



Public Interest Disclosure Procedure

Date 23 September 2019

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Position – Chief Executive Officer



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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* ('the PID Act').

As Chief Executive Officer of the City of Victor Harbor ('the Council'), 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; and
- 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, and Council's Public Interest Disclosure Policy, are designed to enable that to occur, by ensuring that proper procedures are in place for the making and dealing with *appropriate disclosures of public interest information* and by providing appropriate protections for those who make such disclosures.

I, and the employees, Officers and Elected Members at Council, remain deeply committed to the protection of informants who make *appropriate disclosures of public interest information* in accordance with the objectives of the PID Act, and to the genuine and efficient consideration and action in relation to information provided to the Council via an *appropriate disclosure of public interest information*, as contemplated and demonstrated by this Procedure.

Any questions relating to this Procedure or the Council's Public Interest Disclosure Policy should be directed in the first instance to the Responsible Officer/s, whose details are at Section 5 of this Procedure.

Victoria MacKirdy
Chief Executive Officer
City of Victor Harbor

1. Introduction

1.1. The City of Victor Harbor ('Council') is committed to:

- upholding the principles of transparency and accountability in its administrative and management practices;
- the protection of informants who make Public Interest Disclosures; and
- the genuine and efficient consideration and action in relation to information provided in a Public Interest Disclosure

and, therefore, encourages the making of appropriate Disclosures that relate to public interest information in accordance with this Procedure.

1.2. Council is also committed to:

- referring, as necessary, appropriate Disclosures to another Relevant Authority;
- where the Disclosure relates to Corruption, or serious or systemic Misconduct or Maladministration in public administration, reporting the Disclosure directly to the OPI in accordance with the Guidelines issued under the PID Act 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.

1.3. This document explains the applicable procedures and processes that Council has in place for making and dealing with appropriate Disclosures of Public Interest Information, to ensure that Council:

- properly fulfils its responsibilities under the PID Act and the ICAC Act;
- appropriately encourages and facilitates Disclosures of Public Interest Information, including disclosures of both Environmental and Health Information and Public Administration Information;
- provides a process by which Disclosures may be made so that they are properly investigated;
- provides appropriate protection for those who make Disclosures in accordance with the PID Act; and
- recognises the need to appropriately support Informants, the Responsible Officer and, as appropriate, those Public Officers affected by any appropriate Disclosure.

2. Scope

2.1. This Procedure applies to appropriate Disclosures of Public Interest Information that are made in accordance with the PID Act including (but not limited to) Elected Members, Officers and Employees of the Council, and by members of the public.

2.2. This Procedure is intended to complement the reporting framework under the ICAC Act, and designed to complement the existing communication channels within Council and to operate in conjunction with other existing policies.

3. Definitions

For the purposes of this Procedure and the Public Interest Disclosure 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 2012 and means:

- (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; or
- (b) an offence against the *Public Sector (Honesty and Accountability) Act 1995* or the *Public Corporations Act 1993*, or an attempt to commit such an offence; or
- (ba) an offence against the *Lobbyists Act 2015*, or an attempt to commit such an offence; or
- (c) 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 before becoming a public officer and related to his or her capacity as a public officer, or an attempt to commit such an offence; or
- (d) 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 party to, the commission of the offence;
 - (iv) conspiring with others to effect the commission of the offence

Council means the City of Victor Harbor.

Detriment takes its meaning from section 9(7) of the PID Act and includes:

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- 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 2012 and/or Section 14 of the PID Act, which are available on the [Commissioner's website](#).

Disclosure and **Public Interest Disclosure** are used interchangeably in this Procedure and mean an appropriate **Disclosure of Public Interest Information** made by an Informant to a Relevant Authority in accordance with the PID 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; and
 - 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 includes 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 Section 11 of this 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 and

- (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 is defined in section 5(3) of the ICAC Act and means:

- (a) contravention of a Code of Conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or
- (b) other misconduct of a public officer while acting in his or her capacity as a public 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 about corruption, misconduct and maladministration in public administration from the Ombudsman, the Council and public officers;
- 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;
- give directions or guidance to public authorities in circumstances approved by the Commissioner;
- perform other functions assigned to the Office by the Commissioner.

