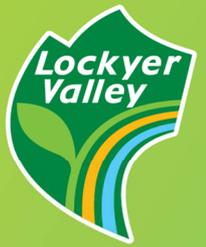


Procedure



Public Interest Disclosure

August 2020

Document Control

This page will be re-issued every time amendments are made to controlled documents. Amended documents will have their revision status and issue date updated accordingly.

Version	Clause(s)	Changes	Author	Issue Date
0		Initial draft	Susan Boland	01/08/2017
1		Adopted by Council		17/01/2018
2		Amendment to definition "Public Officer" removal of volunteer	Susan Boland	06/03/2018
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1. Introduction

The *Public Interest Disclosure Act 2010* facilitates the disclosure, in the public interest, of information about wrongdoing in the public sector and provides protection for those who make such disclosures.

As a public sector entity Lockyer Valley Regional Council is subject to the *Public Interest Disclosure Act 2010* and all Council employees and Councillors are public officers for the purposes of the legislation. Council, therefore, has obligations placed on it related to receiving Public Interest Disclosures (PID) and to ensure that persons making such disclosures are protected from reprisals.

2. Definitions

The following definitions apply for the purposes of this procedure:

Chief Executive Officer	is the Chief Executive Officer of the Lockyer Valley Regional Council or the Mayor (where a disclosure is about the Chief Executive Officer).
Detriment	(a) personal injury or prejudice to safety; (b) property damage or loss; (c) intimidation or harassment; (d) adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business; (e) financial loss; and (f) damage to reputation, including, for example, personal, professional or business reputation.
Discloser	is a person who makes a public interest disclosure.
Maladministration	is an administrative action that is unlawful, arbitrary, unjust, oppressive, improperly discriminatory or taken for an improper purpose; or a waste of public funds.
Corrupt Conduct	is conduct that could, if proved, be a criminal offence or a disciplinary breach providing reasonable grounds for terminating the person's services.
Proper Authority	is (a) a public sector entity, or (b) a member of the Legislative Assembly.
Public Interest Disclosure (PID)	is a disclosure of information by an employee to a proper authority about certain wrongdoing i.e. suspected corrupt conduct, maladministration, a substantial misuse of public resources, or a substantial and specific danger to public health or safety or the environment. Any person may also disclose to a proper authority a substantial and specific danger to the health or safety of a person with a disability, certain substantial and specific dangers to the environment or a reprisal.
Public Officer	is a person who is an employee, member or officer of a public sector entity regardless of their employment status, role or position, i.e. permanent, temporary, casual, part-time, contractors.
Reprisal	occurs when any person causes or attempts or conspires to cause detriment to another person because or in the belief that (a) a person has made or may make a public interest disclosure or (b) a person has been, or intends to be, involved in a proceeding under the <i>Public Interest Disclosure Act 2010</i> . A public officer who is found to have taken a reprisal commits a criminal offence.

Subject Officer is any employee who is the subject of an allegation made against them which requires an investigation, review or other form of managerial response in order to have the allegation addressed.

3. Statement of commitment

Lockyer Valley Regional Council is committed to encouraging the reporting of wrongdoing. The reporting of suspected corrupt conduct within Council is fundamental to its ongoing integrity.

Lockyer Valley Regional Council (LVRC) is fulfilling its commitment to open, transparent and accountable decision making. This comes from leadership that openly recognises the significant contribution staff make to our success and strongly encourages disclosure of unethical and fraudulent behaviour.

LVRC aims to provide clear guidance to staff on how to handle and deal with the complex issues associated with an ethical dilemma and when faced with potential wrongdoing.

Council is committed to the proper management of Public Interest Disclosure (PID) and to raising staff awareness about PID and Council's PID procedure as well as their obligations under the Employee Code of Conduct.

4. Responsibilities

The Chief Executive Officer is the responsible officer for receiving PID and acting on them (or the Mayor if the disclosure is about the Chief Executive Officer).

Council will:

- Provide training to ensure staff can identify situations where behaviour may be unethical or fraudulent and know how to refer a PID to an appropriate officer as per this Procedure
- Provide training and awareness about PIDs to senior managers and other staff who may receive or manage PIDs
- Appoint a responsible officer for the management of issues relating to PID, including the appropriate delegated authority to manage PID matters
- Annually review its PID processes, procedures and internal controls and provide a mechanism for evaluation and monitoring of the effectiveness of PID policies and procedures

Council's Business Performance Unit is responsible for the management and recording of all PIDs and will ensure that effective systems and procedures are in place for issues arising from PIDs. A Public Interest Coordinator, from the Business Performance Team is appointed by the Chief Executive Officer to be responsible for issues related to the management of PIDs.

