



BANANA SHIRE COUNCIL

Procedure

TITLE	PUBLIC INTEREST DISCLOSURE PROCEDURE
APPROVED BY CEO	19 November 2014
REVIEWED/AMENDED	23 November 2016 28/02/2018 Ordinary Meeting – Minute OM003993

PURPOSE

By complying with the Public Interest Disclosure (PID) Act, Council will:

- promote the public interest by facilitating public interest disclosures (PIDs) of wrongdoing
- ensure that PIDs are properly assessed and, where appropriate, properly investigated and dealt with
- ensure appropriate consideration is given to the interests of persons who are the subject of a PID
- ensure protection from reprisal is afforded to persons making PIDs

As required under the PID Act, the Chief Executive Officer will implement procedures to ensure that:

- any public officer who makes a PID is given appropriate support
- PIDs made to Council are properly assessed and, where appropriate, properly investigated and dealt with
- appropriate action is taken in relation to any wrongdoing which is the subject of a PID
- public officers who make PIDs are offered protection from reprisal by Council or other public officers of Council

This Public Interest Disclosure Procedure is available for public viewing on the Council's website.

The Public Interest Disclosure Procedure will be reviewed in accordance with the Council's procedure review schedule.

INTRODUCTION

Council is committed to fostering an ethical, transparent culture. In pursuit of this, Council values the disclosure of information about suspected wrongdoing in the public sector so that it can be properly assessed and, if necessary, appropriately investigated. Council will provide support to an employee or others who make disclosures about matters in the public interest. This Procedure demonstrates this commitment, and ensures that practical and effective procedures are implemented which comply with the requirements of the *Public Interest Disclosure Act 2010* (PID Act).

PROCEDURE

PID Management Program

The Chief Executive Officer has overall responsibility for ensuring that Council develops, implements and maintains a PID management program.

The Council PID management program encompasses:

- commitment to encouraging the internal reporting of wrongdoing
- senior management endorsement of the value to Council of PIDs and the proper management of PIDs
- a communication strategy to raise awareness among employees about PIDs and Council's PID procedure
- training about how to make a PID, information on the support available to a discloser, and advice on how PIDs will be managed
- determining roles responsible for issues related to the management of PIDs;
- ensuring effective systems and procedures are in place so that issues and outcomes from PIDs inform improvements to service delivery, business processes and internal controls
- reviews of the Public Interest Disclosure Procedure and evaluation of the effectiveness of the PID management program

Council Officer:	Responsibilities:
Governance Officer	<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 ▪ maintain and update internal records of PIDs received ▪ report data on PIDs to Queensland Ombudsman ▪ 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
Investigator, the investigator can be the Governance Officer	<ul style="list-style-type: none"> ▪ conduct investigation of information in PID in accordance with terms of reference ▪ prepare report for delegated decision-maker
Delegated decision-maker, the decision maker can be the Governance Officer where another party has undertaken the investigation.	<ul style="list-style-type: none"> ▪ review investigation report and determine whether alleged wrongdoing is substantiated

Disclosure Process

When making a PID the discloser receives the protections provided under the PID Act, including:

- confidentiality – the discloser's name and other identifying information will be protected to the extent possible
- protection against reprisal – the discloser is protected from unfair treatment by Council and employees of Council as a result of making the PID
- immunity from liability – the discloser cannot be prosecuted for disclosing the information but is not exempt from action if they have engaged in wrongdoing
- protection from defamation – the discloser has a defence against an accusation of defamation by any subject officer

Under the PID Act, any person can make a disclosure about a:

- substantial and specific danger to the health or safety of a person with a disability
- substantial and specific danger to the environment
- reprisal because of a belief that a person has made, or intends to make a disclosure

In addition, public sector officers can make a disclosure about the following public interest matters:

- corrupt conduct
- maladministration that adversely affects a person's interests in a substantial and specific way
- a substantial misuse of public resources
- a substantial and specific danger to public health or safety
- substantial and specific danger to the environment

A discloser can have either a 'reasonable belief' that wrongdoing has occurred, or provide evidence which tends to show the wrongdoing has occurred.

