District Council of Elliston
Policy

Governance

E064 Public Interest Disclosure

Signature	
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Person responsible for maintaining	Chief Executive Officer

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1. Introduction

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

This Policy ensures the Council:

- properly fulfils its responsibilities under the *Public Interest Disclosure Act 2018* (**PID Act**);
- encourages and facilitates Disclosures of the Public Interest Information in accordance with the 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 PID Act; and
- acknowledges the need to appropriately support Informants, the Responsible Officer, and, as appropriate, those Public Officers affected by any appropriate Disclosure.

2. Scope

This Policy applied to appropriate Disclosures of Public Interest Information that are made in accordance with the PID Act by public officers, including Elected Members, Officers and Employees of the Council, and by members of the public, and is intended to complement the reporting framework under the *Independent Commission Against Corruption Act 2012* (**ICAC Act**).

The Council is committed to:

- referring, as necessary, appropriate Disclosures to another Relevant Authority
- where the Disclosure relates to Corruption, or intentional and serious Misconduct or Maladministration in public administration, reporting the Disclosure directly to the Officer of Public Integrity (**OPI**) or the Ombudsman in accordance with the relevant directions and 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.

3. Definitions

For the purposes of this Policy, the following definitions apply.

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

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

- an offence against Part 7 Division 4 (Offences relation 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 of public office; or

- an offence against the Public Sector (Honest and Accountability) Act 1995 or the Public Corporations Act 1993, or an attempt to commit such an offence; or
- an offence against the Lobbyists Act 2015, or an attempt to commit such an offence; or
- 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 becoming a public officer and related to his or her capacity as a public officer, or an attempt to commit such an offence; or
- 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 part to, the commission of the offence;
  (iv) conspiring with others to effect the commission of the offence.

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 person's employment; and/or
- threats of reprisal (which may be express or implied, and/or conditional or unconditional).

Directions and Guidelines is a reference to the Directions and Guidelines issued pursuant to section 18B of the ICAC Act and/or section 14 of the PID Act, which are accessible via the Commissioner's website (www.icac.sa.gov.au).

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

Employee refers to all Council's employees, whether they are working in a full-time, part-time or casual capacity.

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

Fraud includes an intentional dishonest act or omission done with the purpose of deceiving.

Independent Assessor means the person designated by the Responsible officer as being responsible for investigating a disclosure made to Council in accordance with this Policy.

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

Inquiry Agency means the Commissioner, the Ombudsman or the Judicial Conduct Commissioner.

Maladministration in public administration has the same meaning as defined in the *Ombudsman Act 1972* and means:

- 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
- conduct of a public officer involving substantial mismanagement in, or in relation to the performance of official functions; and
- includes conduct resulting from impropriety, incompetence or negligence; and
- is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

Misconduct in public administration has the same meaning as defined in the *Ombudsman Act 1972* and 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.

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

- receive and assess complaints about public administration from members of the public;
- receive and assess reports against corruption, misconduct and maladministration in public administration from the inquiry agencies, public authorities and public officers;
- refer complaints and reports to inquiry agencies, public authorities and public officers or to determine to take no action in accordance with the ICAC Act.

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 take to be carried out in the course of public administration*.

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

Public interest information means environmental or health information, or public administration information.

Principal Officer for the purposes of the PID Act means the Chief Executive Officer (**CEO**) of Council

Public Officer has the meaning given by section 4 and Schedule 1 of the ICAC Act, and includes a council member and an employee or officer of the 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 and has been designated by the Council as responsible officer under section 12 of the PID Act.

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

4. Confidentiality

The identify of an informant will be maintained as confidential in accordance with the PID Act.

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

- the recipient believes 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 or serious physical injury or death to any person;
- 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 identify of the Informant to the OPI;
- doing so is necessary for the matter to be properly investigated (but only to the extent necessary to ensure proper investigation); or
- the Information consents to his/her identity being disclosed.

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.

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.

5. Disclosure Process

- Disclosures are to be handled by the Council in accordance with this Policy.
- Nothing in this Policy prevents a person from making a Disclosure to a relevant Authority external to the Council (ie the Ombudsman or the OPI). This is a choice to be made by the informant at his/her discretion.
- A Disclosure may be made to the Council's designated Responsible Officer in person, by telephone or in writing. The contact details are:
  - Phone: 8687 9177
  - Email: disclosures@elliston.sa.gov.au
  - Mail: CONFIDENTIAL
    Responsible Officer, Public Interest Disclosure
    PO Box 46
    ELLISTON SA 5670

6. Responsible Officer

A person designated as a Responsible Officer for Council must:

- Receive appropriate Disclosures relating to the Council and ensure compliance with the PID Act, in relation to any such Disclosures;
- Make appropriate recommendations to the Principal Officer of the Council in relation to dealing with Disclosures, including any suggested changes to this Policy; and
- Provide advice to officers and employees of the Council in relation to the administration of the PID Act; and

- Complete any training courses approved by the Commissioner for the purposes of the Public Interest Disclosure Regulations; and
- May carry out other functions relation to the PID Act.

Upon receipt of a Disclosure, the Responsible Officer will deal with the disclosure in accordance with the Regulations.

In making any determination or taking any action under this Policy, the Responsible Officer may seek legal advice from Council's lawyers and/or guidance from SAPOL or the Ombudsman in relation to the most appropriate course of action to pursue and is authorised within their delegated authority to incur costs in accordance with Council's Budget for that purpose.

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

7. Information to Elected Body

As a matter of discretion, the CEO 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.

In the event the Disclosure and/or subsequent investigation process is confined to issues that impact only upon Council staff and human resource processes, the CEO 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.

8. Protection for the Informant

An informant who makes an appropriate Disclosure is protected by:

- Immunity from criminal or civil liability as provided for in section 5(1) of the PID Act;
- A prohibition on disclosure of his/her identity as provided for in section 8 of the PID Act;
- A prohibition against Victimisation as provided for in section 9 of the PID Act; and
- A prohibition against hindering, obstructing or preventing an Informant from making an appropriate Disclosure as provided for in section 11 of the PID Act.

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

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

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

The Council will take action as appropriate in circumstances of the relevant Disclosure(s) to protect Informants from Victimisation. Such action may include referring the matter to the SA Police.

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

(i) Knowingly makes a disclosure that is false or misleading in a material manner; or
(ii) Commits an act of Victimisation in relation to an Informant; or

(iii) Acts otherwise than in accordance with this Policy (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 CEO (as appropriate).

9. Associated Documents

- Public Interest Disclosure Act 2018
- Independent Commission Against Corruption Act 2012
- Local Government Act 1999
- Criminal Law Consolidation Act 1935
- Fraud, Corruption, Misconduct and Maladministration Policy
- Code of Conduct for Employees
- Code of Conduct for Elected Members
- Behavioural Standards for Elected Members
- Internal Review of Council Decisions Policy

DOCUMENT HISTORY				
Version	**Changes since last version**	**Approved by**	**Record No**	**Issue Date**
1	Original			