

# PUBLIC INTEREST DISCLOSURE

## 1. Purpose

The purpose of this Policy is to ensure that Council:

- properly fulfils its legislative responsibilities
- encourages and facilitates disclosures of public interest information in accordance with the objects and requirements of the PID Act
- ensures there is appropriate oversight of public interest disclosures about corruption, misconduct and maladministration in public administration
- provides appropriate protection for those who make disclosures in accordance with the PID Act, and
- acknowledges the need to appropriately support informants, the responsible officer and, as appropriate, those public officers affected by any appropriate disclosure.

## 2. Scope

This Policy applies to appropriate disclosures of public interest information that are made in accordance with the PID Act by public officers including Elected Members, Council Committee Members, officers and employees of the Council (including Alwyndor), and by members of the public.

It should be noted that any matters relating to clients of Alwyndor are also subject to notification provisions in the *Aged Care Act 1997* (Cth) (*Aged Care Act*), which have shorter reporting timeframes than the PID Act.

Anyone can receive the protection of the PID Act if an appropriate disclosure is made of environmental and health information in accordance with the PID Act. Only public officers are eligible for the protections under the PID Act if making an appropriate disclosure of public administration information.

Nothing in this policy relieves public officers of other reporting requirements, namely:

- public officers must report to the Office for Public Integrity (OPI) any conduct in public administration they reasonably suspect involves corruption unless they know it has already been reported to OPI, and
- public officers are no longer mandated to report misconduct or maladministration in public administration however, the Ombudsman expects breaches of these matters to be reported to them.

### 3. Roles and Responsibilities

Elected Members, Council Committee Members, officers and employees of the Council (including Alwyndor), and by members of the public	Report disclosures of public interest information in accordance with requirements detailed within policy and procedure.
Responsible Officers: General Manager Community & Business General Manager Strategy & Corporate	Will liaise as required with the informant and any independent assessor in relation to any investigation process undertaken in accordance with the Public Interest Disclosure Procedure, and will ensure that the informant is provided with support and protection as necessary and appropriate in the circumstances of the disclosure.

### 4. Policy Statement

Council is committed to:

- referring appropriate disclosures to another relevant authority when necessary
- reporting the disclosure directly to the OPI in accordance with the requirements of the *Independent Commissioner Against Corruption Act 2012* (ICAC Act) and relevant guidelines where a disclosure relates to corruption, or serious or systemic misconduct or maladministration in public administration
- 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.

This policy is designed to complement existing communication channels within Council, and operates in conjunction with relevant fraud, corruption and behavioural management policies.

#### Confidentiality

- 4.1 With the exception of circumstances listed in 4.2, the identity of an informant will be kept confidential.
- 4.2 A recipient of an appropriate disclosure may only divulge the identity of an informant where:
- on reasonable grounds, the recipient believes 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 is the most appropriate authority or person to be able to take action to prevent or minimise the risk
  - the recipient has been issued with a notice from the Office for Public Integrity (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
  - doing so is necessary for the matter to be properly investigated (but only to the extent necessary to ensure proper investigation), or
  - the informant consents to his/her identity being disclosed.
- 4.2 In considering whether to further disclose other information provided as part of an appropriate disclosure, council will be mindful of the prohibition against victimisation in the PID Act.

- 4.3 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.

### Disclosures

- 4.4 Disclosures are to be handled in accordance with the Public Interest Disclosure Procedure.
- 4.5 Nothing in this Policy prevents a person from making a disclosure to a relevant authority external to council (i.e., the Ombudsman, ICAC or OPI). This is a choice to be made by the informant.
- 4.6 A disclosure may be made to the council's designated responsible officer in person, by telephone or in writing. The relevant contact details are:

General Manager Community & Business, or  
General Manager Strategy & Corporate  
8299 9999  
[PID@holdfast.sa.gov.au](mailto:PID@holdfast.sa.gov.au), or

CONFIDENTIAL Public Interest Disclosure  
Attention: Responsible Officer [include position title]  
PO Box 19  
BRIGHTON SA 5048

- 4.7 It should be noted that any disclosures relating to clients of Alwyndor must also be managed under the Aged Care Act, via the General Manager, Alwyndor.

### Protection for an Informant

- 4.8 An informant who makes an appropriate disclosure is protected by the PID Act via:
- immunity from criminal or civil liability, as provided for in section 5(1)
  - a prohibition on disclosure of their identity, as provided for in section 8
  - a prohibition against victimization, as provided for in section 9, and
  - a prohibition against hindering, obstructing or preventing an informant from making an appropriate disclosure, as provided for in section 11.
- 4.9 Protections do not extend to people who knowingly make disclosures that are false or misleading in a material particular (whether by reason of the inclusion or omission of a particular). Disclosures that are false or misleading in a material particular are an offence.
- 4.10 Victimising informants is an offence and Council will take action as appropriate to protect Informants from victimisation.
- 4.11 Any Elected Member or employee or officer of council who:
- knowingly makes a disclosure that is materially false or misleading, or
  - commits an act of victimisation in relation to an informant, or
  - acts otherwise than in accordance with this Policy or the Public Interest Disclosure Procedure (including, but not limited to, divulging the identity of an informant) in relation to a disclosure
- may also face disciplinary action by the Council or the Chief Executive Officer (as appropriate) in accordance with relevant policies and codes of conduct.

