

1. Introduction

- 1.1 The District Council of Mount Remarkable is committed to upholding the principles of transparency and accountability in its administrative and management practices and, therefore, encourages the making of disclosures that reveal public interest information.
- 1.2 The purpose of this Policy is to ensure that the District Council of Mount Remarkable;
 - 1.2.1 properly fulfils its responsibilities under the *Public Interest Disclosure Act 2018*;
 - 1.2.2 encourages and facilitates Disclosures of Public Interest Information in accordance with the objects and requirements of the PID Act;
 - 1.2.3 ensures there is appropriate oversight of public interest disclosures about corruption, misconduct and maladministration in public administration;
 - 1.2.4 provides appropriate protection for those who make Disclosures in accordance with the Act; and
 - 1.2.5 acknowledges the need to appropriately support Informants, the Responsible Officer and, as appropriate, those Public Officers affected by any appropriate Disclosure.

2. Scope

- 2.1 This Policy applies to appropriate Disclosures of Public Interest Information that are made in accordance with the PID Act by Council Members, Employees of the Council, and members of the public, and is intended to complement the reporting framework under the ICAC Act.
- 2.2 This Policy is also designed to complement the existing communication channels within Council, and operate in conjunction with other existing policies, including:
 - 2.2.1 Fraud & Corruption Prevention Policy;
 - 2.2.2 Employee Integrity and Behaviour Standards;
 - 2.2.3 Council Members Integrity and Behaviour Standards; and
 - 2.2.4 Internal Review of Council Decisions Policy under section 270 of the *Local Government Act 1999*.

- 2.3 The Council is committed to:
- 2.3.1 referring, as necessary, appropriate Disclosures to another Relevant Authority;
 - 2.3.2 where the Disclosure relates to Corruption, or serious or systemic Misconduct or Maladministration in public administration, reporting the Disclosure directly to the OPI in accordance with the Guidelines and the requirements of the ICAC Act;
 - 2.3.3 otherwise facilitating the investigation of appropriate Disclosures in a manner which promotes fair and objective treatment of those involved; and
 - 2.3.4 rectifying any substantiated wrongdoing to the extent practicable in all the circumstances.

3. Definitions

For the purposes of this Policy the following definitions apply.

- 3.1 **Commissioner** means the person holding or acting in the office of the Independent Commission Against Corruption.
- 3.2 **Corruption in public administration** is defined in section 5(1) of the ICAC Act and means:
- 3.2.1 an offence against Part 7 Division 4 (Offences relating to public officers) of the *Criminal Law Consolidation Act 1935*, which includes the following offences:
 - a) bribery or corruption of public officers;
 - b) threats or reprisals against public officers;
 - c) abuse of public office;
 - d) demanding or requiring benefit on basis of public office;
 - e) offences relating to appointment to public office; or
 - f) 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
 - 3.2.2 an offence against the *Lobbyists Act 2015*, or an attempt to commit such an offence; or
 - 3.2.3 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

3.2.4 any of the following in relation to an offence referred to in a preceding paragraph:

- a) aiding, abetting, counselling or procuring the commission of the offence;
- b) inducing, whether by threats or promises or otherwise, the commission of the offence;
- c) being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
- d) conspiring with others to effect the commission of the offence

3.3 **Council** means District Council of Mount Remarkable.

3.4 **Detriment** includes:

3.4.1 injury, harm (including psychological harm), damage (including damage to reputation) or loss;

3.4.2 intimidation or harassment;

3.4.3 discrimination, disadvantage or adverse treatment in relation to a person's employment; and/or

3.4.4 threats of reprisal (which may be express or implied, and/or conditional or unconditional).

3.5 **Directions and Guidelines** 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).

3.6 **Disclosure** means 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:

3.6.1 the person:

- a) believes on reasonable grounds that the information is true; or
- b) 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

3.6.2 the disclosure is made to a Relevant Authority.

A person makes an **appropriate disclosure of public administration information** if:

3.6.3 the person:

- a) is a public officer;
- b) reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration; and

3.6.4 the disclosure is made to a Relevant Authority.

3.7 **Employee** refers to all the Council's employees and includes trainees, work experience students, volunteers, and contractors whether they are working in a full-time, part-time or casual capacity.

3.8 **Environmental and health information** 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.

3.9 **Fraud** is an intentional dishonest act or omission done with the purpose of deceiving.

3.10 **ICAC Act** is the *Independent Commission Against Corruption Act 2012*.

3.11 **Independent Assessor** means the person designated by the Responsible Officer as being responsible for investigating a disclosure made to District Council of Mount Remarkable in accordance with the Public Interest Disclosure Procedure.

3.12 **Informant** means a person who makes an appropriate disclosure of public interest information to a Relevant Authority.