Public administration is defined in 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 and 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

- an Elected Member of the Council; 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 Procedure.

Responsible Officer means a person who has completed any training courses required and approved by the Commissioner for the purposes of the PID Regulations and has been designated by the Chief Executive Officer as a responsible officer under Section 12 of the PID Act. A Responsible Officer 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.

4. Responsibilities

4.1 Role of the Principal Officer

The Principal Officer is responsible for:

- ensuring that one or more appropriately qualified officers or employees of the Council are designated as Responsible Officers of the Council for the purposes of the PID Act and that those persons undertake any training as required by the PID Regulations; and
- ensuring that the name and contact details of each Responsible Officer of the Council are made available to members of the public, officers and employees of the Council; and
- the preparation and maintenance of this Procedure in accordance with the requirements of the PID Act and the Directions and Guidelines.

4.2 Role of the Responsible Officer

The person designated as a Responsible Officer for Council must:

- receive appropriate Disclosures and ensure compliance with the PID Act, and this Procedure, in relation to any such Disclosures;
- make appropriate recommendations to the Chief Executive Officer of the Council in relation to dealing with Disclosures, including any suggested changes to this Procedure or the Public Interest Disclosure 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 required and approved by the Commissioner for the purposes of the PID Regulations; and
- may carry out any other functions relating to the PID Act.

4.3 Role of an Elected Member, Employee or Officer

An Elected Member, employee or Officer of Council is responsible for:

- ensuring they comply with this procedure and the Public Interest Disclosure Policy when dealing with any Disclosure; and
- immediately referring any Disclosure of Environmental and Health Information made to them by a member of the public, or any Disclosure of Public Interest Information made to them by a public officer (where that information relates to a location within the area of the Council) to a Responsible Officer of the Council.

4.4 Receipt of a Disclosure

- Upon receipt of a Disclosure (whether from an Informant directly, or on referral from an Elected Member, employee or Officer of the Council), the Responsible Officer will deal with the Disclosure in accordance with the processes described in this Procedure, and within the authority granted by the Public Interest Disclosure Policy and the PID Act.
- If an Informant believes that his/her Disclosure is not being dealt with appropriately or in accordance with this Procedure or the Public Interest Disclosure Policy, they should contact the Responsible Officer in the first instance.

5. Responsible Officers

The Responsible Officer may be contacted in person, by telephone or in writing. The relevant contact details are:

- **City of Victor Harbor Responsible Officers**
 - Manager Library and Customer Service – Vicki Hutchinson
 - Director Corporate and Customer Service – Karen Rokicinski
 - Governance and Policy Officer – Kyla Walker
- **Phone:** (08) 8551 0500 – request to be transferred to a Responsible Officer
- **In writing** Address as:
Private and Confidential – Public Interest Disclosure
 City of Victor Harbor
 Attention: Responsible Officer
 PO Box 11
 Victor Harbor SA 5211
- **Email:** publicinterestdisclosure@victor.sa.gov.au

6. Confidentiality

- 6.1 The identity of an Informant will be maintained as confidential in accordance with the PID Act.
- 6.2 In accordance with section 8 of the PID Act, it is a criminal offence for the identity of an Informant to be disclosed in the absence of his or her consent unless:
- 6.2.1 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 of serious physical injury or death to any person;
 - 6.2.2 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 identity of the Informant to the OPI; or
 - 6.2.3 doing so is necessary for the matter to be properly investigated (but only to the extent necessary to ensure proper investigation).; or
 - 6.2.4 the Informant consents to his/her identity being disclosed
- 6.3. 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 recipient of the Disclosure should be mindful of the prohibition against Victimisation in the PID Act.
- 6.4. 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.