## Role of the Principal Officer

- 4.12 The Principal Officer (Chief Executive 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 undertake any training required by the relevant Regulations
  - ensuring that the name and contact details of each responsible officer of the council are made available to officers and employees
  - as a matter of discretion, informing elected members on a confidential basis of investigations of a disclosure that have taken place and the outcome of an investigation. Factors that the Principal Officer can take into account in determining whether to inform elected members, and the level of detail provided, include:
    - (i) whether the informant has consented to their identity being divulged
    - (ii) if applicable, the identity of any person that is a subject of the disclosure
    - (iii) any impact of the investigation upon the council's achievement of its objectives under its strategic plans or policies
    - (iv) the impact of any action taken to finalise the matter on council's operations or budget.
- 4.13 Where a disclosure or subsequent investigation process is related to council employees and human resource processes, elected members will not be informed of the disclosure or investigation as these matters fall outside their roles and responsibilities under the *Local Government Act 1999*.

## Role of the Responsible Officer

- 4.14 The responsible officer will liaise as required with the informant and any independent assessor in relation to any investigation process undertaken in accordance with the Public Interest Disclosure Procedure, and will ensure that the informant is provided with support and protection as necessary and appropriate in the circumstances of the disclosure.
- 4.15 A person designated as a responsible officer for the council must:
- receive and manage disclosures and ensure compliance with the PID Act, and the Organisational Public Interest Disclosure Procedure
  - make appropriate recommendations to the principal officer of the council in relation to dealing with disclosures, including any suggested changes to this Policy or the Organisational Public Interest Disclosure Procedure
  - provide advice to officer and employees of council in relation to the administration of the PID Act, and
  - complete any training courses approved by the Commissioner for the purposes of the Public Interest Disclosure Regulations.
- 4.16 A person designated as a responsible officer for council may:
- carry out any other functions relating to the PID Act.
  - seek legal advice from council's lawyers and/or guidance from SAPOL or other relevant authority in relation to the most appropriate course of action to pursue,
  - incur costs for that purpose in accordance with the council's Budget and delegations.

4.17 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. In performing their 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 disclosure and/or is a product of the associated investigation/reporting process. All such information will be securely stored in ECM and accessible only to responsible officers. In the event that a person's appointment as a responsible officer ends, 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. These provisions extend to any independent assessor.

## 5. Definitions

Refer to Appendix A on page 7.

## 6. Administration Use Only

Reference Number:	Document Set ID: 4846352
Strategic Alignment:	Council's vision for 2050+ is, in part, to create "a welcoming and healthy place for all in South Australia's most sustainable city". Both sustainability and wellbeing are built on a foundation of trust. The public interest disclosure policy contributes to building trust in public governance and Council.
Strategic Risk:	Poor or ineffective management of legislative and regulatory obligations and ongoing changes.
Responsible Officer(s):	General Manager Strategy & Corporate Manager Strategy & Governance
First Issued / Approved:	9 July 2019, C090719/1547
Minutes Date and Council Resolution Number:	C280125/7975
Last Reviewed:	28 January 2024
Next Review Date:	28 January 2028
Applicable Legislation:	<i>Independent Commission Against Corruption Act 2012</i> <i>Ombudsman Act 1972</i> <i>Public Interest Disclosure Act 2018 and Regulations 2019</i> <i>Local Government Act 1999</i> <i>Criminal Law Consolidation Act 1935</i> <i>Aged Care Act 1997 (Cth)</i>
Related Policies:	<ul style="list-style-type: none"> <li>• Council Fraud, Corruption, Misconduct and Maladministration Policy</li> <li>• Model Public Interest Disclosure Policy and Procedures (issued by the LGA)</li> </ul>
Other Reference Documents:	<ul style="list-style-type: none"> <li>• <a href="#">Ombudsman SA Directions and Guidelines</a></li> <li>• Office of Public Integrity Direction and Guidelines</li> <li>• Public Interest Disclosure Guidelines (issued by the ICAC)</li> </ul>

	<ul style="list-style-type: none"><li>• Codes of Conduct and associated policies for employees and Elected Members</li><li>• Organisational Public Interest Disclosure Procedure.</li></ul>
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## Appendix A