3.13 **Maladministration in public administration** is defined in section 5(4) of the ICAC Act and

3.13.1 means:

- 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
- b) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and

3.13.2 includes conduct resulting from impropriety, incompetence or negligence; and

3.13.3 is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

3.14 **Misconduct in public administration** is defined in section 5(3) of the *ICAC Act* and means:

- 3.14.1 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
 - 3.14.2 other misconduct of a public officer while acting in his or her capacity as a public officer.
- 3.15 *Office for Public Integrity (OPI)*** is the office established under the *ICAC Act* that has the function to:
- 3.15.1 receive and assess complaints about public administration from members of the public;
 - 3.15.2 receive and assess reports about corruption, misconduct and maladministration in public administration from the Ombudsman, the Council and public officers;
 - 3.15.3 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;
 - 3.15.4 give directions or guidance to public authorities in circumstances approved by the Commissioner;
 - 3.15.5 perform other functions assigned to the Office by the Commissioner.
- 3.16 *Public administration*** is 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.
- 3.17 *Public administration information*** means information that raises a potential issue of corruption, misconduct or maladministration in public administration.
- 3.18 *Public interest information*** means environmental or health information, or public administration information.
- 3.19 *PID Act*** means the *Public Interest Disclosure Act 2018*.
- 3.20 *Principal Officer*** for the purposes of the *PID Act* means the Chief Executive Officer of the Council.
- 3.21 *Public Officer*** has the meaning given by section 4 and Schedule 1 of the *ICAC Act*, and includes:
- 3.21.1 a Council Member; and
 - 3.21.2 an Employee or Officer of the Council;
 - 3.21.3 A person to whom a function or power of a public authority or a public

officer is delegated in accordance with an Act;

3.21.4 A person who is, in accordance with an Act, assisting a public officer in the enforcement of the Act;

3.21.5 A person performing contract work for a public authority

3.22 **Relevant Authority** means the person or entity that receives an appropriate disclosure of public interest information in accordance with the PID Act.

3.23 **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.

3.24 **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.

4. Confidentiality

4.1 The identity of an Informant will be maintained as confidential in accordance with the PID Act.

4.2 A recipient of an appropriate Disclosure may only divulge the identity of an Informant where:

4.2.1 the recipient believes on reasonable grounds 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 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 physical injury or death to any person;

4.2.2 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 **must** disclose the identity of the Informant to the OPI;

4.2.3 doing so is necessary for the matter to be properly investigated (but only to the extent necessary to ensure proper investigation); or

4.2.4 the Informant consents to his/her identity being disclosed.

4.3 The PID Act does not expressly require any other information relating to a Disclosure (including, for example, the nature of the allegations) to be maintained as confidential, but in considering whether to further disclose other

information provided as part of an appropriate Disclosure the Council should be mindful of the prohibition against Victimisation in the PID Act.

- 4.4 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.

5. Disclosure Process

- 5.1 Disclosures are to be handled by the Council in accordance with the Public Interest Disclosure Procedure.
- 5.2 Nothing in this Policy prevents a person from making a Disclosure to a Relevant Authority external to the Council (i.e. the Ombudsman or the OPI). This is a choice to be made by the Informant at his/her discretion. The Council recommends an Informant have regard to the factors at clause 6.4 of the Public Interest Disclosure Procedure when deciding where to direct a Disclosure.
- 5.3 A Disclosure may be made to the Council's designated Responsible Officer in person, by telephone or in writing. The relevant contact details are:
- Telephone 08 8666 2014
 - Email postmaster@mtr.sa.gov.au
 - Address Confidential
Jacqui Kelleher, Responsible Officer, Public Interest Disclosure
PO Box 94
MELROSE SA 5483

6. The Role of the Responsible Officer

- 6.1 A person designated as a Responsible Officer for the Council:
- 6.1.1 must:
- a) receive appropriate Disclosures relating to the Council and ensure compliance with the PID Act, and the Public Interest Disclosure Procedure, in relation to any such Disclosures;
 - b) 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 Public Interest Disclosure Procedure; and
 - c) provide advice to officers and employees of the Council in relation to the administration of the PID Act; and
 - d) complete any training courses approved by the Commissioner for the purposes of the Public Interest Disclosure Regulations; and

- 6.1.2 may carry out any other functions relating to the PID Act.
- 6.2 Upon the receipt of a Disclosure, the Responsible Officer will deal with the disclosure in accordance with the Public Interest Disclosure Procedure.
- 6.3 In making any determination or taking any action under this Policy or pursuant to the Public Interest Disclosure Procedure:
 - 6.3.1 the Responsible Officer may seek legal advice from Council's Lawyers and/or guidance from SAPOL or the Ombudsman in relation to the most appropriate course of action to pursue; and
 - 6.3.2 is authorised to incur costs in accordance with the Council's Budget for that purpose.
- 6.4 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.