7. Disclosure Process

- 7.1 The PID Act provides for protection for Informants where Public Interest Disclosures are made:
 - 7.1.1. by a member of the public or a public officer about Environmental and Health Information which the Informant reasonably believes to be true or which the Informant believes may be true and is of sufficient significance to warrant Disclosure; and/or
 - 7.1.2. by a public officer who holds a reasonable suspicion that the Public Administration Information raises a potential issue of corruption, misconduct or maladministration in public administration..
- 7.2. Disclosures should generally, and wherever possible, be directed in the first instance to the Responsible Officer, who has the responsibility for receiving appropriate Disclosures relating to the Council.
- 7.3. However, nothing in this Procedure prevents a person from making a Disclosure to another Relevant Authority, including a Relevant Authority external to the Council. This is a choice to be made by the Informant at his/her discretion.
- 7.4. The following are relevant considerations for an Informant in determining where to direct a Disclosure:
 - 7.4.1 when choosing to make a Disclosure internally, Disclosures relating to an Elected Member or a member of council staff should be made to a Responsible Officer;
 - 7.4.2 any Disclosures relating to the Chief Executive Officer, including a person acting in that position, should be made to a Responsible Officer (or the Mayor);
 - 7.4.3 any Disclosure relating to a person appointed as a Responsible Officer should be made to another Responsible Officer or to a Relevant Authority external to the Council (such as the OPI);
 - 7.4.4 any Disclosure relating to Public Administration Information (being information relating to corruption, maladministration or misconduct in public administration) about a public officer who is an Elected Member, Officer or employee of the Council may be made to a Responsible Officer or otherwise to a Relevant Authority external to the Council (such as the OPI).
 - 7.4.5 any Disclosure relating to Environmental and Health Information should be made to a Responsible Officer or otherwise to a Relevant Authority external to the Council (such as the Environment Protection Agency).
- 7.5. A Disclosure may be made in person, by telephone or in writing (either by post or email). Where a Disclosure is made by telephone, the recipient must take notes of the conversation and, where possible, should ask the Informant to verify and sign the notes.

8. Receipt of a Disclosure

- 8.1. A flowchart outlining the Disclosure Process is contained in **Appendix B** to this Procedure.
- 8.2. If an Elected Member, employee or Officer receives a Disclosure of Public Interest Information and determines that they require assistance with the appropriate assessment and management of the Disclosure, the recipient of that Disclosure should:
 - 8.2.1. 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 a failure to provide that consent may mean that the Disclosure cannot be properly investigated; and
 - 8.2.2. 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.
- 8.3. Upon the receipt of a Disclosure (whether directly, or by referral from an Elected Member, employee or Officer), the Responsible Officer will:
 - 8.3.1. immediately undertake a Preliminary Assessment in accordance with Section 9 of this Procedure; and
 - 8.3.2. as soon as practicable thereafter, in accordance with Section 10 of this Procedure:
 - 8.3.2.1. notify the OPI of the Disclosure; and
 - 8.3.2.2. confirm receipt of the Disclosure with the Informant; and
 - 8.3.3. subject to the outcome of the Preliminary Assessment, then take appropriate action, including, where required:
 - 8.3.3.1. appointing an Independent Assessor to further investigate the Disclosure in accordance with Section 11 of this Procedure; and
 - 8.3.3.2. notifying the Informant of the outcome of any action, including any investigation in accordance with Section 12 of this Procedure; and
 - 8.3.3.3. notifying the OPI of the outcome of any action taken in accordance with Section 12 of this Procedure; and/or
 - 8.3.3.4. reporting the outcome of any action taken to the Minister in accordance with Section 12 of this Procedure; and
 - 8.3.3.5. preparing and issuing a final report to the Principal Officer in accordance with Section 13 of this Procedure.

