

G.18-B Public Interest Disclosure Procedure

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Effective Date	10 June 2016		Review Date	10 June 2018
Procedure Owner	CEO		Responsible Officer	CEO
Procedure Number	GA.18-B		IX Reference	91131
Related Policy Number	GA.18		IX Reference	91130
Version Number	V1	15-May-13	Developed and adopted	
	V2	08-Apr-14	Reviewed and adopted	
	V3	10-Jun-16	Reviewed and adopted	

CEO Chief Executive Officer
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1 OBJECTIVE

This procedure aims to:

- Ensure the prompt and efficient action of all disclosures and compliance with the *Public Interest Disclosure Act 2010*;
- Outline the disclosure processes and the required responsibilities of all employees;
- Allow for a prompt investigation into disclosure complaints; and
- Ensure that appropriate action is taken when required.

2 SCOPE

This policy applies to all Councillors, Officers of Council and any person making a Public Interest Disclosure with respect to Council or its Councillors or employees. This policy should be read in conjunction with Council's Public Interest Disclosure Policy and the Public Interest Disclosure Management Plan.

3 STATEMENT

3.1 OVERVIEW

Public Interest Disclosures involve the supply of information to relevant public sector agencies (including Quilpie Shire Council) that reasonably indicates a wrongdoing. To receive the unique protections of the *Public Interest Disclosure Act 2010 (The PID Act)* a disclosure must fall within the definitions of that Act and as reflected in Council's Public Interest Disclosure Policy. Please refer to Schedule B for examples of matters giving rise to a valid Public Interest Disclosure.

Quilpie Shire Council encourages the making of Public Interest Disclosures and is committed to the protection of persons who make such disclosures. However, persons making disclosures should also be aware that Council considers it is a serious offence for employees, Councillors or members of the public to make false or misleading claims with the intent that it be acted on by Council as a Public Interest Disclosure, or to defame a person/s or an organisation. Persons should only make a Public Interest Disclosure when they honestly believe on reasonable grounds the information they are disclosing to be correct. Where Council discovers that a false disclosure has been made with vexation intent, such discloser may be subject to Disciplinary action in accordance with Council's Performance and Misconduct Policy or, if appropriate, other legal action.

3.2 WHERE TO REPORT A PUBLIC INTEREST DISCLOSURE

Disclosures must be made to the proper authority, namely a public sector entity. Specifically, Council can only pursue disclosures where the information and the subject of the disclosure relates to the conduct of Council or that Council has the power to investigate. Public Interest Disclosures in relation to Quilpie Shire Council may be made to:

- the Chief Executive Officer or, in the case of Council or the Chief Executive Officer, the Mayor; or
- an officer of Council who may be delegated with the function of receiving or taking action on the type of information being disclosed; or
- if the entity is Council and the discloser is a Council staff, a person who directly or indirectly supervises or manages the person who is the subject of the disclosure; or
- A member of the Legislative Assembly of the Queensland Parliament; or
- For cases of maladministration the Queensland Ombudsman; or
- For suspected cases of fraud or corruption the Crime and Corruption Commission.

In certain circumstances, in accordance with section 20 of the *PID Act*, a Public Interest Disclosure may be made to a journalist. A Public Interest Disclosure may only be made to a journalist if a person including an employee, has already made a Public Interest Disclosure and Council:

- decided not to investigate or deal with the Public Interest Disclosure; or
- investigated the Public Interest Disclosure but did not recommend any action be taken; or
- did not notify the discloser within six (6) months whether or not the Public Interest Disclosure would be dealt with or investigated.

3.3 HOW TO MAKE A PUBLIC INTEREST DISCLOSURE TO QUILPIE SHIRE COUNCIL

A Public Interest Disclosure may be made in writing (preferable) or orally and anonymously, although a person making an anonymous disclosure should disclose as much information as possible to enable Council to respond appropriately. However where a Public Interest Disclosure is of a complex nature or involves serious allegations against a Councillor or a Council officer, it is recommended that the disclosure be submitted in writing and marked 'Confidential for the attention of the Chief Executive Officer or Mayor as appropriate.

