

AP179 PUBLIC INTEREST DISCLOSURE PROCEDURE

OVERVIEW

Any person is entitled and encouraged to make a public interest disclosure (PID) about wrongdoing in the public sector relating to -

- a. a substantial and specific danger to the health and safety of a person with a disability; or
- b. an offence or a contravention of a condition which endangers the environment; or
- c. conduct which could be a reprisal.

Public officers are entitled to make the above PIDs, as well as PIDs related to -

- a. corrupt conduct; or
- b. maladministration that adversely affects a person's interest in a substantial and specific way; or
- c. a substantial misuse of public resources (other than an alleged misuse based on mere disagreement over policy that may properly be adopted about amounts, purposes or priorities of expenditure); or
- d. a substantial and specific danger to public health or safety; or
- e. a substantial and specific danger to the environment.

Brisbane City Council (Council) has a responsibility to ensure that PIDs are dealt with in accordance with the *Public Interest Disclosure Act 2010* (the Act).

APPLICABILITY

While any person is entitled to make a PID, this procedure only applies to Council public officers, a person engaged by Council under a 'contract of service' and Council volunteers.

This procedure outlines not only how a disclosure can be made, but also the provisions that apply and the protections they may afford a discloser under the Act.

However, while this procedure does cover individuals engaged by Council under a 'contract of service' or as a Council volunteer, as they are not deemed 'public officers' they are, limited:

- a. in the types of PIDs they can make; and
- b. in the scope of the services they will receive from Council.

DEFINITIONS

The following definitions apply to this procedure:

the Act refers to the *Public Interest Disclosure Act 2010*

corrupt conduct by a public sector employee is conduct that constitutes or could constitute a criminal offence, or a disciplinary breach that provides reasonable grounds for the termination of an employee's employment and may involve:

- a. performance of duties in a way that is not honest or impartial; or
- b. a breach of the community's trust; or
- c. the improper dissemination of information.

detriment includes:

- a. personal injury or prejudice to safety;
- b. property damage or loss;



- c. intimidation or harassment;
- d. adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business;
- e. financial loss; and
- f. damage to reputation, including, for example personal, professional or business reputation.

discloser means, for the purposes of this procedure, a public officer, a contractor engaged by Council under a 'contract for service' and a volunteer making a PID in accordance with the Act.

disclosure is a PID of information to a proper authority in accordance with the Act and includes all information and help given by the discloser to the proper authority.

employee means a person employed by Council whether on a permanent, temporary or casual basis and includes a person engaged under a 'contract of service'.

maladministration is administrative action that -

- a. was taken contrary to law; or
- b. was unreasonable, unjust, oppressive, or improperly discriminatory; or
- c. was in accordance with a rule of law or a provision of an act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory in the circumstances; or
- d. was taken for an improper purpose; or
- e. was taken on irrelevant grounds; or
- f. was taken having regard to irrelevant considerations; or
- g. was an action for which reasons should have been given, but were not given; or
- h. was based wholly or partly on a mistake of law or fact; or
- i. was wrong.

proper authority means a person or organisation that is authorised under the Act to receive disclosures. For clarity, this means: Council, a member of the Legislative Assembly and the appropriate external entities as prescribed in Annexure 1.

PID Standards are the PID standards issued by the Queensland Ombudsman under section 60 of the Act and detail the actions a proper authority must take when preparing for and responding to a disclosure.

public officer means an employee or officer of Council.

public sector entity has the meaning as defined in section 6 of the Act and includes a local government.

public health or safety includes the health or safety of persons:

- a. under lawful care or control; or
- b. using community facilities or services provided by the public or private sector; or
- c. in employment workplaces.

reprisal means where a person causes, or attempts or conspires to cause, detriment to another person because, or in the belief that -

- a. the other person or someone else has made, or intends to make, a disclosure; or
- b. the other person or someone else is, has been, or intends to be, involved in a proceeding under the Act against any person.

subject officer is an employee who is the subject of allegations of wrongdoing made in a disclosure.

wrongdoing means conduct or other matter as defined at section 12(1) and 13(1) of the Act.