9. Preliminary Assessment of Disclosure

- 9.1 Where the identity of the Informant is known to the Responsible Officer or is reasonably ascertainable, the Responsible Officer will acknowledge receipt of the Disclosure within two (2) business days of their receipt of the Disclosure (noting that there may be delays if a Disclosure is referred from an Elected Member, employee or officer of the Council) and in doing so, will provide a copy of this Procedure and the Public Interest Disclosure Policy to the Informant.
- 9.2 Upon receipt of a Disclosure, the Responsible Officer will undertake a preliminary assessment to determine:
 - 9.2.1. whether the Disclosure relates to information within the scope of the PID Act, namely whether it pertains to Environmental and Health Information and/or Public Administration Information, within the Council's area;
 - 9.2.2 if the content of the Disclosure suggests there is an imminent risk of serious physical injury or death to any person or the public generally;
 - 9.2.3. if the matter/s the subject of the Disclosure involve corruption in public administration, or serious or systemic misconduct or maladministration in public administration; or
 - 9.2.4. if the information disclosed justifies further action, including a decision as to whether the Disclosure:
 - 9.2.4.1. is frivolous, vexatious or trivial (in which case, no further action will be taken in relation to the Disclosure);
 - 9.2.4.2. involves a matter which has already been investigated or acted upon by a Relevant Authority (whether by the Council or any other Relevant Authority) and there is no reason to re-examine the matter or there is other good reason why no action should be taken in respect of the matter (in which case, no further action will be taken in relation to the Disclosure);
 - 9.2.4.3. requires referral to another Relevant Authority external to the Council; or
 - 9.2.4.4. warrants referral to an Independent Assessor for a formal investigation and report to Council.
- 9.3. The Responsible Officer must report the outcome of his/her determination following the Preliminary Assessment to the Chief Executive Officer (unless the Disclosure relates to the Chief Executive Officer, in which case it should be reported to the Mayor). Any report prepared in accordance with this Part will not disclose particulars that will or are likely to lead to the identification of the Informant, unless the circumstances in Section 6.2 of this Procedure apply.

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- 9.5. Where the Responsible Officer determines that the content of the Disclosure suggests there is an imminent risk of serious physical injury or death to any person or to the public generally, the Responsible Officer must immediately communicate such information as may be necessary to mitigate that risk to the most appropriate agency (for example, South Australia Police, SafeWork SA, SA Ambulance, Environment Protection Authority). In doing so, the Responsible Officer must also have regard to Section 6.2.1 of this Procedure.
 - 9.6. Where the Responsible Officer forms a reasonable suspicion that the matter/s the subject of the Disclosure involve corruption in public administration, or serious or systemic misconduct or maladministration in public administration, the Responsible Officer must comply with his/her reporting obligations under the ICAC Act in accordance with the [Directions and Guidelines](#).
 - 9.7. Where the Responsible Officer determines a Disclosure of Environmental and Health Information warrants further investigation, the Responsible Officer will, having regard to available resources, appoint the Independent Assessor and refer the Disclosure to the Independent Assessor for investigation. The identity of the Informant must not be disclosed in any referral to an Independent Assessor for investigation.
 - 9.8. Where the Responsible Officer determines the Disclosure warrants referral to an external body or another Relevant Authority, the Responsible Officer will undertake the referral, including ensuring that such information as is necessary to enable action to be taken is communicated to the most appropriate Relevant Authority to take that action.
 - 9.9. Where the Responsible Officer determines the Disclosure requires any other action to ensure the matter subject of the Disclosure is properly addressed, the Responsible Officer will include in his/her determination details of any other recommended action.

10. Notification of Preliminary Assessment

- 10.1. If the Responsible Officer assesses the content of the disclosure as requiring no further action, the Responsible Officer must notify the Informant (if his or her identity is known) **within 30 days of receipt** of the Disclosure that :
 - 10.1.1. an assessment of the Disclosure has been made; and
 - 10.1.2. no action is being taken in relation to the Disclosure; and
 - 10.1.3. the reason/s why no action is being taken in relation to the information.
- 10.2. If the Responsible Officer assesses the content of the disclosure as **requiring further action**, the Responsible Officer must ensure that **within 30 days of receipt** of the Disclosure:
 - 10.2.1. such action as is appropriate in the circumstances is taken to ensure the matter(s), the subject of the Disclosure, are properly addressed; or

