

# POLICY

<b>Policy Name</b>	Public Interest Disclosure Policy
<b>Policy Category</b>	Governance
<b>Department / Officer</b>	CEO/Group Manager Governance and Finance
<b>Date Adopted</b>	23 September 2019
<b>Date/s Reviewed</b>	
<b>Review Frequency</b>	Every Three Years
<b>Strategic Plan Reference</b>	Objective 5 – An innovative Council empowering the Community Approach 5.1 – Cultivate and demonstrate community leadership <i>Strategy 5.1.1 – Decision making is transparent, and complies with legislative and policy requirements</i>
<b>Attachments</b>	Appendix A – Relevant Authorities

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## 1. Purpose

The purpose of this Policy is to ensure that the City of Victor Harbor:

- Fulfills its responsibilities under the *Public Interest Disclosure Act 2018* ('the 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, Responsible Officer/s and, as appropriate, those Public Officers affected by any appropriate Disclosure.

## 2. Scope

This Policy applies:

- to appropriate Disclosures of Public Interest Information that are made in accordance with the PID Act by Elected Members, Employees of the Council, and members of the public, and is intended to complement the reporting framework under the *Independent Commissioner Against Corruption Act 2012* ('the ICAC Act');
- is also designed to complement existing communication channels within Council, and operate in conjunction with other existing policies.

The City of Victor Harbor is committed to:

- referring, as necessary, appropriate Disclosures to another Relevant Authority;
- where the Disclosure relates to a Public Administration Disclosure (being information relating to Corruption, or serious or systemic Misconduct or Maladministration in public administration), reporting the Disclosure directly to the *Office for Public Integrity* in accordance with the Guidelines and the requirements of the ICAC Act;
- 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. Policy Statement (Summary)

The City of Victor Harbor 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.

### 4. Legislation and Compliance

*Independent Commissioner Against Corruption Act 2012*  
*Local Government Act 1999*  
*Public Interest Disclosure Act 2018*

### 5. Definitions

Words and phrases defined by the ICAC Act and the PID Act have the same meaning when used in this Policy and the Public Interest Disclosure Procedure. The definitions that are commonly used have been reproduced/defined further below:

**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.

**Council** means the City of Victor Harbor.

**Detriment** takes its meaning from section 9(7) of the PID Act and 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** means the Directions and Guidelines issued pursuant to section 20 of the ICAC Act and/or section 14 of the PID Act, available on the Commissioner's website [www.icac.sa.gov.au](http://www.icac.sa.gov.au) .

**Disclosure** and **Public Interest Disclosure** are used interchangeably and mean an appropriate **Disclosure of Public Interest Information** made by an Informant to a Relevant Authority in accordance with the Act.

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:
  - i. is a public officer;
  - ii. reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration; and
- (b) the disclosure is made to a Relevant Authority.

**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.

**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.

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

**ICAC Act** is the *Independent Commissioner Against Corruption Act 2012*.

**Independent Assessor** means the person designated by the Responsible Officer as being responsible for investigating a disclosure made to Council in accordance with the Public Interest Disclosure Procedure.

**Informant** means a person who makes an appropriate disclosure of Public Interest Information to a Relevant Authority.

**Maladministration in public administration** is defined in section 5(4) of the ICAC Act.

**Misconduct in public administration** is defined in section 5(3) of the ICAC Act.

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

- i. receive and assess complaints about public administration from members of the public;

- ii. receive and assess reports about corruption, misconduct and maladministration in public administration from the Ombudsman, the Council and public officers;
- iii. 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;
- iv. give directions or guidance to public authorities in circumstances approved by the Commissioner;
- v. perform other functions assigned to the Office by the Commissioner.

**Public Administration** is 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.

**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.

**PID Act** means the *Public Interest Disclosure Act 2018*.

**PID Regulations** means the *Public Interest Disclosure Regulations 2019*

**Principal Officer** of the Council, 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:

- 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, as set out in Appendix A to this Policy.

**Responsible Officer** is a person who has completed any training courses required and approved by the Commissioner for the purposes of the *Public Interest Disclosure Regulations 2019* and has been designated by the Chief Executive Officer as a Responsible Officer under section 12 of the PID Act. A Responsible Office is also a Relevant Authority for the purposes of the PID Act.