PROCEDURE

1. Disclosing to Council

- (1) Within Council, a disclosure can be made to the —
 - a. Chief Executive Officer (CEO); or
 - b. Chief Legal Counsel (CLC); or
 - c. General Manager, Ethical Standards. The General Manager, Ethical Standards also fulfils the role of Council's PID Coordinator. The specific responsibilities of the PID Coordinator are detailed in Annexure 2.
- (2) A discloser can make a disclosure either verbally or in writing. The discloser may identify themselves or remain anonymous. While not essential, the discloser should identify, where possible, that the information provided is a PID.

The likelihood of a successful outcome is increased greatly if, when making a disclosure, the discloser's identity is known. If an anonymous disclosure is made, it may not be possible for Council to keep the discloser informed of the progress in handling the disclosure and the discloser could experience difficulties in relying upon the protections afforded by the Act. It is recommended that an anonymous discloser provide an email address specifically set up for the purpose of making the disclosure and through which the discloser can be kept informed of progress. If the disclosure is anonymous and enough information is provided, Council is committed to act upon the disclosure.

- (3) Ethical Standards (ES) is responsible for the assessment of PIDs and the support of all disclosers under the Act and, for the purposes of Council PID matters, to fulfil the role of PID Support Officers. This includes providing sufficient information to the Queensland Ombudsman's database. The specific responsibilities of PID Support Officers are detailed in Annexure 2. In the event where a possible PID is disclosed to the CEO or CLC, these will be referred to ES for assessment, except in circumstances where there is a real, perceived or potential conflict of interest with ES.

While ES has responsibility under the Act as PID Support Officers, the discloser's work area may also be involved in providing support to the discloser, in conjunction with ES, where appropriate.

2. Disclosing to an External Entity

- (1) Disclosers may choose to make a disclosure to someone external to Council. This can be done as a first step or if disclosers are not satisfied with Council's response to a disclosure. While disclosers are urged to disclose to an appropriate person within Council, as outlined in the Disclosing to Council section of this procedure, Council will respect and support disclosers making a disclosure to an appropriate external entity. For a comprehensive list of appropriate external entities please refer to Annexure 1.
- (2) Disclosers should be aware when making a disclosure to an appropriate external entity, it is very likely that the entity will discuss the disclosure with Council. Council will make every effort to assist and cooperate with any appropriate external entity dealing with a disclosure to work towards a satisfactory outcome.
- (3) If disclosers make a disclosure to a person or an organisation other than an appropriate external entity that can investigate and deal with the disclosure, disclosers will not receive the protections provided under the Act.

3. Making a disclosing to Council as a member of the public

If a member of the public wishes to make a disclosure to Council as a PID, this will be assessed and managed by the PID Coordinator to ensure they are informed about the outcome of this assessment, the resolution of the matter and their rights as a discloser if applicable. Under the PID Act, reprisal against any discloser, including a member of the public, is an offence; it also makes Council liable if any of the entity's employees attempt or cause reprisal against a discloser (whether a public officer or a member of the public). All members of the public, if wishing to make a disclosure to Council as a PID, should be directed to the General Manager, ES.

4. Information to Disclose

- (1) To ensure a comprehensive and successful assessment or investigation of suspected wrongdoing, disclosers are encouraged to provide all known information that might be relevant including:
 - a. the circumstances of the incident/matter including dates, times and locations;
 - b. the details of person/s involved;
 - c. the details of any witnesses; and
 - d. possible sources of additional information or evidence, e.g. records, CCTV footage.

5. Deciding on What Action to Take

- (1) Once a disclosure is received, the CEO, CLC, or in most matters the PID Coordinator, will assess the disclosure to determine whether it requires:
 - a. referral to another proper authority; or
 - b. further enquiries to be made; or
 - c. investigation; or
 - d. finalisation; or
 - e. no action.
- (2) Where possible, the discloser will be advised of the outcome of this assessment.