5. Protected disclosures

This Procedure applies to PIDs within the meaning of the *Public Interest Disclosure Act 2010*. What constitutes a PID depends on who is making the disclosure, with the *Public Interest Disclosure Act 2010* distinguishing between disclosures made by a public officer and those made by anyone else.

A public officer can report wrongdoing to a proper authority about:

- a) the conduct of another person that could, if proved, be—
 - i. corrupt conduct; or
 - ii. maladministration that adversely affects a person's interests in a substantial and specific way; or

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- b) a substantial misuse of public resources (other than an alleged misuse based on mere disagreement over policy that may properly be adopted about amounts, purposes or priorities of expenditure); or
- c) a substantial and specific danger to public health or safety; or
- d) a substantial and specific danger to the environment.

Any person can report wrongdoing to a proper authority about:

- a) a substantial and specific danger to the health or safety of a person with a 'disability' as defined in the *Disability Services Act 2006*; or
- b) a contravention of environmental law which is a substantial and specific danger to the environment (per provisions mentioned in Schedule 2 of the *Public Interest Disclosure Act 2010*); or
- c) the conduct of another person that could, if proved, be a reprisal.

To determine that a disclosure is a public interest disclosure, the disclosure must also satisfy either:

- a) the person making the disclosure honestly believes, on reasonable grounds, that the information tends to show the conduct or other matter is wrongdoing (subjective test) or
- b) the information tends to show the conduct or other matter is wrongdoing, regardless of whether the person making the complaint honestly believes the information (objective test).

The *Public Interest Disclosure Act 2010* only protects PIDs that are made to a "proper authority". Council is a proper authority for conduct concerning the Council, a councillor or Council employee or behaviour that Council has the power to investigate or remedy. Disclosures made otherwise than in accordance with this procedure may not attract the protection of the *Public Interest Disclosure Act 2010*, including disclosures made to the media (except in special circumstances outlined in part 4 section 20 of the *Public Interest Disclosure Act 2010*); unions or professional associations; federal government departments and agencies; private organisations; and organisations operating outside of Queensland.

6. Making a disclosure

A Council employee may make a Public Interest Disclosure (PID) to:

- their direct or indirect supervisor or manager
- any other person in a management position within Council
- the Chief Executive Officer.

A PID can always be made to a member of the Legislative Assembly or an external agency if that agency has the power to investigate and remedy that type of disclosure, such as the Crime and Corruption Commission if it concerns corrupt conduct or the Queensland Ombudsman if it concerns maladministration or waste of public resources.

A disclosure may be made anonymously; however, it is difficult in these circumstances to protect the person making the disclosure from any retributive action or reprisal. As such, although anonymous disclosures are permitted under the *Public Interest Disclosure Act 2010*, disclosers are encouraged to provide their contact details when making a disclosure.

A disclosure should be in writing, although it may be made orally. If a supervisor or manager receives a PID, they should encourage the discloser to put the information in writing. If the discloser is unable or unwilling to do so, the supervisor or manager should document the disclosure and ask the discloser to confirm the contents before signing it. If circumstances prevent this occurring (e.g. telephone caller who remains anonymous), the supervisor or manager should promptly make a written note recording the precise matters raised and this should be referred to the Chief Executive Officer.

Under certain circumstances a person may make a disclosure to a journalist (refer to part 4 section 20 of *Public Interest Disclosure Act 2010*). This can only occur if a person has already made a disclosure to the proper authority and that proper authority:

- has decided not to investigate or deal with the disclosure; or
- investigated but did not recommend taking any action; or
- did not notify the discloser within six months of whether or not the disclosure was to be investigated or dealt with.

A Public Interest Disclosure (PID) can be made about an unidentified person. A person can involuntarily make a PID if they are legally compelled to do so. A PID can be made in a proceeding in a court or tribunal as part of giving information to the court or tribunal.

A PID can concern an event that happened or may have happened even if the event occurred before the enactment of the *Public Interest Disclosure Act 2010*. The PID can also concern a current or potential event that will or may happen.

There is no limit to the number of PIDs that can be made. When making a PID, the discloser has the responsibility to provide honest and accurate information. It is a criminal offence under the *Public Interest Disclosure Act 2010* to make a disclosure which is intentionally false or misleading and the discloser may face disciplinary action and criminal prosecution. Knowingly providing false or misleading information is different to providing information that turns out to be incorrect or unable to be substantiated.

Council encourages persons contemplating the making of a PID to give due prior consideration to that course to ensure that matters raised have substance and are soundly based. Under the *Public Interest Disclosure Act 2010* a person is not liable civilly, criminally or under an administrative process, including disciplinary action, for making a PID.