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- 10.2.2 if such action consists of referring the Disclosure (whether to a Responsible Officer, or to the Chief Executive Officer, or to another Relevant Authority), such information as is necessary to enable action to be taken is communicated to the most appropriate person or relevant authority to take such action.
- 10.3 If the action taken does not consist of referring the Disclosure, the Responsible Officer must, **within ninety (90) days** of receiving the Disclosure, take reasonable steps to notify the Informant (if his or her identity is known) of the outcome of the action taken by the Council. This is detailed further in Part 12 of this Procedure.
- 10.4 If the Responsible Officer fails to notify the Informant in accordance with Sections 10.1 or 10.3 above, the Informant may be entitled to protection in relation to any subsequent Disclosure of the information to a journalist or Member of Parliament in accordance with the PID Act.
- 10.5. If the Informant is dissatisfied with the Responsible Officer's determination, it is open to him/her to report the Disclosure to another Relevant Authority external to the Council.
- 10.6. As soon as reasonably practicable following the Preliminary Assessment and notification to the Informant, the Responsible Officer must use the dedicated [online notification form](#) to notify OPI of the Disclosure (**Initial Notification**), and, in doing so, must ensure that the details required by *Guideline One* of the Public Interest Disclosure Guidelines are included in the Initial Notification as detailed below:
- 10.4.1 the date the Disclosure was received;
 - 10.4.2 the name and contact details of the recipient of the Disclosure (being the Relevant Authority with the Council who initially received the Disclosure);
 - 10.4.3 a summary of the content of the Disclosure;
 - 10.4.4 the assessment made of the Disclosure;
 - 10.4.5 the action taken by the recipient of the Disclosure including:
 - 10.4.5.1 whether the Disclosure was referred to another Relevant Authority (including to a Responsible Officer or the Chief Executive Officer of the Council), public authority, public officer or other person; and
 - 10.4.5.2 if the Disclosure was referred to another Relevant Authority, public authority, public officer or other person:
 - 10.4.5.2.1 the date of the referral;
 - 10.4.5.2.2 the identity of the Relevant Authority, public authority, public officer or other person to whom the disclosure was referred;
 - 10.4.5.2.3 the manner of referral; and

10.4.5.2.4 the action to be taken by that Relevant Authority, public authority, public officer or another person (if known);

10.4.6 if no action was taken by the recipient of the Disclosure, the reason why no action was taken; and

10.4.7 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 a Relevant Authority, public authority, public officer or other person (and if so, the reasons why such communication was made).

10.5. The Responsible Officer will retain the unique reference number issued by the OPI upon making the **Initial Notification**, and will ensure that reference number is provided to any other person or authority to whom the Disclosure is referred.

11. Investigation Procedure

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

11.2. The Independent Assessor will be appointed on a case-by-case basis depending on the nature of the Disclosure. Council may prepare a list of pre-approved persons who may be appointed as an Independent Assessor in any given circumstances, in which case the Responsible Officer must have regard to this list in appointing the Independent Assessor.

11.2.1 An Independent Assessor will not be appointed to investigate a Disclosure of Public Administration Information (being information that raises a potential issue of corruption, maladministration or misconduct in public administration) **in the absence of a direction to do so from the OPI or the ICAC**. Such Disclosures must be referred to the OPI for further investigation in accordance with the ICAC Act.

11.3. The objectives of the investigation process are:

11.3.1. 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;

11.3.2. to collate information relating to the allegation as quickly as possible. This may involve taking steps to protect or preserve documents, materials and equipment;

11.3.3. to consider the information collected and to draw conclusions objectively and impartially;

