



Public Interest Disclosure Procedure

Classification:	Council
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Responsible Officer:	Chief Executive Officer
Applicable Legislation:	Public Interest Disclosure Act 2018 Independent Commissioner Against Corruption Act 2012 Local Government Act 1999 Ombudsman Act 1972
Related Policies/Procedures:	Public Interest Disclosure Procedure Public Interest Disclosure Guidelines (issued by the Independent Commissioner Against Corruption)

PRINCIPAL OFFICER'S STATEMENT

As the Chief Executive Officer of the Kingston District Council (“the Council”), I am also the *principal officer* of the Council for the purposes of the Public Interest Disclosure Act 2018 (“the Act”).

In giving effect to my role as principal officer, I have caused the preparation of this Procedure, which sets out the process for a person (an informant) who wishes to make an *appropriate disclosure of public interest information* to the Council. It also sets out the process for officers, employees and elected members of the Council in dealing with such disclosures which are made to them.

The Council is committed to the protection of informants, as well as to the genuine and efficient consideration and action of *appropriate disclosures of public interest information* made under the Act.

In my capacity as CEO and *principal officer*, I expect that all *appropriate disclosures of public interest information* made to relevant authority at the Council will be dealt with in the strictest confidence and with the utmost priority.

In preparing this Procedure, the Council is giving effect to its obligations under the Act to encourage and facilitate *disclosures of public interest information* by ensuring that proper procedures are in place for making and dealing with such disclosures and by providing protections, in accordance with the Act, for persons who make disclosures.

Nat Traeger
Chief Executive Officer
January 2020

1. PURPOSE:

- 1.1. Kingston District Council (the Council) is committed to its obligations to act as a representative, informed and responsible public authority. The Council supports its officers, employees and elected members to uphold the values of honesty, integrity, accountability and transparency for the purposes of fostering community confidence and trust in the Council specifically, but also in Local Government generally.
- 1.2 This Procedure:
 - 1.2.1 encourages and facilitates appropriate disclosures of public interest information and, in doing so, provides protections in accordance with the Act for persons making such disclosures;
 - 1.2.2 provides a process by which an appropriate disclosure of public interest information may be made by a person to a relevant authority at the Council;
 - 1.2.3 specifies the manner in which the relevant authority at the Council will receive such a disclosure, including the manner in which the information may be safely received and stored;
 - 1.2.4 sets out the criteria that will be applied in the assessment of a public interest information disclosure and the manner in which the details of the assessment will be securely stored; and
 - 1.2.5 specifies the manner in which an informant will be notified as to action taken in respect of an appropriate disclosure of public interest information.
- 1.3 The Council recognises its responsibilities under the Act, not only to support persons who make an appropriate disclosure of public interest information, but also to those persons to whom the information related and the relevant authority to whom the disclosure is made.

2. LEGISLATIVE CONTEXT:

- 2.1 This Procedure has been developed to ensure that the Council meets its obligations under the Public Interest Disclosure Act 2018.

3. SCOPE:

- 3.1 This Policy applies to all officers, employees and Elected Members of the Council, as well as to all persons who make an appropriate disclosure of public interest information to a relevant authority at the Council for the purposes of the Act.

4. DEFINITIONS:

<i>Commissioner</i>	means the person holding or acting in the office of the Independent Commissioner Against Corruption.
<i>Corruption in public office</i> (as defined in Section 5(1) of the ICAC Act)	<p>a) an offence against Part 7 Division 4 (Offences relating to public officers) of the <i>Criminal Law Consolidation Act 1935</i>, which includes the following offences:</p> <ul style="list-style-type: none"> (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 <p>b) an offence against the <i>Public Sector (Honesty and Accountability) Act 1995</i> or the <i>Public Corporations Act 1993</i>, or an attempt to commit such an offence; or</p> <p>c) an offence against the <i>Lobbyists Act 2015</i>, or an attempt to commit such an offence; or</p> <p>d) any other offence (including an offence against Part 5 (Offences of dishonesty) of the <i>Criminal Law Consolidation Act 1935</i> 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</p> <p>e) any of the following in relation to an offence referred to in a preceding paragraph:</p> <ul style="list-style-type: none"> (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
<i>Council</i>	means the Kingston District Council
<i>Detriment</i>	<p>includes:</p> <ul style="list-style-type: none"> • 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).
<i>Directions and Guidelines</i>	is a reference to the Directions and Guidelines issued pursuant to section 20 of the ICAC Act and/or section 14 of the PID Act,