7. Assessing a disclosure

When a disclosure is made to a supervisor or manager, the supervisor or manager must communicate the disclosure immediately to the Chief Executive Officer. The Chief Executive Officer must ensure that a disclosure made to Council or referred to it by another entity or Member of the Legislative Assembly is assessed.

The Chief Executive Officer will assess the PID to determine whether the disclosure requires:

- referral to another public sector entity, e.g. all cases of suspected corrupt conduct must be referred to the Crime and Corruption Commission
- further enquiries to be made
- investigation; or
- finalisation.

In assessing a disclosure, the Chief Executive Officer will determine if:

- the person making the disclosure is able to receive the protection of the *Public Interest Disclosure Act 2010*
- the disclosure concerns a matter about which a PID can be made
- the disclosure meets either the subjective or objective test set out in the *Public Interest Disclosure Act 2010*
- the disclosure has been made to an individual or entity who may receive a PID; and

- the disclosure has been made in accordance with Council’s procedure or to a person listed in the *Public Interest Disclosure Act 2010*.

If there is doubt whether a disclosure is a PID, the Chief Executive Officer will assume the disclosure is protected by the *Public Interest Disclosure Act 2010* and manage the disclosure as if it is a PID.

Each separate allegation should be reported as a separate PID, unless the matters are clearly linked, and it would be reasonable to view them as a single disclosure. Council cannot decline to receive and/or assess a disclosure as a PID. The Chief Executive Officer may decide not to investigate or deal with a PID if:

- the substance of the disclosure has already been investigated or dealt with by another appropriate process; or
- Council 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 Council from the performance of its functions; or
- another entity that has the jurisdiction to investigate the disclosure has notified Council that investigation of the disclosure is not warranted.

If Council decides not to investigate or deal with a PID, written reasons for this decision will be given to the person making the disclosure. A person who receives written reasons for a decision not to investigate may apply to the Chief Executive Officer for a review of the decision within 28 days after receiving the written reasons.

Whether a complaint has been assessed as a PID, the appropriate investigation procedure identified in the Council’s Complaints Management Policy and Procedure for general complaints will apply.

Referral of disclosure

In accordance with section 31 of the *Public Interest Disclosure Act 2010*, a public sector entity to which a PID is made may refer the disclosure to another public sector entity (the referral entity) 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.

The power of a public sector entity to investigate or remedy conduct that is the subject of a PID is not limited by a referral of the disclosure.

The public sector entity must not refer a PID to another public sector entity if it considers there is an unacceptable risk that a reprisal would happen because of the referral.

In considering whether there would be an unacceptable risk, the public sector entity must, if practicable, consult with the person who made the PID.

8. Informing the discloser

The Chief Executive Officer will provide the discloser or the entity that referred the disclosure reasonable information about the disclosure in writing, 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 result of the action
- the likely timeframes (if possible)
- their involvement in the investigation process
- the importance of maintaining confidentiality

- the protections under the *Public Interest Disclosure Act 2010* that will apply
- that Council will keep the information disclosed, including the discloser's identity, confidential, except as allowed under the *Public Interest Disclosure Act 2010*
- how they will be advised of progress and outcomes; and
- who to contact if they want further information or are concerned about reprisals.

Regular follow up with the discloser should be arranged by agreement to provide advice on the progress of resolving the PID (where this is desired by the discloser, and it is safe to do so).

9. Discloser support and protection

As soon as possible after receiving a Public Interest Disclosure (PID), the Chief Executive Officer will determine the level of protection and support appropriate for a discloser by conducting 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). Council will also take into account any consequences if reprisals do occur.

The Chief Executive Officer will ensure protective measures are in place which are appropriate to the risk of reprisal, and the potential consequences of a reprisal. If the risk is assessed as sufficiently high, Council will prepare a protection plan to protect the discloser. Where feasible, this will be developed in consultation with the discloser and other relevant stakeholders.

When assessing the risk, an assessment of the discloser's need for support will also be conducted. Where it is determined that a discloser requires support, Council will offer the appropriate level of support to the discloser.

This may include:

- acknowledging that making a PID was the right action to take and is valued
- making a clear statement that the entity will support the discloser
- appointing an appropriate person (separate from the investigations function) with sufficient authority to ensure the discloser has appropriate support and protection from reprisals
- regularly checking on the discloser's wellbeing, where this is warranted
- 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.

10. Managing reprisals

Council has a duty of care to support and protect employees from negative action, including reprisals that occur as a result of a disclosure. Reprisals are not condoned or tolerated by Council.