The Public Interest Disclosure should detail the incident or issue of concern in sufficient detail to enable an appropriate investigation to be conducted. Council will accept and process anonymous Public Interest Disclosures but without discloser details Council will be unable to contact the discloser to obtain further information or to provide feedback. Depending on circumstances, disclosers should supply:

- their name and contact details (desirable);
- the nature of the wrongdoing;
- who they think did the wrongdoing (if possible);
- when and where the wrongdoing occurred;
- events surrounding the issue;
- whether they did anything in response to the wrongdoing;
- others who know about the wrongdoing and have allowed it to continue.

Council will endeavour to detect any communication received which could constitute a PID however persons wishing to have their communication regarded as a Public Interest Disclosure are strongly advised to express that wish when making the disclosure.

3.4 ASSESSING A DISCLOSURE

All Public Interest Disclosures and suspected Public Interest Disclosures will be referred to the Chief Executive Officer for processing. Prior to commencing any referral or investigation processes, the Chief Executive Officer will undertake the following steps:

Step1 Assess whether the subject matter qualifies as a Public Interest Disclosure within the meaning of the *PID Act*. In assessing a disclosure, the officer must determine if:

- the person making the disclosure is able to receive the protection of the *PID Act*;
- the disclosure concerns a matter about which a Public Interest Disclosure can be made;
- the disclosure meets either the subjective or objective test set out in the *PID Act*;
- the disclosure has been made to an individual or entity who may receive a Public Interest Disclosure; and
- the disclosure has been made in accordance with Council's procedure.

Step2 Determine whether the subject matter should be referred to another public sector agency. This would apply if the disclosure is about:

- the conduct of the referral entity or a public officer of the referral entity; or
- the conduct of an entity (including itself); or
- another matter, that the referral entity has the power to investigate or remedy.

- Referral to another public sector agency will not be made where the Chief Executive Officer considers there is an unacceptable risk that a reprisal would happen because of the referral. Where practical, the officer will consult with the person who made the disclosure to determine whether there would be an unacceptable risk.

Step 3 Determine whether Council should investigate the disclosure. In accordance with Section 30 of the *PID Act*, Council may decide not to investigate or deal with a Public Interest Disclosure if:

- the substance of the disclosure has already been investigated or dealt with by another appropriate process; or
- the entity reasonably considers that the disclosure should be dealt with by another appropriate process; or
- the age of the information the subject of the disclosure makes it impracticable to investigate; or
- Council reasonably considers that the disclosure is too trivial to warrant investigation and that dealing with the disclosure would substantially and unreasonably divert the resources of the organisation from their use by the entity in the performance of its functions; or
- another entity that has jurisdiction to investigate the disclosure has notified Council that investigation of the disclosure is not warranted.

Step 4 Conduct a risk assessment of a reprisal to the discloser and others associated with the discloser (including those who may wrongly be suspected of being a discloser) as a consequence of Council's investigation of the disclosure and subsequent actions.

If the risk is assessed as sufficiently high, a protection plan will be prepared to protect the discloser. Where feasible, this will be developed in consultation with the discloser and other relevant stakeholders.

Step 5 Register the disclosure in Council's records management System. The matter will be registered as a confidential item to be accessed and tracked only by the Chief Executive Officer.

Step 6 Provide the discloser or the entity that referred the disclosure, reasonable information including:

- confirmation that the disclosure was received by Council;
- a description of the action proposed to be taken, or taken, by Council in relation to the disclosure;
- if action has been taken by Council in relation to the disclosure—a description of the results of the action;
- the likely timeframes (if possible);
- their involvement in the investigation process;
- the importance of maintaining confidentiality;
- the protections under the *PID Act* that will apply;
- that Council will keep the information disclosed, including the discloser's identity confidential, except as allowed under the *PID Act*;
- how they will be advised of progress and outcomes; and
- who to contact if they want further information or are concerned about reprisals.

If Council decides not to investigate or deal with a Public Interest Disclosure, it will give written reasons for its decision to the person making the disclosure (provided that their identity and contact details are known).