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- 11.3.4. to observe procedural fairness in the treatment of any person who is subject of the Disclosure; and
- 11.3.5. to make recommendations arising from the conclusions drawn concerning remedial or other appropriate action.
- 11.4. The Independent Assessor will observe the principles 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.
- 11.5. Upon receipt of a Disclosure referral under this Part, the Independent Assessor will bring the fact of the Disclosure to the attention of the person who is the subject of it (if applicable) in writing **within 5 business days**, and provide them with an opportunity to respond to the Disclosure within a reasonable timeframe (either in writing or in person). The full details of any allegations contained in the Disclosure need not be brought to the person's attention if the Independent Assessor considers that doing so will compromise the investigation.
- 11.6. During any interview with the Independent Assessor, the person who is the subject of a Disclosure may be accompanied by any person providing support to him/her (including a lawyer) as he/she considers fit. Any costs incurred in relation to obtaining the assistance of a support person are the personal expenses of the person subject of the Disclosure. The support person is bound by a duty of confidentiality in relation to any matter discussed during such interview.
- 11.7. The investigation will be undertaken in confidence. So long as the identity of the Informant is known to the Responsible Officer or is reasonably ascertainable, the Independent Assessor will keep the identity of the Informant confidential unless the circumstances in Section 6.2 of this Procedure apply.
- 11.8. The Independent Assessor will keep the Responsible Officer informed of the expected timeframes for completion of the investigation and the provision of his/her investigation report to the Responsible Officer.
- 11.9. Upon finalising an investigation, the Independent Assessor must prepare an investigation report to the Responsible Officer that will contain the following details:
- 11.9.1. the allegation(s);
 - 11.9.2. an account of all relevant information received including any rejected evidence, and the reasons why the rejection occurred;
 - 11.9.3. the conclusions reached and the basis for them; and
 - 11.9.4. any recommendations arising from the conclusions, including any remedial action which should be taken by the Council.

The report is to be accompanied by:

- 11.9.5. the transcript or other record of any verbal evidence taken, including tape recordings; and
- 11.9.6. all documents, statements or other exhibits received by the Independent Assessor and accepted as evidence during the course of the investigation.
- 11.10. Any report prepared in accordance with this Part will not disclose particulars that will or are likely to lead to the identification of the Informant, unless the circumstances in Section 6.2 of this Procedure apply.
- 11.11. The Responsible Officer must take whatever action is, in his/her discretion, considered appropriate in the circumstances having regard to the matters identified in the Independent Assessor's report.

12. Notification of Further Action

- 12.1. If the identity of the Informant is known to the Responsible Officer or is reasonably ascertainable, the Responsible Officer will notify the Informant of the outcome of his/her determination in writing as soon as is reasonably practicable after the Further Action has been taken and, in any event, within either:
 - 12.1.1. **90 days of receipt of the Disclosure;** or
 - 12.1.2. such longer period as may be specified by written notice given by the Responsible Officer within that 90-day period.
- 12.2. In doing so the Responsible Officer must advise the Informant of:
 - 12.2.1. any action that has been, or will be, taken in relation to the Disclosure; or
 - 12.2.2. if no action is being taken in relation to the Disclosure, the reason/s why.
- 12.3. If the Responsible Officer fails to notify the Informant in accordance with Section 12.1 and 12.2 above, the Informant may be entitled to protection in relation to any subsequent Disclosure of that information to a journalist or Member of Parliament in accordance with the PID Act.
- 12.4. If the Informant is dissatisfied with the Responsible Officer's determination or the action taken it is open to him/her to report the Disclosure to another Relevant Authority, external to the Council.
- 12.5. As soon as reasonably practicable following the Preliminary Assessment and notification to the Informant, the Responsible Officer must use the dedicated [online notification form](#) to notify OPI of the action taken in relation to the Disclosure (**Further Notification**) and, in doing so, must ensure that the details required by Guideline 2 of the Public Interest Disclosure Guidelines are included in the Further Notification as detailed below:
 - 12.5.1 The unique reference number issued by the OPI upon notification of the Initial Notification;

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- 12.5.2 the name and contact details of the notifier;
 - 12.5.3 the name and contact details of the person or authority responsible for taking the action;
 - 12.5.4 what (if any) findings were made in respect of the disclosure;
 - 12.5.5 the nature of the action taken (if any);
 - 12.5.6 the outcome of any action taken (if applicable);
 - 12.5.7 whether the identity of the informant was disclosed to a person other than the original recipient of the Disclosure; and
 - 12.5.8 whether the informant was notified of the action taken and, if so, when and how that notification was made.
- 12.6. If the Disclosure came to the Council by way of a referral from a Minister, the Responsible Officer must ensure that the Minister is also notified of the action taken in relation to the Disclosure, and the outcome of any such action. The Minister should be notified in accordance with this section following the Preliminary Assessment if the Responsible Officer determines that no action is to be taken.