A disclosure amounts to a PID and is covered by the PID Act even if the:

- discloser reports the information as part of their duties – such as an auditor reporting a fraud or an health and safety officer reporting a safety breach
- disclosure is made anonymously – the discloser is not required to give their name or any identifying information
- discloser has not identified the material as a PID – it is up to Council to assess information received and decide if it is a PID
- disclosure is unsubstantiated following investigation – the discloser is protected when the information they provide is assessed as a PID, whether or not it is subsequently investigated or found to be substantiated

Reporting Disclosures

A PID must be made to the 'proper authority' to receive disclosures of the type being made.

Disclosers are encouraged to make a disclosure to an appropriate officer of Council first. If the matter is not resolved, or the discloser is concerned about confidentiality, the disclosure may be made to another appropriate agency. Who to contact within Council:	Other agencies that can receive PIDs:
Any person (including employees) can make a disclosure to: <ul style="list-style-type: none">• Directors• Human Resource Manager• Chief Executive Officer	Disclosures can be made to an agency that has a responsibility for investigating the information disclosed: <ul style="list-style-type: none">• Crime and Corruption Commission (CCC) for disclosures about corrupt conduct including reprisal• Queensland Ombudsman for disclosures about maladministration• Queensland Audit Office for disclosures about a substantial misuse of resources• Department of Child Safety, Youth and Women for disclosures about danger to the health and safety of a child or young person with a disability• Department of Communities, Disability Services and Seniors for disclosures about danger to the health and safety of a person with a disability• Office of the Public Guardian for disclosures about

	<ul style="list-style-type: none">danger to the health and safety of a person with a disabilityDepartment of Environment and Science disclosures about danger to the environment
--	---

A disclosure can also be made to a journalist if the following conditions have been met:

- a valid PID was initially made to a proper authority, and the proper authority:
 - decided not to investigate or deal with the disclosure, or
 - investigated the disclosure but did not recommend taking any action, or
 - failed to notify the discloser within six months of making the disclosure whether or not the disclosure was to be investigated or otherwise dealt with.

A person who makes a disclosure to a journalist in these circumstances is protected under the PID Act. However, disclosers should be aware that journalists are not bound under the confidentiality provisions of section 65 of the PID Act.

Making a PID

A discloser can make a PID in any way, including anonymously, either verbally or in writing. To assist in the assessment, and any subsequent investigation of a PID, disclosers are requested to:

- provide contact details (this could be an email address that is created for the purpose of making the disclosure or a telephone number)
- provide as much information as possible about the suspected wrongdoing, including:
 - who was involved
 - what happened
 - when it happened
 - where it happened
 - whether there were any witnesses, and if so who they are
 - any evidence that supports the PID, and where the evidence is located
 - any further information that could help investigate the PID
- provide this information in writing.

Determining a PID matter

If there is any doubt as to whether a matter is a PID, further information may be obtained to inform the decision. If doubt still remains, the matter will be considered and managed as a PID.

Mere disagreements over policy do not meet the threshold for a PID under the PID Act.

It is an offence under the PID Act to intentionally give false or misleading information intending it be acted on as a PID. Employees may be subject to disciplinary action for intentionally giving false or misleading information in a PID, or during an investigation into a PID.

Assessing a PID

The disclosure will be assessed in accordance with the PID Act, the PID Standard, Council Public Interest Disclosure Procedure and any other relevant procedure(s).

Once the matter has been assessed as a PID, Council will advise the discloser:

- that their information has been received and assessed as a PID

- the action to be taken by Council in relation to the disclosure, which could include referring the matter to an external agency, or investigating
- the likely timeframe involved
- the name and contact details of the Council officer they can contact for updates or advice
- of the discloser's obligations regarding confidentiality
- the protections the discloser has under the PID Act
- the commitment of Council to keep appropriate records and maintain confidentiality, except where permitted under the PID Act
- how updates regarding intended actions and outcomes will be provided to the discloser
- contact details for the Council Employee Assistance Program

If the PID has been made anonymously and the discloser has not provided any contact details, Council will not be able to acknowledge the PID or provide any updates.