3.5 INVESTIGATING A DISCLOSURE

The Chief Executive Officer will commission an investigation of all Public Interest Disclosures excepting where a contrary decision has been made under Step 3 above. Where appropriate, an external investigator will be engaged for this purpose. In all cases the investigator must:

- have the necessary skills or training to perform that task in a professional manner;
- not be under the direction of a person being investigated;

- be sufficiently removed from the issue as to not have a conflict of interest or perceived conflict of interest when undertaking the investigation;
- when assessing (and where necessary, investigating and taking action on) a Public Interest Disclosure involving allegations against Council officers, take account of Council’s obligations to the subject officers. The fact that Council is relying on information obtained through a Public Interest Disclosure for any subsequent disciplinary process does not exempt Council from its obligations to the subject officers.

On conclusion of the investigation, the investigator will provide the Chief Executive Officer with a written report detailing the process followed and their findings. A copy of the report will also be forwarded to the person who made the disclosure and the person who is the subject of the investigation.

The Chief Executive Officer will utilise that report as appropriate to:

- inform improvements to service delivery, business processes and internal controls;
- recommend any amendments to Council policies;
- recommend amendments of Council policy or procedure to improve its effectiveness; or
- instigate disciplinary action.

Where disciplinary action is commenced arising from a Public Interest Disclosure, the subject officers will be afforded rights as provided for in Council’s Staff Disciplinary Policy.

3.6 PROTECTION AND SUPPORT OF DISCLOSERS

Council will provide protection and support for persons making Public Interest Disclosures against reprisals by:

- Treating all Public Interest Disclosures as confidential information to be recorded on protected files; and
- Taking firm disciplinary action against any officer found to have disclosed a Public Interest Disclosure contrary to this policy or to have taken reprisal action against the discloser.

A person making a public interest disclosure is not subject to any civil or criminal liability, or any liability arising by way of administrative process, including disciplinary process for making the disclosure. In particular:

- in a proceeding for defamation has a defence of absolute privilege for making a Public Interest Disclosure; and
- a person, who would otherwise be required to maintain confidentiality about the disclosed information in any Act, oath, rule of law or practice does not contravene an Act, oath, rule of law or practice by making a disclosure.

However, a person’s liability for their own conduct is not affected by the person making a disclosure under the Act.

Disclosures made under the *PID Act* are protected from being disclosed in response to applications made under *the Right to Information Act 2009*. It should be noted however that agencies such as the Crime and Misconduct Commission may require full disclosure of information held by Council. Also persons making Public Interest Disclosures should understand that in particular circumstances their identity may become evident to other persons as a consequence of investigation processes.

Both during and following the investigation process support for disclosers will be provided proportionate to the risk of reprisal, and the potential consequences of a reprisal. Protections under the *PID Act* are only available to a person who makes a Public Interest Disclosure to a proper authority. For example a person making a Public Interest Disclosure to a journalist prior to making a Public Interest Disclosure to a proper authority would not be afforded the protections of the *PID Act*.

Similarly, vexatious allegations with no reasonable basis will also not be afforded the protections of the PID Act.

In the event of a reprisal being alleged or suspected, Council will act in the interest of the discloser by:

- attending to the safety of the discloser(s) or affected third parties as a matter of priority;
- reviewing the risk assessment of reprisal and any protective measures needed; and
- managing any allegation of a reprisal as a Public Interest Disclosure in its own right.

Council will assist employees who make Public Interest Disclosures by:

- regularly checking on the discloser's well-being;
- advising the discloser of the availability of the Employee Assistance Scheme; and
- where the health of the discloser becomes a concern, liaising with officers responsible for occupational workplace health and safety.

3.7 FURTHER ACTIONS BY DISCLOSERS

Within 28 days of a person receiving notification that the Chief Executive Officer has decided under Step 3 (above) not investigate or deal with their disclosure, the person who made the disclosure may appeal to the Chief Executive Officer for a review of that decision.