6. Referring a Public Interest Disclosure

- (1) If Council decides there is another proper authority that is better able to deal with the disclosure, the disclosure may be referred to that proper authority. This may be because:
 - a. the disclosure concerns wrongdoing by that proper authority or an employee of that agency;
 - b. that proper authority has the power to investigate or remedy the matter.
- (2) Before referring the disclosure to another proper authority, Council will conduct a risk assessment, and will not proceed with the referral if there is an unacceptable risk of reprisal.

7. Assessing a Disclosure

- (1) If there is any doubt as to whether a matter is a disclosure, further information may be obtained to inform the decision. If doubt still remains, the matter will be considered and managed as a disclosure.
- (2) Mere disagreement over policy does not meet the threshold for a disclosure to be upheld under the Act.

- (3) The disclosure will be assessed in accordance with the Act, the PID Standards and any other relevant procedures and will be undertaken by Council's PID Support Officers, with oversight from the PID Coordinator.

8. When No Action is Required

- (1) Council may decide not to investigate or deal with a disclosure if:
 - a. the substance of the disclosure has already been investigated or dealt with by another appropriate process; or
 - b. Council reasonably considers that the disclosure should be dealt with by another appropriate process; or
 - c. the age of the information that is the subject of the disclosure makes it impracticable to investigate; or
 - d. Council reasonably considers that the disclosure is too trivial to warrant investigation and that dealing with the disclosure would substantially and unreasonably divert Council resources; or
 - e. there has been insufficient information or evidence provided by the disclosure to allow for a meaningful investigation to be undertaken; or
 - f. another entity that has jurisdiction to investigate the disclosure has notified Council that the investigation of the disclosure is not warranted.
- (2) If Council decides not to investigate or deal with the disclosure, it will advise the discloser. A discloser, dissatisfied with that decision, may within 28 days after receiving the written reasons, apply in writing to the CEO for an internal review of the decision. Once all rights of internal review have been exhausted, the discloser may make a complaint to the Queensland Ombudsman in accordance with section 20 of the *Ombudsman Act 2001* if they remain dissatisfied.

9. Commitment to Keeping the Discloser Informed

- (1) All disclosures received by Council will be acknowledged in writing. In addition, Council will give the discloser reasonable information about their disclosure, including:
 - a. confirmation that the disclosure was received;
 - b. a description of the action proposed to be taken, or taken, in relation to the disclosure and the reasons for the decision;
 - c. likely timeframes;
 - d. if action has been taken in relation to the disclosure, a description of the results of the action; and
 - e. contact details for further information or to advise in the event of a suspected reprisal, including that of the PID Coordinator. Refer to Annexure 2 for these contact details.
- (2) Council may withhold the aforementioned information if giving the information would be likely to adversely affect:
 - a. anybody's safety; or
 - b. the investigation of an offence or possible offence; or
 - c. necessary confidentiality about an informant's existence or identity.

10. Commitment to Providing Support

- (1) Council will initiate and coordinate action to support disclosers making a disclosure. This includes the allocation of a PID Support Officer to each discloser and the provision of their contact details in the initial confirmation letter to the discloser. The PID Support Officer, with assistance from the relevant Council work area, where appropriate, will undertake actions which may include:
 - a. providing moral and emotional support;

- b. advising the discloser about the resources available in Council to manage any concerns the discloser may have as a result of making a disclosure;
- c. referring the discloser to the Employee Assistance Program;
- d. generating support for the discloser in the work area if appropriate;
- e. ensuring that any suspicions of victimisation or harassment are dealt with;
- f. maintaining contact with the discloser.; and
- g. negotiating with the discloser, PID Coordinator and work area, where appropriate, a formal end to the discloser's involvement with the support program, when it is agreed that the discloser no longer needs assistance.