Upon receiving a PID, Council will conduct a risk assessment to assess the likelihood of the discloser suffering reprisal action as a result of having made the disclosure. This assessment will take into account the actual and reasonably perceived risk of the discloser suffering detriment, and will include consultation with the discloser.

Consistent with the assessed level of risk, Council will arrange any reasonably necessary support or protection for the discloser.

Referring a PID

If Council decides there is another proper authority that is better able to deal with the PID, the PID may be referred to that agency. This may be because:

- the PID concerns wrongdoing by that agency or an employee of that agency
- the agency has the power to investigate or remedy the matter

In these cases, the discloser will be advised of the action taken by Council.

It may also be necessary to refer the PID to another agency because of a legislative obligation, for example, refer a matter to the Crime and Corruption Commission where there is a reasonable suspicion that the matter involves or may involve corrupt conduct (as required by section 38 of the *Crime and Corruption Act 2001*).

The confidentiality obligations of the PID Act permit appropriate officers of Council to communicate with another agency about the referral of a PID. Officers will exercise discretion in their contacts with any other agency.

Declining to take action on a PID

Under the PID Act, the Council may decide not to investigate or deal with a PID in various circumstances, including:

- the information disclosed has already been investigated or dealt with by another process
- the information disclosed should be dealt with by another process
- the age of the information makes it impractical to investigate
- the information disclosed is too trivial and dealing with it would substantially and unreasonably divert Council from the performance of its functions
- another agency with jurisdiction to investigate the information has informed Council that an investigation is not warranted

If a decision is made not to investigate or deal with a PID Council will give the discloser written reasons for that decision.

If the discloser is dissatisfied with the decision they can request a review by writing to the Chief Executive Officer of Council within 28 days of receiving the written reasons for decision.

Investigating a PID

If a decision is made to investigate a PID, this will be done with consideration for the:

- principles of natural justice
- obligation under the PID Act to protect confidential information
- obligation under the PID Act to protect officers from reprisal
- interests of subject officers

If as a result of investigation, the information about wrongdoing provided in the PID is substantiated, appropriate action will be taken.

Where the investigation does not substantiate wrongdoing, Council will review systems, policies and procedures to identify whether there are improvements that can be made and consider if staff training is required.

Organisational Support for Disclosers

Disclosers should not suffer any form of detriment as a result of making a PID. In the event of reprisal action being alleged or suspected, Council will:

- attend to the safety of disclosers or affected third parties as a matter of priority
- review its risk assessment and any protective measures needed to mitigate any further risk of reprisal
- manage any allegation of a reprisal as a PID in its own right

Details about disclosures, investigations, and related decisions will be kept secure and accessible only to the people involved in the management of the PID. Council will ensure that communication with all parties involved will be arranged discreetly to avoid identifying the discloser wherever possible.

While Council will make every attempt to protect confidentiality, a discloser's identity may need to be disclosed to:

- provide natural justice to subject officers
- respond to a court order, legal directive or court proceedings

Disclosers should be aware that while Council will make every attempt to keep their details confidential, it cannot guarantee that others will not try to deduce their identity. Information and support will be provided to the discloser until the matter is finalised.

Making a PID does not prevent reasonable management action. That means that the discloser will be continue to be managed in accordance with normal, fair and reasonable management practices during and after the handling of the PID.

Rights of subject officers

Council acknowledges that for officers who are the subject of a PID the experience may be stressful. Council will protect their rights by:

- assuring them that the PID will be dealt with impartially, fairly and reasonably in accordance with the principles of natural justice

- confirming that the PID is an allegation only until information or evidence obtained through an investigation substantiates the allegation
- providing them with information about their rights and the progress and outcome of any investigation
- referring them to the Employee Assistance Program for support

Information and support will be provided to subject officer until the matter is finalised.

Record-keeping

In accordance with its obligations under the PID Act and the *Public Records Act 2002*, Council will ensure that:

- accurate data is collected about the receipt and management of PIDs
- anonymised data is reported to the Office of the Queensland Ombudsman in their role as the oversight agency, through the PID reporting database

APPROVED



.....
**CHIEF EXECUTIVE OFFICER
BANANA SHIRE COUNCIL**

7.3.18

.....
DATE