	which are available on the Commissioner's website (www.icac.sa.gov.au).
<i>Disclosure</i>	<p>Means an appropriate disclosure of public interest information made by an Informant to a Relevant Authority.</p> <p>A person makes an appropriate disclosure of environmental and health information if:</p> <p>a) the person:</p> <ol style="list-style-type: none"> 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 <p>b) the disclosure is made to a Relevant Authority.</p> <p>A person makes an appropriate disclosure of public administration information if:</p> <p>a) the person:</p> <ol style="list-style-type: none"> i. is a public officer; ii. reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration; and <p>b) the disclosure is made to a Relevant Authority.</p>
<i>Employee</i>	refers to all the Council's employees, whether they are working in a full-time, part-time or casual capacity.
<i>Environmental and Health Information</i>	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.
<i>Fraud</i>	includes an intentional dishonest act or omission done with the purpose of deceiving.
<i>ICAC Act</i>	Is the Independent Commissioner Against Corruption Act 2012.
<i>Independent Assessor</i>	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.
<i>Informant</i>	means a person who makes an appropriate disclosure of public interest information to a Relevant Authority.
<i>Maladministration in public administration</i> (as defined in section 5(4) of the ICAC Act)	<p>means</p> <p>a) 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</p>

	<p>b) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and</p> <p>includes conduct resulting from impropriety, incompetence or negligence; and</p> <p>is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.</p>
<i>Misconduct in public administration</i> (as defined in section 5(3) of the ICAC Act)	<p>means</p> <p>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</p> <p>b) other misconduct of a public officer while acting in his or her capacity as a public officer.</p>
<i>Office for Public Integrity (OPI)</i>	<p>is the office established under the ICAC Act that has the function to:</p> <p>a) receive and assess complaints about public administration from members of the public;</p> <p>b) receive and assess reports about corruption, misconduct and maladministration in public administration from the Ombudsman, the Council and public officers;</p> <p>c) 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;</p> <p>d) give directions or guidance to public authorities in circumstances approved by the Commissioner;</p> <p>e) perform other functions assigned to the Office by the Commissioner.</p>
<i>Public administration</i>	<p>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.</p>
<i>Public administration information</i>	<p>means information that raises a potential issue of corruption, misconduct or maladministration in public administration.</p>
<i>Public interest information</i>	<p>means environmental or health information, or public administration information.</p>
<i>PID Act</i>	<p>means the Public Interest Disclosure Act 2018.</p>
<i>Principal Officer</i>	<p>for the purposes of the PID Act means the Chief Executive Officer of the Council.</p>
<i>Public Officer</i>	<p>has the meaning given by section 4 and Schedule 1 of the ICAC Act, and includes:</p> <ul style="list-style-type: none"> • a Council member; and • an employee or officer of the Council

<i>Relevant Authority</i>	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.
<i>Responsible Officer</i>	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
<i>Victimisation</i>	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.]

5. APPROPRIATE DISCLOSURES:

- 5.1 The Act establishes a scheme to encourage and facilitate the appropriate disclosure of public interest information to a relevant authority.
- 5.2 Subject to the provisions of the Act, if a person makes an appropriate disclosure of public interest information to a relevant authority, the person will not be subject to any liability as a result of that disclosure and is entitled to have their identity kept confidential.
- 5.3 Immunity is provided for an appropriate disclosure of public interest information where:
- 5.3.1 any person makes an appropriate disclosure of environmental and health information; or
- 5.3.2 a public officer makes an appropriate disclosure of public administration information.
- 5.4 Whilst any person can make a disclosure of public administration information, **only public officers** who make such a disclosure are eligible for the protections provided under the Act.
- 5.5 Environmental Health Information
- 5.5.1 A person makes an appropriate disclosure of environmental and health information for the purposes of the Act if the disclosure is made to a relevant authority and the person:
- believes on reasonable grounds that the information is true; or
 - not being in a position to form such a belief, 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.

