

BARCOO SHIRE COUNCIL POLICY *PUBLIC INTEREST DISCLOSURE*

Policy Number: CIM-003	Version: 1a
Classification: Administrative	Section: Corporate- Information Management
Date Adopted by Council: 19.06.2017	Resolution Number: 2017.06.24
Responsible Officer: Manager HR Communications and Governance	<p>Review: Note: This Policy is reviewed when any of the following occur:</p> <ol style="list-style-type: none"> 1. The related information is amended or replaced. 2. Other circumstances as determined from time to time by the Chief Executive Officer. <p>Notwithstanding the above, this Policy is to be reviewed at intervals of no more than two years.</p>
Legislation: <i>Public Interest Disclosure Act 2010</i> ;	

OBJECTIVE

The objective of this policy is to provide understanding of the processes involved in making a public interest disclosure under the Public Interest Disclosure Act 2010 (the Act), and to promote an environment that encourages the making of a public interest disclosure.

POLICY STATEMENT

Barcoo Shire Council will promote the public interest by:

- facilitating public interest disclosures
- ensuring that public interest disclosures are properly made, investigated, assessed and dealt with
- ensuring that appropriate consideration is given to the interests of persons who are the subject of a public interest disclosure.

Barcoo Shire Council will maintain public confidence in the process for managing public interest disclosures through:

- appropriate management of the process in accordance with the Public Interest Disclosure Act 2010
- maintaining confidentiality of public interest disclosures received and of the person making them
- prosecution of any person providing false or misleading information with the intention of it being processed as a public interest disclosure
- prosecution or disciplinary action against any Councillor, Council employee or volunteer who takes or attempts to take reprisal action against a person making a public interest disclosure
- maintaining appropriate records of public interest disclosures and subsequent investigations.

DEFINITIONS

A **Public Interest Disclosure** is a disclosure of information made by a public officer to a proper authority which concerns:

- conduct of another person which could, if proved, be corrupt conduct or maladministration that adversely affects a person's interests in a substantial or 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 public interest disclosure may be made by any other person in relation to a public sector entity/officer, to a proper authority which concerns:

- a substantial and specific danger to the health or safety of a person with a disability
- a substantial and specific danger to the environment
- a reprisal taken against anybody as a result of a public interest disclosure.

Reportable conduct shall mean any conduct by a Councillor, Council employee or volunteer which is:

- dishonest
- fraudulent
- illegal
- a breach of legislation or local laws
- unethical
- unsafe work practices
- conduct which may be detrimental to the interests of Council
- gross mismanagement
- serious or substantial waste
- a repeated breach of administrative procedures
- environmentally dangerous

A **reprisal** is an occurrence where a person attempts to cause, or causes detriment to anybody because of a belief that a person intends to or has made a public interest disclosure.

A **proper authority** is a public sector entity, such as a local government. Council may only pursue disclosures where the information and the subject of the disclosure relates to the conduct of Council, Councillors, employees or volunteers.

PROCEDURE

A person may make a disclosure to a proper authority in any way including anonymously. Public interest disclosures relating to Barcoo Shire Council may be made verbally or in writing to:

- Chief Executive Officer
- in the case of the Chief Executive Officer or Council, the Mayor
- an officer of Council with the delegated function of receiving or taking action in relation to a public interest disclosure
- if the entity is Council and the discloser is a Council employee, a person who directly or indirectly supervises the person who is the subject of the disclosure
- a member of the Legislative Assembly of the Queensland Parliament
- for cases of maladministration, the Queensland Ombudsman
- for cases of suspected fraud or corruption, the Crime and Corruption Commission.

The public interest disclosure should detail the incident or issue of concern in sufficient detail for an appropriate investigation to be conducted.

Anonymous disclosures may be made but it should be recognised that Council will be unable to obtain further information and relevant detail to enable a thorough investigation to be carried out.

Any communication received by Council will be assessed to determine if it should be regarded and processed as a public interest disclosure. However, informants who wish to have their communication regarded as a public interest disclosure are strongly advised to express that intent when making the disclosure.

Step 1

Assess whether the subject matter qualifies as a public interest disclosure within the meaning of the Act:

- the person making the disclosure is able to receive the protection of the Act
- the disclosure concerns a matter about which public interest disclosures can be made
- the disclosure meets either the subjective or objective test set out in the Act
- the disclosure has been made to an individual who may receive a public interest disclosure
- the disclosure has been made in accordance with Council's procedure.

Step 2

Determine whether the subject matter should be referred to another public sector agency which would apply if the disclosure is about:

- the conduct of the referral entity or a public officer of the referral entity
- the conduct of the entity (including itself)
- another matter that the referral entity has the power to investigate or remedy.

Referral to another public sector agency will not be made where the Chief Executive Officer considers there is an unacceptable risk that a reprisal would happen because of the referral.

Step 3

Determine whether Council will investigate the disclosure. Council may decide not to investigate if:

- the substance of the disclosure has already been investigated or dealt with
- the entity reasonably considers that the disclosure should be dealt with by another appropriate process
- the age of the information provided makes it impracticable to investigate
- Council reasonably considers the disclosure is too trivial to warrant investigation and that dealing with the disclosure would substantially and unreasonably divert the resources of the organisation
- another entity that has jurisdiction to investigate the disclosure has notified Council that investigation of the disclosure is not warranted.