The Chief Executive Officer will ensure effective systems and procedures are in place to monitor a discloser's workplace for any signs of reprisal action. 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 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 PID in its own right.

Any employees found to have engaged in reprisals will be the subject of disciplinary action up to dismissal. Criminal action may be taken with respect to reprisal and penalties under the *Public Interest Disclosure Act 2010* may apply.

Council may be vicariously liable for reprisal actions taken by employees, but may be able to raise as a defence, on the balance of probabilities, that reasonable steps were taken to prevent the employee taking reprisal action.

Reasonable management action is not prevented in relation to an employee who has made a PID. Any management action can be only taken if the manager's reasons for taking the action do not include the fact that the person has made a PID.

11. Protecting the rights of the subject officer

All PIDs will be assessed and managed impartially, fairly and reasonably. The rules of natural justice will apply to any subject officer under investigation in respect of an allegation raised against them. Accordingly, subject officers will be advised of the nature of allegations against them at the appropriate time and are to be afforded an opportunity to respond. Employees who are the subject of a PID may seek assistance from their employee association (e.g. Union) or may engage their own private legal representation. An employee may also utilise the services of Council's employee assistance scheme.

12. Investigation

The assessment about whether the reported conduct constitutes a PID and the determination of appropriate action to be taken will be determined by the Chief Executive Officer on a case by case basis.

Where appropriate, an investigator will be engaged to investigate the PID. In all cases the investigator must:

- have the necessary skills or training to perform that task in a professional manner; and
- 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; and
- when assessing (and where necessary, investigating and taking action on) a PID, take account of Council's obligations to the subject officer.

The fact that Council is relying on information obtained through a PID for any subsequent disciplinary process does not exempt Council from its obligations to the subject officer.

On conclusion of the investigation, the investigator will provide the Chief Executive Officer with a written report detailing the process followed and their findings. 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 and/or procedures
- recommend amendments to this procedure to improve its effectiveness; or
- investigate disciplinary action.

Where reasonable, an edited extract of the report may be forwarded to the discloser upon application through the right to information process. A person dissatisfied with Council's handling of their PID 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.

13. Confidentiality

An employee who gains confidential information because he or she receives a PID or is involved in dealing with a PID must not make a record of the information, or intentionally or recklessly disclose the information to anyone, other than:

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- for the *Public Interest Disclosure Act 2010*
- to discharge a function under another Act including, for example, to investigate something disclosed by a PID
- for a proceeding in a court or tribunal
- if the person to whom the confidential information relates consents in writing to the making of the record or disclosure of the information
- if the employee cannot reasonably obtain consent from the person to whom the confidential information relates and making the record or disclosing the information is unlikely to harm the interests of the person to whom the confidential information relates and is reasonable in all the circumstances
- if the person reasonably believes that making the record or disclosing the information is necessary to provide for the safety or welfare of a person; or
- if authorised under a regulation or another Act.

In certain circumstances, natural justice may require a person to disclose information to a person whose rights would otherwise be detrimentally affected. The identity of the discloser may only be disclosed if it is essential to do so under the principles of natural justice and it is unlikely that a reprisal will be taken against a discloser because of the PID. Making a record of confidential information or disclosing information to anyone (other than for the reasons noted above) is an offence under the *Public Interest Disclosure Act 2010*.

14. Record keeping and reporting

The *Public Interest Disclosure Act 2010* requires Council to keep adequate record of PID, including details of the discloser (where known), the nature of the information disclosed and action taken by Council, even where the disclosure is investigated and found to be incorrect. Council will maintain a confidential file pertaining to each potential PID, with the following minimum requirements:

- the name of the person making the disclosure (if known)
- details of the disclosure
- the determination made in respect of the disclosure; and
- action taken on the disclosure (including review, investigation or other form of managerial response).

All records of PID and their investigation will be kept in Council's content management system and will be kept strictly confidential. Responsibility for creating records and for fulfilling Council's reporting obligations rests with Council's Public Interest Disclosure Coordinator who is part of Council's Business Performance Team.

Council will also provide the Queensland Ombudsman with the required information via the PID Database.

15. Related Documents

Public Interest Disclosure Policy

Employee Code of Conduct

Complaints Management Process Policy

Complaints Management Procedure

Public Interest Disclosure Act 2010

Crime and Corruption Act 2001

Public Interest Disclosure Standard – effective 1 January 2011

Managing a Public Interest Disclosure Program – A guide for public sector organisations 2011

Handling a Public Interest Disclosure – A guide for public sector managers and supervisors 2011

Making a Public Interest Disclosure – A guide for individuals working in the public sector 2011