5.5.2 Where the information relates to a location within the area of the Council, a person may make a disclosure to an elected member, officer or employee of the Council.

5.6 Public Administration Information

5.6.1 A public officer makes an appropriate disclosure of public administration information for the purposes of the Act if the disclosure is made to a relevant authority and the public officer reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration.

5.6.2 Where the information relates to a public officer, a person who is designated under the Guidelines or a person who is responsible for the management or supervision of that public officer or a responsible officer, are relevant authorities for the purposes of the Act.

5.6.3 For the avoidance of doubt, where the public administration information relates to a location within the area of the Council, an elected member, officer or employee of the Council are each also a relevant authority for the purposes of the Act.

6. ASSESSMENT OF A DISCLOSURE:

6.1 A relevant authority of the Council to whom an appropriate disclosure of public interest information is made, must assess the information as soon as practicable after the disclosure is made to them.

6.2 If the disclosure gives rise to a concern of imminent risk of serious physical injury or death to any person, or the public generally, the relevant authority must give immediate consideration to the matters set out at clause 6.8.

6.3 The criteria that will be applied to the initial assessment of the disclosed information will include (but not necessarily be limited to), whether it:

6.3.1 relates to information within the scope of the Act, namely whether it pertains to environmental and health information and/or public administration information;

6.3.2 raises matters that are within the Council's scope of authority, including if the information relates to a location within the area of the Council; and

6.3.3 justifies the taking of further action or relates to a matter that 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 action should not be taken in respect of the matter.

6.4 If the relevant authority of the Council who receives the disclosure, being an officer, employee or elected member, determines that the require assistance with the appropriate assessment and management of the disclosure, the recipient is encouraged to seed the assistance of a responsible officer of the

Council (or the CEO, in circumstances where the disclosure relates to the responsible officer(s)), who are also relevant authorities for the purposes of the Act.

- 6.5 It is also open for the relevant authority who receives the disclosure, to determine, based on the training, expertise, access to resources and appropriate support mechanisms in place at the Council, that it is appropriate in all of the circumstances, to refer the disclosure to the responsible officer (or the CEO) for action, in accordance with section 7(3) of the Act.
- 6.6 Nothing in this Procedure, or under the Act, prevents a relevant authority of the Council who has received a disclosure, or who is assisting in the assessment and management of a disclosure, from obtaining legal advice from one of the Council's legal advisors.
- 6.7 In giving effect to the above, consideration must be carefully given as to whether the identity of the informant if required or is able to be disclosed, noting that section 8 of the Act requires that the identity of an informant is to be kept confidential, except so far as may be necessary to ensure that the matters to which the information relates are properly investigated. It is recommended that this exception be considered and treated as being of very limited application.
- 6.8 Following the assessment of the information, the subject of disclosure:
- 6.8.1 if the content gives rise to a concern of imminent risk of serious physical injury or death to any person, or the public generally, the recipient must immediately communicate such information as may be necessary to mitigate that risk to the most appropriate agency, such as SAPOL, SafeWork SA, SA Ambulance or the Environment Protection Authority; and
- 6.8.2 if the recipient of the public interest disclosure forms a reasonable suspicion that the matter(s), the subject of the disclosure, involves corruption in public administration, or serious or systemic misconduct or maladministration, the recipient of the disclosure must also comply with his or her reporting obligations under the Act.
- 6.9 If the recipient of a public interest disclosure, or other relevant authority of the Council to whom a disclosure has been referred, assesses the content of the disclosure as requiring no further action, the recipient of the disclosure must notify the informant (if his or her identity is known) within thirty (30) days that:
- 6.9.1 an assessment of the information has been made;
- 6.9.2 no action is being taken in relation to the information; and
- 6.9.3 the reasons why no action is being taken in relation to the information.
- 6.10 If the recipient of a public interest disclosure assesses the content of the disclosure as requiring further action, the recipient of the disclosure must ensure that:

- 6.10.1 such action as is appropriate in the circumstances is taken to ensure the matter(s), the subject of the public interest disclosure, are properly addressed; or
 - 6.10.2 if such action consists of referring the disclosure (whether to a responsible officer, or to the CEO of the Council, 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:
 - 6.10.3 if the recipient has assessed the disclosure as requiring further action, the recipient of the disclosure must notify the informant (if his or her identity is known) within thirty (30) days of the action being taken in relation to the information.
- 6.11 If the action taken does not consist of referring the disclosure, the relevant authority at the Council who is responsible for the management of the disclosure 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 that action.
- 6.12 Notification to the informant can occur by personal meeting, telephone, email or letter; the communication method being at the absolute discretion of the informant.

7. MANAGEMENT OF DISCLOSURE:

- 7.1 If an informant is dissatisfied with the manner in which his or her disclosure has been managed, or otherwise believes that his or her disclosure has been dealt with inappropriately, the informant may contact a responsible officer at the Council (or the CEO if their concern relates to the responsible officer(s)) to express their concern in the first instance.
- 7.2 Following which, the responsible officer (or CEO), will review the disclosure and confirm with the informant the assessment made and the action to be taken.
- 7.3 If the informant remains dissatisfied following the further assessment made by a responsible officer (or CEO, as the case may be), it is open to the informant to make the public interest disclosure to an alternative relevant authority, such as the Ombudsman or the OPI.

8. NOTIFYING THE OPI

- 8.1 Following the receipt, and assessment, of a public interest disclosure, irrespective of whether the relevant authority at the Council responsible for the disclosure determines that future action is, or is not, required, the recipient of the public interest disclosure must notify the OPI as soon as reasonably practicable that they are in receipt of a public interest disclosure.
- 8.2 Notification is to occur by way of the notification form on the ICAC website (www.icac.sa.gov.au) and must include the following information:
 - 8.2.1 the date the disclosure was received;

- 8.2.2 the name and contact details of the recipient of the disclosure (being the relevant authority with the Council who initially received the disclosure);
 - 8.2.3 a summary of the content of the disclosure;
 - 8.2.4 the assessment made of the disclosure;
 - 8.2.5 the action taken by the recipient of the disclosure, including:
 - (a) whether the disclosure was referred to another relevant authority (including to a responsible officer or the CEO of the Council), public authority, public officer, or another person; and
 - (b) if the disclosure was referred to a relevant authority, public authority, public officer or another person
 - (c) the date of the referral
 - (d) the identity of that relevant authority, public authority, public officer or another person;
 - (e) the manner of the referral; and
 - (f) the action to be taken by that relevant authority, public authority or public officer or another person (if known).
 - 8.2.6 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 another relevant authority, public authority, public officer or other person (and if so, the reasons why); and
 - 8.2.7 if no action was taken by the recipient of the disclosure, the reasons why.
- 8.3 The recipient of the disclosure must retain the unique reference number issued by the OPI upon making a notification and must provide this to any other person or authority to whom the disclosure is referred, including the responsible officer where relevant.

9. ACTION TAKEN ON A DISCLOSURE:

- 9.1 Informants who make an appropriate disclosure of public interest information must provide sufficient detail and evidence for the matter to be addressed. If the relevant authority determines that there is not sufficient evidence to facilitate an assessment of a disclosure, and the OPI will be advised accordingly.
- 9.2 Relevant authorities at the Council will not be responsible for investigating disclosures of public administration information (being information that raises a potential issue of corruption, or serious/systemic misconduct or maladministration in public administration) in the absence of a direction to do so from the Manager OPI or the ICAC.
- 9.3 Conversely, appropriate disclosures of environmental and health information may be assessed and subsequently investigated by or on behalf of a relevant authority at the Council.