13. Final Report and Recommendation

- 13.1. Upon finalising any action required in relation to a Disclosure, the Responsible Officer must prepare a report that will contain the following details:
- 13.1.1. the subject of the Disclosure;
 - 13.1.2. an account of the steps taken by the Responsible Officer in accordance with this Procedure, including, where appropriate, enclosing a copy of any Independent Assessor's report;
 - 13.1.3. conclusions reached as a result of the steps taken in response to the Disclosure and the basis for them; and
 - 13.1.4. any recommendations arising from the conclusions, including any remedial action which should be taken by the Council.
- 13.2. Any report prepared in accordance with this Section will not disclose particulars that will or are likely to lead to the identification of the Informant, unless the circumstances in Section 6.2 of this Procedure apply.
- 13.3. The Responsible Officer's Report must be provided to the Chief Executive Officer, or to the Mayor where the matter relates to the Chief Executive Officer, to action as he/she considers appropriate.

14. Information to the Elected Body

- 14.1 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.
- 14.2 The Chief Executive Officer shall take into account, in determining whether to inform the elected body under Section 14.1 above, the level of detail to be provided to the Elected Body including:
- 14.2.1 if known, the identity of the Informant, and whether the Informant has consented to his/her identity being divulged;
 - 14.2.2 if applicable, the identity of any person the subject of the Disclosure;
 - 14.2.3 the impact (if any) of the investigation upon Council's achievement of its objectives under its Strategic Plan and/or policies; and
 - 14.2.4 the impact of any action taken to finalise the matter upon Council's operations and/or budget.
- 14.3 In the event the Disclosure and/or subsequent investigation process is confined to issues that impact only upon Council staff and human resources processes, the Chief Executive Officer 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*).

15. Secure Handling and Storage of Information

- 15.1. The Responsible Officer must ensure accurate records of an appropriate Disclosure are securely and confidentially maintained including notes of all discussions, phone calls, and interviews.
- 15.2. The Responsible Officer will ensure all information relating to an appropriate Disclosure is maintained as confidential and as such, will be solely responsible for the records are stored securely with restricted access and remain confidential. No details will be placed on personnel files.
- 15.3. In performing his/her duties, the Responsible Officer will maintain a confidential file of information (including written documents, disks, tapes, film or other objects that contain information) that relates to a Disclosure and/or is a product of the associated investigation/reporting process. All such information will be recorded in a register which is to remain confidential and be securely stored in the strong room at the Civic Centre.
- 15.4. In the event that a person's appointment as a Responsible Officer is terminated, the person must provide this information to the newly-appointed Responsible Officer and having done so will continue to be bound by a duty of confidentiality in respect of an Informant's identity and the information received as a result of the Disclosure.

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- 15.5. The Responsible Officer is ultimately responsible to ensure Public Interest Information will be securely received and stored, the security and confidentiality obligations outlined in this Part also apply to any Independent Assessor appointed pursuant to this Procedure in relation to any Investigation.
- 15.6 In addition to the above, in giving effect to this responsibility, a Responsible Officer may employ security measures including, but not limited to:
- 15.6.1 keeping all printed material in secure files that are clearly marked as “CONFIDENTIAL”, and which warn of the criminal penalties that apply to any unauthorised access, use or divulging of information concerning a public interest disclosure;
 - 15.6.2 keeping all printed material in a locked cabinet that is only accessible to the relevant authority at the Council who is responsible for the management of the assessment and/or action of the disclosure;
 - 15.6.3 assigning specific password protections to all electronic material, which are provided to only the relevant authority at the Council who is responsible for the management of the assessment and/or action of the disclosure;
 - 15.6.4 ensuring that all electronic material is only accessible by the relevant authority at the Council who is responsible for the management of the assessment and/or action of the disclosure; and
 - 15.6.5 conducting all telephone calls and meetings in relation to a public interest disclosure privately and in the strictest of confidence.