- Commissioner -** the person holding or acting in the office of the Independent Commissioner Against Corruption.
- Corruption -** in public administration is defined in section 5(1) of the ICAC Act and means:
- an offence against Part 7 Division 4 (Offences 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
  - 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
  - an offence against the *Lobbyists Act 2015*, or an attempt to commit such an offence; or
  - any other offence (including an offence against Part 5 (Offences of dishonesty) of the *Criminal Law Consolidation Act 1935*) committed by a public officer while acting in his or her capacity as a public officer or by a former public officer and related to his or her former capacity as a public officer, or by a person 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
  - 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 -** the City of Holdfast Bay.
- Detriment** includes:
- injury, harm (including psychological harm), damage (including damage to reputation) or loss
  - intimidation or harassment
  - discrimination, disadvantage or adverse treatment in relation to a person's employment, and/or
  - threats of reprisal (which may be express or implied, and/or conditional or unconditional).
- Directions/  
Guidelines –** refers 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](http://www.icac.sa.gov.au)).
- Disclosure -** an appropriate disclosure of public interest information made by an informant to a relevant authority.
- A person makes an appropriate disclosure of environmental and health information if:
- (a) the person:

- believes on reasonable grounds that the information is true, or
  - 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:

- is a public officer
- 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, whether they are working in a full-time, part-time or casual capacity.

**Environmental & health info -** 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.

**Independent Assessor -** means the person designated by the responsible officer as being responsible for investigating a disclosure made to the City of Holdfast Bay in accordance with the Organisational Public Interest Disclosure Procedure.

**Informant -** means a person who makes an appropriate disclosure of public interest information to a relevant authority.

**Maladministration -** in public administration is defined in section 4 of the *Ombudsman Act 1972* Act and means:

- conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources, or
- conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions, and includes conduct resulting from impropriety, incompetence or negligence, and is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

**Misconduct -** in public administration is defined in section 4 of the *Ombudsman Act 1972* and means an intentional and serious contravention of a code of conduct by a public officer while acting in their capacity as a public officer that constitutes ground for disciplinary action against the officer.

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

- receive and assess complaints about public administration from members of the public
- receive and assess reports 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, and



- perform other functions assigned to the Office by the Commissioner.

**Public administration** - defined at section 4 of the ICAC Act and, without limiting the acts that may comprise public administration, an administrative act within the meaning of the *Ombudsman Act 1972* will be taken to be carried out in the course of public administration.

**Public administration information** -

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

**Public interest information** -

means environmental or health information, or public administration information.

**Principal Officer** -

for the purposes of the PID Act means the Chief Executive Officer of the Council.

**Public Officer** -

has the meaning given by section 4 and Schedule 1 of the ICAC Act, and includes:

- a Council member; and
- an employee or officer of the Council.

**Relevant Authority** -

means the person or entity that receives an appropriate disclosure of public interest information in accordance with the PID Act, as follows:

Where the information relates to...	the relevant authority is...
a public officer*  *as defined and set out in Schedule 1 of the <i>Independent Commissioner Against Corruption Act 2012</i> - relevantly, this includes members, officers and employees of local government bodies	either: <ul style="list-style-type: none"> <li>• the person who is designated by the Guidelines as being taken to be responsible for management or supervision of the public officer; or</li> <li>• the person who is in fact responsible for the management or supervision of the public officer; or</li> <li>• the relevant responsible officer (as designated by the Council in accordance with section 12 of the PID Act)</li> </ul>
a public sector agency or public sector employee	either: <ul style="list-style-type: none"> <li>• the Commissioner for Public Sector Employment; or</li> <li>• the responsible officer for the relevant public sector agency</li> </ul>
an agency to which the <i>Ombudsman Act 1972</i> applies	the Ombudsman
a location within the area of a particular council established under the <i>Local Government Act 1999</i>	a member, officer or employee of that Council
a risk to the environment	the Environment Protection Authority
an irregular and unauthorised use of public money or substantial	the Auditor-General
the commission, or suspected commission, of any offence	a member of the police force
a judicial officer	the Judicial Conduct Commissioner
a member of Parliament	the Presiding Officer of the House of Parliament to which the member belongs
a person or a matter of a prescribed class <sup>1</sup>	an authority declared by the regulations to be a relevant authority in relation to such information

<p>public interest information - being:</p> <ul style="list-style-type: none"> <li>• environmental and health information (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</li> <li>• public administration information (information that raises a potential issue of corruption, misconduct or maladministration in public administration)</li> </ul>	<ul style="list-style-type: none"> <li>• the OPI;</li> <li>• a Minister of the Crown; or</li> <li>• any other prescribed person or person of a prescribed class</li> </ul>
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<sup>1</sup> at this stage, no prescribed persons or classes have been identified.

**Responsible Officer** - is a person who has completed any training courses approved by the Commissioner for the purposes of the Public Interest Disclosure Regulations 2019 and has been designated by the Council as responsible officer under section 12 of the PID Act.

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