- 9.4 The outcomes of any investigation into a disclosure of environmental and health information will be reported to the CEO. The relevant authority of the Council, responsible for the management of the investigation, will notify the informant of the outcome (where his or her identity is known).
- 9.5 If a relevant authority at the Council takes action in response to the receipt of a public interest information disclosure (which does not consist of a referral), the relevant authority responsible for the management of the disclosure, must, as soon as reasonably practicable, provide the OPI with information in relation to the outcome of the action taken by way of the online notification form (www.icac.sa.gov.au) detailing:
- 9.5.1 the unique identification number issued by the OPI upon notification of the original disclosure;
 - 9.5.2 the name and contact details of the notifier;
 - 9.5.3 the name and contact details of the person or authority responsible for taking the action;
 - 9.5.4 what (if any) findings were made in respect of the disclosure;
 - 9.5.5 the nature of the action taken (if any);
 - 9.5.6 the outcome of any action taken;
 - 9.5.7 whether the identity of the informant was disclosed to a person other than the original recipient of the disclosure; and
 - 9.5.8 whether the informant was notified of the action taken and, if so, when that notification was made.

10. CONFIDENTIALITY:

- 10.1 In accordance with Section 8 of the Act, it is a criminal offence for the identity of an informant to be disclosed in the absence of his or her consent unless:
- 10.1.1 it is necessary to divulge the identity of the informant to ensure that the matters to which the information relates are properly investigated; or
 - 10.1.2 the recipient believes, on reasonable grounds, that it is necessary to divulge the identity of the informant to prevent or lessen an imminent risk of serious harm to any person; and
 - 10.1.3 the identity of the informant is 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 harm; or
 - 10.1.4 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 may disclose the identity of the informant to the OPI.

- 10.2 The details of the public interest disclosure and its assessment, will be securely stored in confidential electronic files at the Council's principal office and will only be accessible by Council's nominated responsible officers (appointed in accordance with the PID Act, by the CEO of the Council).
- 10.3 The responsible officer(s) of the Council are required to ensure, so far as reasonably practicable, that all information in relation to public interest disclosures is received and maintained in a confidential manner.
- 10.4 In giving effect to this responsibility, a responsible officer may employ security measures including, but not limited to:
- 10.4.1 scanning all relevant documentation and keeping all electronic material in secure files in a Public Interest Disclosure folder in Council's records management system (G:/Governance/Public Interest Disclosures).
 - 10.4.2 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
 - 10.4.3 conducting all telephone calls and meetings in relation to a public interest disclosure privately and in the strictest confidence.
- 10.5 A public interest disclosure can also be securely received by a responsible officer at the Council in the first instance, in person, by telephone, by text, in writing or via email.
- 10.6 Written disclosures should be addressed as follows:

CONFIDENTIAL
Responsible Officer – Public Interest Disclosure
PO Box 321
KINGSTON SE SA 5275

- 10.7 Additional contact details for the Council's responsible officers are as follows:

Manager Corporate & Community Services – Mrs Heather Schinckel
Phone: 8767 2033
Email: hschinckel@kingstondc.sa.gov.au

Financial Service Co-ordinator – Mrs Alicia Bastiaans
Phone: 87672033
Email: abastiaans@kingstondc.sa.gov.au

11. SUBJECT OF A PUBLIC INTEREST DISCLOSURE:

- 11.1 In accordance with section 12 of the Act, the CEO must ensure there are risk management steps for assessing and minimising detriment to people against whom allegations are made in a public interest disclosure.

11.2 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:

11.2.1 keeping the identity of the informant, and the subject of the disclosure, confidential;

11.2.2 flexibility as to when meetings are held, if and when necessary; and

11.2.3 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.

11.3 The Council also commits to supporting all relevant authorities at the Council who receive any appropriate disclosures of public interest information.

12. REVIEW OF THE PROCEDURE:

12.1 This Procedure will be reviewed once in the term of the Council, or as required as a result of amendments to the Act, Regulations, Guidelines or the statutory public integrity framework generally.

13. AVAILABILITY OF THE PROCEDURE:

13.1 This Procedure is available for inspection at the Council office during ordinary business hours, 8.30am to 5.00pm, Monday to Friday.

13.2 A copy of the Procedure will also be provided to the public upon request and upon payment of a fee in accordance with the Council's Schedule of Fees and Charges.

13.3 The Procedure is also available to download via the Council's website: www.kingstondc.sa.gov.au