A person dissatisfied with Council's handling of their Public Interest Disclosure has an internal right of review to the Chief Executive Officer. Disclosers are also entitled to raise the matter with other entities, such as the Queensland Ombudsman in cases of maladministration or the Crime and Corruption Commission in cases of suspected fraud or corruption.

4 DEFINITIONS

Refer to policy document.

5 RELATED POLICIES | LEGISLATION | OTHER DOCUMENTS

IX #	Details
91130	G.18 Public Interest Disclosure Policy
91137	G.18-A Public Disclosure Management Plan

6 SCHEDULE A

The following refers to Acts and relevant sections pursuant thereto, upon which knowledge of the commission of an offence or contravention of such, giving rise to a substantial or specific danger to the environment, may provide the basis for a public interest disclosure pursuant to s12 of the *PID Act* – Refer Schedule 2 *PID Act*.

Aboriginal Cultural Heritage Act 2003

- section 24(1) (Unlawful harm to Aboriginal cultural heritage)
- section 25(1) (Prohibited excavation, relocation and taking away)
- section 26(1) (Unlawful possession of Aboriginal cultural heritage)

Environmental Protection Act 1994

- all provisions for which a contravention is an offence

Fisheries Act 1994

- section 89 (Noxious fisheries resources not to be possessed, released etc.)
- section 90 (Non-indigenous fisheries resources not to be possessed, released etc.)
- section 91 (Aquaculture fisheries resources not to be released)
- section 92 (Duty of person who takes or possesses noxious or non-indigenous fisheries resources)
- section 122 (Protection of fisheries resources in declared fish habitat area)
- section 123 (Protection of marine plants)

Forestry Act 1959

- section 53(1)(b) (Interference with forest products on Crown holdings and particular entitlements)
- section 54 (Interfering with forest products on Crown lands etc.)

Greenhouse Gas Storage Act 2009

- all provisions for which a contravention is an offence

Land Act 1994

- section 404 (No trespassing)

Mineral Resources Act 1989

- section 194 (Conditions of mineral development licence)
- section 209 (Contravention by holder of mineral development licence)
- section 276 (General conditions of mining lease)
- section 308 (Contravention by holder of mining lease)

Nature Conservation Act 1992

- section 88 (Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal)
- section 89(1) (Restriction on taking etc. particular protected plants)
- section 91 (Restriction on release etc. of international and prohibited wildlife)
- section 92 (Prohibition on breeding etc. hybrids of protected animals)
- section 93 (Aborigines' and Torres Strait Islanders' rights to take etc. protected wildlife)
- section 94 (Conservation officers prohibited in dealing with protected wildlife)
- section 97(2) (Restriction on taking etc. of native wildlife in areas of major interest and critical habitats)
- section 109 (Compliance with order)

Petroleum Act 1923

- all provisions for which a contravention is an offence

Petroleum and Gas (Production and Safety) Act 2004

- all provisions for which a contravention is an offence

Queensland Heritage Act 1992

- section 104 (Offence to destroy protected area)
- section 155 (Contravention of stop order)
- section 169(2) (Restoration orders)

Torres Strait Islander Cultural Heritage Act 2003

- section 24(1) (Unlawful harm to Torres Strait Islander cultural heritage)

- section 25(1) (Prohibited excavation, relocation and taking away)
- section 26(1) (Unlawful possession of Torres Strait Islander cultural heritage)

Transport Operations (Marine Pollution) Act 1995

- all provisions for which a contravention is an offence

Water Act 2000

- section 272(4) (Immediate suspension of permit in exceptional circumstances)
- section 273(3) (Notice to owner of land to remove vegetation etc.)
- section 814 (Destroying vegetation, excavating or placing fill without permit)

7 SCHEDULE B

Examples of matters that could give rise to a valid Public Interest Disclosure

- A disclosure of information that would show Official Misconduct;
- A disclosure of information that a person honestly believes on reasonable grounds that the information tend to show Maladministration;
- A disclosure of information that tends to show the substantial misuse of public resources regardless of whether the person honestly believes the information might display the improper use of such public resources;
- Any other disclosure in accordance with the *Public Interest Disclosure Act 2010*.