11. Commitment to Confidentiality

- (1) Maintaining confidentiality is very important in the handling of a disclosure. Everyone involved in the administration of disclosures must maintain confidentiality. Confidentiality protects the discloser and any other people affected by the disclosure against reprisals.
- (2) The Act does not expressly require that information relating to a disclosure, such as the allegations and evidence, be maintained as confidential. However, such information must be treated confidentially except where the investigation process requires this information to be disclosed, e.g. where the evidence must be put to the subject officer.
- (3) For the purposes of this procedure, confidential information includes:
 - a. the fact a disclosure has been made;
 - b. any information that may identify the discloser or any subject officer;
 - c. the actual information that has been disclosed; and
 - d. information relating to the disclosure that, if known, may cause detriment to any person.
- (4) In protecting the discloser's confidentiality, Council will ensure that the details of the disclosure, the investigation and related decisions will be kept secure. However, while every attempt to protect confidentiality will be made, there will be occasions when disclosure of the discloser's identity may be necessary. These include but are not limited to:
 - a. providing natural justice to the subject officer;
 - b. responding to a court order or legal directive (e.g. subpoena, notice to produce); or
 - c. court proceedings.
- (5) Council will advise the discloser if their identity needs to be revealed for any reason and seek consent if possible. Council will take all necessary steps, to avoid a situation where the discloser's identity will need to be revealed. Disclosers should also be aware that information provided as part of their PID may be used in a disciplinary process against Council officers, if deemed appropriate.
- (6) While Council is prepared to take all steps necessary to protect the confidentiality of the information that is disclosed, the discloser has some confidentiality obligations. The fewer people who know about the disclosure — both before and after it is made — the more likely it is that Council will be able to keep identities confidential and protect persons from any form of reprisal. Council encourages disclosers not to talk about their disclosure to their colleagues or any other person to whom a disclosure would increase the risk of reprisal, or the identity of the discloser becoming known.

12. Commitment to Provide Protection & Respond to Reprisals

- (1) Disclosers should not suffer any form of detrimental action as a result of making a disclosure, including:

- a. unfair treatment;
 - b. harassment;
 - c. intimidation;
 - d. victimisation; or
 - e. unlawful discrimination.
- (2) Council is committed to ensuring that no disciplinary or adverse action, including workplace reprisals by managers, occurs as a result of an individual making a disclosure. On receipt or referral of a disclosure, the PID Coordinator and PID Support Officers will assess the risk to the discloser of reprisal, including if the disclosure should be referred to another party.
- (3) If detrimental action does occur as a result of a disclosure, the discloser has the right to request that Council takes positive action to protect them. The discloser should immediately contact the PID Coordinator, PID Support Officer, or their manager or team leader, where appropriate, and advise of the adverse action.
- (4) Disclosers should be aware that the submission of a disclosure does not prevent disciplinary action being taken against the discloser, if that action is warranted for a disciplinary breach.
- (5) All Council managers and team leaders are under an obligation to notify the PID Coordinator if it is reported, or they suspect, that a discloser is suffering reprisal as a result of making a disclosure.
- (6) Reprisal by Council employees against a discloser may constitute corrupt conduct and may be referred to the Crime and Corruption Commission, following assessment by ES. Reprisals are indictable offences which carry a maximum penalty of 167 penalty units or two years imprisonment.
- (7) Disclosers may be able to seek compensation if they have suffered a reprisal. Legal advice should be sought by disclosers in these circumstances.

13. Rights of subject officers

- (1) Council acknowledges that for officers who are the subject of a disclosure the experience may be stressful. Council will protect their rights by:
- a. assuring them that the disclosure and any subsequent investigation, will be dealt with impartially, fairly and reasonably in accordance with the principles of natural justice;
 - b. confirming that the disclosure is an allegation only until information or evidence obtained through an investigation substantiates the allegation;
 - c. providing them with information about their rights, including the right of reply to any allegations, and the progress and outcome of any investigation;
 - d. referring them to the Employee Assistance Program for support. Information and support will be provided to a subject officer throughout the process.

14. Disclosure to Journalists

- (1) The discloser can make a disclosure to a journalist if they have already made that disclosure to a proper authority and the proper authority:
- a. has decided not to investigate or deal with the disclosure; or
 - b. has investigated the disclosure but did not recommend any action be taken; or
 - c. did not notify the person within six months, whether or not the disclosure would be dealt with or investigated.

