5. Appropriate Disclosures:

5.1 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:

- immunity from criminal or civil liability;
- a prohibition on the disclosure of their identity, other than in limited specific circumstances, as set out in section 8 of the PID Act and Guideline 3 of the Public Interest Disclosure Guidelines (the Guidelines);
- protection against Victimisation; and
- a prohibition against hindering, obstructing or preventing an Informant from making an Appropriate Disclosure.

5.2 Immunity for an Appropriate Disclosure of Public Interest Information will follow if:

- a person makes an Appropriate Disclosure of Environmental and Health Information; or
- a Public Officer makes an Appropriate Disclosure of Public Administration Information.

5.3 Whilst anyone can make a Disclosure of Public Administration Information, only Public Officers who make such a Disclosure are eligible for the protections under the PID Act.

5.4. *Environmental and Health Information*

5.4.1 A person makes an Appropriate Disclosure of Environmental and Health Information for the purposes of the 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.

5.4.2 Where the information relates to a location within the area of Council, a person may make a Disclosure to an Elected Member, Officer or Employee of the Council.

5.5 *Public Administration Information*

5.5.1 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 regarding either a location within the Council area, or a public officer who is a Council Member, officer or employee of the Council.

5.5.2 Where the information relates to a Public Officer, the following are each a Relevant Authority for the purposes of the PID Act:

- a person who is designated under the Guidelines
- a person who is responsible for the management or supervision of that Public Officer
- a Responsible Officer.

6. Contact Details for Submitting a Disclosure

6.1 The contact details for making a Disclosure of Public Interest Information are:

Telephone: 08 8269 5355

Post: *Confidential*
Responsible Officer, Public Interest Disclosure
City of Prospect
128 Prospect Road (PO Box 171)
Prospect SA 5082

Email: publicinterest@prospect.sa.gov.au

6.2 The Responsible Officers for City of Prospect are:

Director City Corporate	Caroline Batty
Manger People and Risk	Victor DiMaria
Team Leader Governance	Melanie Amezdroz

7. Receipt of a Disclosure

7.1 A flowchart outlining the Appropriate Disclosure Process is at Appendix 2 to this Procedure.

7.2 If an Officer, Employee or Council Member of Council is the recipient of a Disclosure of Public Interest Information regarding a location within the Council area, or pertaining to a Public Officer of Council, as the Relevant Authority, they will:

7.2.1 ask the Informant whether they consent to the details of their identity being provided to the Responsible Officer, and in doing so advise the Informant that the failure to provide consent may mean that the Disclosure cannot be properly investigated

7.2.2 refer the Disclosure to the Responsible Officer and, in doing so, comply with the wishes of the Informant with respect to whether details of their identity may be divulged

7.2.3 if the Informant does not consent to the details of their identity and Disclosure being provided to the Responsible Officer, then the Officer, Employee or Council Member of Council as the Relevant Authority must still undertake the process outlined below.

7.3 Upon the receipt of a Disclosure of Public Interest Information (whether directly, or by referral from the Recipient), the Responsible Officer or Relevant Authority will:

7.3.1 where the identity of the Informant is known, or is reasonably ascertainable, send a confirmation of receipt of the Disclosure to the Informant within three (3) business days of receipt, and in doing so, provide a copy of this Procedure to the Informant

7.3.2 immediately undertake a Preliminary Assessment and provide a notification to the Informant within thirty (30) days of the Informant making that Disclosure

7.3.3 as soon as practicable thereafter, notify the OPI of the Disclosure

7.3.4 if action has been taken, notify the Informant of the outcome of that action within ninety (90) days of the Informant making that Disclosure

7.3.5 as soon as reasonably practicable thereafter, provide the OPI with information in relation to the outcome of the action taken.

8. Assessment of Disclosure

8.1 A Relevant Authority of Council to whom an Appropriate Disclosure of Public Interest Information is made, must assess the information as soon as practicable after the Disclosure.

8.2 The criteria that will be applied to the initial assessment of the Disclosure will include, but not necessarily be limited to, whether it:

8.2.1 relates to information within the scope of the PID Act, namely whether it pertains to Environmental and Health Information and/or Public Administration Information

8.2.2 raises matters that are within Council's scope of authority, including if the information relates to a location within the area of Council, or to an Officer, Employee or Council Member of Council

8.2.3 justifies the taking of further action, or otherwise relates to a matter that has already been investigated or acted upon by a Relevant Authority (whether by the Council or another Relevant Authority), and there is no reason to re-examine the matter, or there is other good reason why action should be taken in respect of the matter

8.2.4 gives rise to a concern of imminent risk of serious physical injury or death to any person, or the public generally, in which case, the Relevant Authority will need to give immediate consideration whether another Agency needs to be contacted eg SA Police, SafeWork SA

8.2.5 requires referral to a Relevant Authority external to Council.

8.3 If the Recipient, as the Relevant Authority, determines they require assistance with the appropriate assessment and management of the Disclosure, the Recipient is encouraged to seek the assistance of a Responsible Officer of Council (or the CEO, in circumstances where the Disclosure relates to the Responsible Officer(s)), who are also each a Relevant Authority for the purposes of the Act.