Step 4

Determine the level of risk of reprisal to the discloser and others associated with the discloser, including those who may wrongly be suspected of being a discloser, as a consequence of Council's investigation and subsequent actions.

If the risk is assessed as being reasonable high, prepare a protection plan, which where feasible, will be prepared in consultation with the discloser and relevant stakeholders.

Step 5

Register the disclosure in Council's record system. The matter will be registered as confidential, with tracking only by the Chief Executive Officer or delegated officer.

Step 6

Provide the discloser reasonable information including:

- confirmation that the disclosure was received by Council
- a description of the action proposed to be taken, or taken
- if action has been taken by Council, a description of the results of the action
- the likely timeframes (if possible)
- the involvement of the discloser in the investigation process

- the importance of maintaining confidentiality
- the protections under the Act that will apply
- that Council will keep the information disclosed, including the discloser's identity confidential, except as allowed under the Act
- how the the discloser will be advised of progress and outcomes
- who to contact if they want further information or are concerned about reprisals.

If Council decides not to investigate or deal with a public interest disclosure, written reasons will be provided to the discloser.

Step 7

The Chief Executive Officer or delegated officer will commission an investigation of the public interest disclosure. Where appropriate, an external investigator will be engaged for this purpose. In all cases the investigator must:

- have the necessary skills and/or training to perform the task in a professional manner
- not be under the direction of a person being investigated
- not have a conflict of interest or perceived conflict of interest.

When assessing (and where necessary, investigating and taking action on) a public interest disclosure involving allegations against Council officers, Council's obligations to the subject officers must be sustained including upholding the rights of Council's employees under Council's disciplinary policy.

On conclusion of the investigation, the investigator will provide the Chief Executive Officer with a written report detailing the process followed and their findings. A copy of the report will also be forwarded to the person who made the disclosure and the person who is the subject of the investigation.

The Chief Executive Officer will utilise that report as appropriate to:

- inform improvements to service delivery, business processes and internal controls
- recommend any amendments to Council policies or procedure to improve its effectiveness
- instigate disciplinary action.

Protection and Support for disclosers

Council will provide protection and support for persons making Public Interest Disclosures against reprisals by:

- treating all Public Interest Disclosures as confidential information to be recorded on protected files
- taking firm disciplinary action against any officer found to have disclosed a Public Interest Disclosure contrary to this policy or to have taken reprisal action against the discloser
- regularly checking on the discloser's well-being
- advising the discloser of the availability of the Employee Assistance Scheme
- where the health of the discloser becomes a concern, liaising with officers responsible for workplace health and safety.

A person making a public interest disclosure is not subject to any civil or criminal liability, or any liability arising by way of administrative process, including disciplinary process for making the disclosure.

In particular:

- in a proceeding for defamation has a defense of absolute privilege for making a public interest disclosure
- a person, who would otherwise be required to maintain confidentiality about the disclosed information by any Act, oath, rule of law or practice does not contravene an Act, oath, rule of law or practice by making a disclosure.

However, a person's liability for their own conduct is not affected by the person making a disclosure under the Act.

Disclosures made under the Act are protected from being disclosed in response to applications made under the Right to Information Act 2009. It should be noted however that agencies such as the Crime and Misconduct Commission may require full disclosure of information held by Council. Also persons making public interest disclosures should understand that in particular circumstances their identity may become evident to other persons as a consequence of investigation processes.

Both during and following the investigation process support for disclosers will be provided proportionate to the risk of reprisal, and the potential consequences of a reprisal. Protections under the Act are only available to a person who makes a public interest disclosure to a proper authority. For example a person making a public interest disclosure to a journalist prior to making a public interest disclosure to a proper authority would not be afforded the protections of the Act.

Similarly, vexatious allegations with no reasonable basis will also not be afforded the protections of the Act.

In the event of a reprisal being alleged or suspected, Council will act in the interest of the discloser by:

- attending to the safety of the discloser(s) or affected third parties as a matter of priority
- reviewing the risk assessment of reprisal and any protective measures needed
- managing any allegation of a reprisal as a public interest disclosure in its own right.

Council will assist employees who make Public Interest Disclosures by:

Further actions by disclosers

Within 28 days of a person receiving notification that the Chief Executive Officer has decided under Step 3 (above) not investigate or deal with their disclosure, the person who made the disclosure may appeal to the Chief Executive Officer for a review of that decision.

A person dissatisfied with Council's handling of their Public Interest Disclosure has an internal right of review to the Chief Executive Officer. Disclosers are also entitled to raise the matter with other entities, such as the Queensland Ombudsman in cases of maladministration or the Crime and Corruption Commission in cases of suspected fraud or corruption.

ASSOCIATED DOCUMENTS AND POLICIES

Complaints, Customer Requests and Feedback Policy
Fraud and Corruption Prevention Policy
Competitive Neutrality & Complaints Policy