**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.

## 6. Policy Content

### 6.1 Confidentiality

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

### 6.2 Disclosure Process

6.2.1 Disclosures are to be handled by the Council in accordance with the Public Interest Disclosure Procedure.

6.2.2 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 section 6.4 of the Public Interest Disclosure Procedure when deciding where to direct a Disclosure.

### 6.3 The Role of the Responsible Officer

6.3.1 A person designated as a Responsible Officer for the Council must:

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

6.3.1.2 make appropriate recommendations to the Chief Executive Officer of the Council in relation to dealing with Disclosures, including any suggested changes to this Policy or the Public Interest Disclosure Procedure; and

6.3.1.3 provide advice to Officers and employees of the Council in relation to the administration of the PID Act; and

6.3.1.4 complete any training courses required and approved by the Commissioner for the purposes of the *Public Interest Disclosure Regulations 2019*; and

may carry out any other functions relating to the PID Act

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

6.3.3 In making any determination or taking any action under this Policy, or pursuant to the Public Interest Disclosure Procedure, the Responsible Officer:

6.3.3.1 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; and

6.3.3.2 is authorised to incur costs in accordance with Council's Budget for that purpose.

6.3.4 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.

#### **6.4 Information to Elected Body**

6.4.1 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 as outlined in Section 14 of the Public Interest Disclosure Procedure.

#### **6.5 Protection for the Informant**

6.5.1 The Public Interest Disclosure Act does not provide any protection to people who knowingly make Disclosures that are false or misleading.

6.5.2 An informant who makes an appropriate Disclosure is entitled to the protections under section 5(1), 8 and 9 of the PID Act (refer to *Section 16 of the Public Interest Disclosure Procedure*).

### **7. Risk Management**

This Policy ensures that Council fulfils its obligations under the PID Act and should be read in conjunction with Council's Fraud and Corruption Prevention Policy and Public Interest Disclosure Procedure.

### **8. Implementation/Delegations**

The Chief Executive Officer has the delegated authority to implement this Policy and sub-delegate as necessary.

### **9. Related Documents**

Code of Conduct for Employees  
Code of Conduct for Council Members  
Complaints Handling Policy  
Fraud and Corruption Prevention Policy  
Internal Control Policy and Procedure  
Internal Review of Council Decisions Procedure (*Section 270 Local Government Act 1999*)  
Public Interest Disclosure Procedure  
ICAC Public Interest Disclosure Guidelines

### **10. Availability of Policy**

This policy is available on Council's website at [www.victor.sa.gov.au](http://www.victor.sa.gov.au). It may also be inspected or purchased at the Principal Office of the Council at 1 Bay Road, Victor Harbor.

## Appendix A – Relevant Authorities

A disclosure of Public Interest Information <sup>1</sup> where the information relates to...	The relevant authority is...
a public officer <sup>2</sup>	either: <ul style="list-style-type: none"> <li>• the person who is designated by the Guidelines as being taken to be responsible for management or supervision of the public officer; or</li> <li>• the person who is in fact responsible for the management or supervision of the public officer; or</li> <li>• the relevant Responsible Officer (as designated by the Chief Executive Officer in accordance with section 12 of the PID Act)</li> </ul>
a public sector agency or public sector employee	either: <ul style="list-style-type: none"> <li>• the Commissioner for Public Sector Employment; or</li> <li>• the responsible officer for the relevant public sector agency</li> </ul>
an agency to which the <i>Ombudsman Act 1972</i> applies	the Ombudsman
a location within the area of a particular council established under the <i>Local Government Act 1999</i>	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 <sup>3</sup>	an authority declared by the regulations to be a relevant authority in relation to such information
Public Interest Information	<ul style="list-style-type: none"> <li>• the OPI;</li> <li>• a Minister of the Crown; or</li> <li>• any other prescribed person or person of a prescribed class</li> </ul>

<sup>1</sup> Being Environmental and Health 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 that raises a potential issue of corruption, misconduct or maladministration in public administration

<sup>2</sup> 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.

<sup>3</sup> At this stage, no prescribed persons or classes have been identified