8.4 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 Council, that it is appropriate, in all of the circumstances, to refer the Disclosure to the Responsible Officer (or the CEO) for action, in accordance with section 7(3) of the PID Act.

8.5 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 confidentially obtaining legal advice from one of the Council's legal advisors.

8.6 In giving effect of the above, consideration must be carefully given as to whether the identity of the Informant is required to be disclosed, noting that in section 8 of the PID Act the identity of the 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.

8.7 Following the assessment of the information of the Appropriate Disclosure:

8.7.1 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 more appropriate agency, such as SA Police, SafeWorkSA, SA Ambulance or the Environment Protection Authority (Appendix 1)

8.7.2 if the recipient of the Disclosure forms a reasonable suspicion that the matter(s) involves corruption, misconduct or maladministration in public administration, the recipient of the Disclosure must also comply with their reporting obligations under the ICAC Act and/or the Ombudsman Act.

8.8 The recipient of a Disclosure, or other Relevant Authority of Council to whom a Disclosure has been referred, will assess the content of the Disclosure and must notify the Informant (if their identity is known) within thirty (30) days of the Informant making the Disclosure:

8.8.1 that an assessment of the information has been made

8.8.2 of the action being taken in relation to the information

8.8.3 that no action is being taken in relation to the information, providing reasons why.

8.9 Notification to the Informant can occur by personal meeting, telephone, text message, email, or letter, on election at the absolute discretion of the Informant.

8.10 If the recipient of a Disclosure assesses the content of the Disclosure as requiring further action under this Procedure, the recipient of the Disclosure must ensure that:

8.10.1 such action as appropriate in the circumstances is taken to ensure the matter(s) relating to the Disclosure are properly addressed

8.10.2 if such action consists of referring the Disclosure (whether to a Responsible Officer, or to the CEO of Council, or to another Relevant Authority (Appendix 1), such information as is necessary to enable action to be taken is communicated to the most appropriate person or other Relevant Authority to take such action.

9. Notifying the OPI of the Disclosure

9.1 Following receipt and assessment of a Public Interest Information Disclosure, irrespective of whether the Relevant Authority of Council responsible for the Disclosure determines that further action is, or is not required, the Relevant Authority must notify the OPI as soon as reasonably practicable that they are in receipt of a Public Interest Disclosure.

9.2 Notification is to occur by way of the online notification form found at https://www.publicintegrity.sa.gov.au/public-interest-disclosures/pid-notifications and must include the following information:

9.2.1 the date the Disclosure was received

9.2.2 the name and the contact details of the recipient of the Disclosure (being the Relevant Authority of Council who initially received the Disclosure)

9.2.3 a summary of the content of the Disclosure

9.2.4 the assessment made of the Disclosure

9.2.5 the action taken by the recipient of the Disclosure, including:

- whether the Disclosure was referred to another Relevant Authority, Public Authority, Public Officer, or other person, and if so:
  - the date of the referral
  - the identity of that Relevant Authority, Public Authority, Public Officer or other person
  - the manner of the referral
  - the action to be taken by that Relevant Authority, Public Authority, Public Officer or other person (if known).

9.2.6 whether the identity of the Informant is known only to the recipient of the Disclosure, or if the identity of the Informant has been communicated to another Relevant Authority, Public Authority, Public Officer or other person (and if so, the reasons why)

9.2.7 if no action was taken by the recipient of the Disclosure, the reasons why.

9.3 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.

10. Action Taken on a Disclosure

10.1 Informants who make an Appropriate Disclosure of Public Interest Information must provide sufficient detail and evidence for the matter to be assessed.

10.2 If the Relevant Authority determines there is not sufficient evidence to facilitate an assessment of a Disclosure, no action can be taken on the Disclosure, and the Informant and the OPI will be advised accordingly.

10.3 A Relevant Authority of Council will not be responsible for investigating Disclosures of Public Administration Information in the absence of a direction to do so from the Director of OPI or the Ombudsman.

10.4 Appropriate Disclosures of Environmental and Health Information may be assessed and investigated by Council or referred to another Relevant Authority.

10.5 When investigating Appropriate Disclosures of Environmental and Health Information, or when directed by the Director of OPI or the Ombudsman to investigate Appropriate Disclosures of Public Administration Information, the objectives of the investigation process are:

10.5.1 in appropriate circumstances, to investigate the substance of the Disclosure and to determine whether there is evidence in support of the matters raised or, alternatively, to refute the report made

10.5.2 to collate information relating to the allegation as soon as reasonably practicable, which may involve taking steps to protect or preserve documents, materials and equipment

10.5.3 to consider the information collected and to draw conclusions objectively and impartially

10.5.4 to observe procedural fairness in the treatment of any person who is the Subject of the Disclosure

10.5.5 to make recommendations arising from the conclusions drawn concerning remedial or appropriate action.