7. Information to Elected Body

- 7.1 As a matter of discretion, the Chief Executive Officer may inform the elected body, on a confidential basis, of the fact that an investigation of a Disclosure took place and the outcome of the investigation.
- 7.2 Factors the Chief Executive Officer will take into account in determining whether to inform the elected body under paragraph 7.1 above and the level of detail provided in doing so are to include:
 - 7.2.1 if known, the identity of the Informant, and whether the Informant has consented to his/her identity being divulged;
 - 7.2.2 if applicable, the identity of any person the subject of the Disclosure;
 - 7.2.3 the impact (if any) of the investigation upon the Council's achievement of its objectives under its Community Plan 2021-2031 (known as Strategic Plan) and/or policies; and
 - 7.2.4 the impact of any action taken to finalise the matter upon the Council's operations and/or budget.
- 7.3 In the event the Disclosure and/or any subsequent investigation process is confined to issues that impact only upon Council staff and human resource processes, the Chief Executive Officer will not inform the elected body of the fact of the Disclosure and/or investigation (since these matters fall outside the roles and responsibilities of elected members under the *Local Government Act 1999*).

8. Protection for the Informant

- 8.1 An Informant who makes an appropriate Disclosure is protected by:
- 8.1.1 immunity from criminal or civil liability as provided for in section 5(1) of the PID Act;
 - 8.1.2 a prohibition on disclosure of his/her identity as provided for in section 8 of the PID Act;
 - 8.1.3 a prohibition against Victimisation as provided for in section 9 of the PID Act; and
 - 8.1.4 a prohibition against hindering, obstructing or preventing an Informant from making an appropriate Disclosure as provided for in section 11 of the PID Act.
- 8.2 The PID Act does not provide any protection 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).
- 8.3 A person who knowingly makes a Disclosure that is false or misleading in a material particular is guilty of an offence and may be prosecuted.
- 8.4 A person who personally commits an act of Victimisation against an Informant is guilty of an offence and may be prosecuted.
- 8.5 The Council will take action as appropriate in the circumstances of the relevant Disclosure/s to protect Informants from Victimisation.
- 8.6 Such action may include acting in accordance with the risk minimisation steps set out in the Public Interest Disclosure Procedure and/or referring the matter to the SA Police.
- 8.7 Any Council Member or employee or officer of the Council who:
- 8.7.1 knowingly makes a disclosure that is false or misleading in a material particular; or
 - 8.7.2 commits an act of Victimisation in relation to an Informant; or
 - 8.7.3 acts otherwise than in accordance with this Policy or the Public Interest Disclosure Procedure (including with respect 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).

9. Document administration and control

Policy title:	Public Interest Disclosure Policy
Policy number:	04.70
Policy type:	Council / Statutory
Responsible officer:	Chief Executive Officer
Committee Review:	Audit & Risk Committee 3 March 2023 [026-2023]
First issued / adopted:	16 July 2019, reference 155-2019
Review period:	Reviewed within 12 months after the conclusion of a periodic election, inline with legislative changes or by resolution of Council
Last reviewed:	21 March 2023 [046-2023]
Next review date:	By November 2027
Version:	Version 3
Date revoked:	n/a
Applicable legislation:	<p>Council Members Integrity and Behaviour Standards</p> <p>Employees Integrity and Behaviour Standards (only applicable if standard is endorsed by Council)</p> <p>Criminal Law Consolidation Act 1935</p> <p>Independent Commission Against Corruption Act 2012</p> <p>Lobbyists Act 2015</p> <p>Local Government Act 1999</p> <p>Ombudsman Act 1972</p> <p>Public Corporations Act 1993</p> <p>Public Interest Disclosure Act 2018</p> <p>Public Interest Disclosure Regulations 2019</p> <p>Public Sector (Honesty & Accountability) Act 1995</p>
Related documents:	<p>Fraud, Corruption, Misconduct and Maladministration Prevention Policy</p> <p>Internal Review of Council Decisions Policy</p> <p>Public Interest Disclosure Procedure</p>
Public consultation required / undertaken:	No
Availability	<p>This Policy is available for inspection at the Council office and any person may obtain a copy of this Policy upon payment of the fee fixed by Council in accordance with Council's Fees and Charges adopted each financial year. It is also available on Council's website mtr.sa.gov.au.</p> <p>Any grievance in relation to this policy or its application should be forwarded in writing to the Chief Executive Officer of the Council.</p>
File reference:	W:\4. Policy Manuals\Current Policy Manual