- (2) Where a discloser makes a disclosure to a journalist, the disclosure is to be substantially the same information that was provided to the proper authority.

15. False or Misleading Information

- (1) A person, who gives information to a proper authority, knowing that it is false or misleading and intending that it be acted upon as a disclosure, may face disciplinary action and criminal prosecution. Knowingly providing false or misleading information is different from information that turns out to be incorrect or unable to be substantiated.
- (2) A person giving false or misleading information to a proper authority, with the intention of having that disclosure acted on as a disclosure can commit an offence that carries a maximum penalty of 167 penalty units or two years imprisonment.
- (3) While any assessment of whether a disclosure is false or misleading will take into account the circumstances of the individual matter, indicators of a false or misleading disclosure include:
 - a. the discloser has a history of making false, vexatious or unsubstantiated complaints;
 - b. there is no information to support the allegation in any way;
 - c. the allegation is not serious or sensible, and is of such a nature that a reasonable person could not treat it as being genuine; or
 - d. the allegation appears, on face value, to be without foundation and designed to harass, annoy or embarrass the subject officer.

16. Reporting to the Queensland Ombudsman

- (1) Council must provide the Queensland Ombudsman with information about all disclosures received. This is done by updating the Queensland Ombudsman's database with the required information. Names and other personal identifying factors are not reported. Updating the database is the responsibility of ES and is undertaken once a disclosure has been assessed as a PID and closed out once all action in regard to the disclosure has been finalised.

RELATED INFORMATION

Public Sector Ethics Act 1994
Public Interest Disclosure Act 2010
Crime and Corruption Act 2001
HRP040 Code of Conduct
AP185 Complaints Management Policy

Annexure 1

Appropriate external entities

Conduct	Appropriate Entity
Corrupt conduct	Crime and Corruption Commission, Queensland Police Service
Danger to public health or safety	Queensland Health; Health Ombudsman; Workplace Health and Safety Queensland; Queensland Police Service; or the relevant local council
Danger to health and safety of a person with a disability	Department of Communities, Disability Services and Seniors; Adult Guardian; Department of Health; Queensland Police Service
Danger to environment	Department of Environment and Science or the relevant local council
Substantial loss of public funds	Queensland Audit Office, Queensland Police Service
Reprisal	Crime and Corruption Commission (a reprisal would normally constitute corrupt conduct), Queensland Human Rights Commission, Queensland Police Service.

Annexure 2

Roles and responsibilities in assessing and managing PIDs

The CEO has assigned the following roles and responsibilities for managing PIDs within Council:

Role:	Responsibilities:	Officer:
PID Coordinator	<ul style="list-style-type: none"> principal contact for PID issues within Council document and manage implementation of PID management program review and update PID procedure annually maintain and update internal records of PIDs received report data on PIDs to Queensland Ombudsman assess PIDs received provide acknowledgment of receipt of PID to discloser undertake risk assessments in consultation with disclosers and other relevant officers liaise with other agencies about referral of PIDs allocate Investigator and Support Officer to PID matter 	<p>General Manager, Ethical Standards. (07) 3403 6797. ethicalstandards@brisbane.qld.gov.au</p>
PID Support Officer	<ul style="list-style-type: none"> provide advice and information to discloser on Council's PID procedure provide personal support and referral to other sources of advice or support as required facilitate updates on progress of investigation proactively contact discloser throughout PID management process 	<p>Ethical Standards. (07) 3403 6797. ethicalstandards@brisbane.qld.gov.au</p>
Investigator	<ul style="list-style-type: none"> conduct investigation of information in PID in accordance with terms of reference prepare report for delegated decision-maker 	<p>An appropriate internal or external investigator will be appointed for each PID investigated depending upon the type of disclosure and other relevant considerations.</p> <p>All investigations, whether undertaken by an external or internal investigator will be coordinated by Ethical Standards.</p>
Delegated decision-maker	<ul style="list-style-type: none"> review investigation report and determine whether alleged wrongdoing is substantiated 	<p>An appropriate decision-maker will be appointed for each PID investigated.</p>