10.6 Where the Responsible Officer determines, following a Preliminary Assessment, that a Disclosure warrants referral to an Independent Assessor for a formal investigation and report to the Principal Officer of Council, the Responsible Officer will appoint an Independent Assessor in accordance with this Part to investigate the Disclosure.

10.7 The Independent Assessor will observe the principals of natural justice throughout the investigation process. The investigation will be conducted in an efficient manner and will involve a thorough and balanced assessment of the available evidence and any other factors deemed relevant to making a fair and reasonable judgement about the matter.

11. Notifying the Informant and OPI of the Outcome

11.1 If the Disclosure has not been referred to another Relevant Authority for action, the Responsible Officer or Relevant Authority responsible for the management of the Disclosure who has taken action:

11.1.1 must take reasonable steps to notify the Informant (if their identity is known) of the outcome of that action within ninety (90) days of the Informant making the Disclosure

11.1.2 request a longer period as specified by written notice given within the ninety (90) days of the Informant making that Disclosure.

11.2 If a Responsible Officer of Council takes action in response to the receipt of a Disclosure (which has not been referred to another Relevant Authority), the Responsible Officer of Council, must as soon as reasonably practicable, provide the OPI with information in relation to the outcome of the action taken by way of the online notification form at https://www.publicintegrity.sa.gov.au/public-interestdisclosures/pid-notifications detailing:

11.2.1 the unique reference number issued by the OPI upon original notification of the Disclosure

11.2.2 the name and contact details of the notifier

11.2.3 the name and contact details of the person or Responsible Officer responsible for taking the action

11.2.4 what (if any) findings were made in respect of the Disclosure

11.2.5 the nature of the action taken (if any)

11.2.6 the outcome of the action taken (if any)

11.2.7 whether the identity of the Informant was disclosed to a person other than the original recipient of the Disclosure

11.2.8 whether the Informant was notified of the action taken and, if so, when that notification was made.

11.3 If an Informant is dissatisfied with the manner in which their Disclosure has been managed, or otherwise believes that their Disclosure has been dealt with inappropriately, the Informant may contact a Responsible Officer of Council, (or the CEO if their concern pertains to the Responsible Officer(s)) to express their concern at the first instance.

11.4 Following which, the Responsible Officer (or CEO), will review the Disclosure and confirm the assessment made with the Informant, and the action to be taken (or if no action is to be taken, the reason why).

11.5 If the Informant remains dissatisfied following the further assessment made by a Responsible Officer (or CEO, as the case may be), it is open to the Informant to make the Disclosure to an alternative Relevant Authority, such as the Ombudsman or the OPI.

12. Confidentiality

12.1 In accordance with section 8 of the PID Act, and Guideline 3 of the Guidelines, it is a criminal offence for the identity of an Informant to be disclosed in the absence of their consent, unless:

12.1.1 it is necessary to divulge the identity of the Informant to ensure that the matters to which the information relates are properly investigated

12.1.2 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

12.1.3 the identity of the Informant is divulged to a person or Relevant 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

12.1.4 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.

12.2 The details of the Disclosure and its assessment will be securely stored in confidential electronic and hard copy files by Council and will only be accessible by the recipient, or another Relevant Authority of Council, involved in the assessment and management of the Disclosure.

12.3 The Responsible Officer(s) of Council are required to ensure, so far as reasonably practicable, that all information in relation to a Disclosure is received and maintained in a confidential manner.

12.4 A Disclosure can be securely received directly by a Responsible Officer of Council in the first instance via the contact details provided in this Procedure.

13. Subject of a Public Interest Disclosure

13.1 In accordance with section 12 of the PID Act, the CEO must ensure there are risk management steps for assessing and minimising:

13.1.1 detrimental action against an Informant for making a Disclosure

12.1.2 detriment against whom allegations are made in a Disclosure, being the Subject of a Disclosure.

13.2 Council commits to providing the same protections to the Subject of a Disclosure (and related persons), as to Informants, which will include, but not necessarily be limited to:

13.2.1 keeping the identity of the Informant, the Subject of the Disclosure, and any other persons involved in the matter, confidential

13.2.2 the opportunity to make reasonable requests in relation to how and when the Responsible Officer 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, the Subject of the Disclosure, or related persons), to be subject to detriment.

14. Review

14.1 The Procedure will be reviewed **once** per Council term, or as required by legislation.

15. Further Information

15.1 For further information about this Procedure please contact:

Director City Corporate
City of Prospect
128 Prospect Road
Prospect SA 5082

Ph 8269 5355
Email admin@prospect.sa.gov.au

Appendix 1 – Relevant Authorities

Where the information relates to:	The Relevant Authority is:
A public officer* *as defined in section 4 and Schedule 1 of the *Independent Commission Against Corruption Act 2012* – 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 • The person who is responsible for the management or supervision of the public officer • The relevant Responsible Officer (As designated by 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 • 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	The Auditor-General
The commission, or suspected commission, of any offence	A member of SAPOL
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 (none currently identified in legislation)	An authority declared by the regulations to be a Relevant Authority in relation to such information

Appendix 2 – Public Interest Disclosure Flowchart