16. Protection for the Informant

- 16.1 An Informant who makes an appropriate Disclosure will be afforded the following protections under the PID Act:
- 16.1.1 immunity from criminal or civil liability;
 - 16.1.2 a prohibition on disclosure of his/her identity, other than in limited specific circumstances, as set out under the PID Act and Guidelines;
 - 16.1.3 a prohibition against Victimisation; and
 - 16.1.4 a prohibition against hindering, obstructing or preventing an Informant from making an appropriate Disclosure.
- 16.2 A person who personally commits an act of Victimisation against an Informant is guilty of an offence and may be prosecuted.
- 16.3 In accordance with section 12 of the PID Act, the Chief Executive Officer must also ensure there are risk management steps for assessing and minimising detriment to people against whom allegations are made in a Disclosure. The Council commits to providing the same protections to persons who are the subject of a Disclosure, as it does to Informants, which will include, but not necessarily be limited to:

- 16.3.1 keeping the identity of the Informant, and the subject of the Disclosure, confidential;
- 16.3.2 flexibility as to when meetings are held, if and when necessary; and
- 16.3.3 the opportunity to make reasonable requests in relation to how and when the Relevant Authority 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, or subject of the disclosure) to be subject to detriment.

16.4 The Council also commits to supporting all relevant authorities at the Council who receive any appropriate Disclosures of Public Interest Information.

17. Public Interest Disclosure Register

17.1 In accordance with Section 15.3, a register recording a unique register number and key information for each disclosure shall include the following:

- The date a Public Interest Disclosure was received
- Name of the Public Officer who received the Public Interest Disclosure
- Name of Responsible Officer undertaking the assessment
- The date of the acknowledgement correspondence sent to the informant
- A summary of the allegation/information received
- Involvement of an external agency
- The action taken to minimise any risk
- Details of the Preliminary Assessment
- Date of the report provided to CEO of the outcome of the Preliminary Assessment
- Date when the Responsible Officer notified that a preliminary assessment of information had been made.
- Date of any action taken and details
- Date of who was notified from the action taken (eg informant, OPI, Minister)

The Responsible Officer/s will ensure that the Public Interest Disclosure Register are stored securely with restricted access and remain confidential.

18. Reviews

18.1 This Procedure will be reviewed every three years, or as required as a consequence of amendments to the Act, Regulations, Guidelines or the statutory public integrity framework generally.

19. Availability of the Procedure

19.1 This Procedure will be available free of charge for inspection at the Council's offices during ordinary business hours and via councils website www.victor.sa.gov.au Copies will also be provided to the public upon request and upon payment of a fee in accordance with Councils Fee and Charges.

20. Document History

Version	Issue Date	Resolution No.	Description
1.0	23 September 2019	OC6652019	Endorsed by Council

21. Document Control

Policy Category	Statutory
Department/Officer	Office of CEO/CEO
Applicable Legislation	Public Interest Disclosure Act 2018 Independent Commissioner Against Corruption Act 2012
Related Policies	Code of Conduct for Employees Code of Conduct for Council Members; Fraud and Corruption Prevention Policy Internal Review of Council Decisions Policy under Section 270 of the Local Government Act 1999. Public Interest Disclosure Policy Public Interest Disclosure Guidelines
Date Adopted	23 September 2019
Next Review	August 2022
Review Frequency	Every Three Years

Appendix A – Relevant Authorities

A disclosure of public interest information ¹ where the information relates to...	the relevant authority is...
a public officer ²	either: <ul style="list-style-type: none"> • the person who is designated by the Guidelines as being taken to be responsible for management or supervision of the public officer; or • the person who is in fact responsible for the management or supervision of the public officer; or • the relevant Responsible Officer (as designated by the Chief Executive Officer in accordance with Section 12 of the PID Act)
a public sector agency or public sector employee	either: <ul style="list-style-type: none"> • the Commissioner for Public Sector Employment; or • the responsible officer for the relevant public sector agency
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 ³	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"> • the OPI; • a Minister of the Crown; or • any other prescribed person or person of a prescribed class

¹ 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

² As defined and set out in Schedule 1 of the Independent Commissioner Against Corruption Act 2012 – relevantly, this includes elected members, officers and employees of Local Government bodies.

³ presently, no prescribed persons or classes have been identified

Appendix B – Notification Process Flowchart

