

MPR- 040 Public Interest Disclosures

RELATED POLICY	MP-040 Public Interest Disclosures		
TRIM Reference:	D19/191520	Due for Review:	January 2023
Responsible Officer:	Manager Governance and Risk		

Purpose

This procedure outlines Surf Coast Shire Council's (Council's) processes for the making and handling of public interest disclosures and compliance with the Public Interest Disclosures Act 2012 (the Act).

Scope

This policy applies to Councillors, Council Officers and members of Special Committees. It includes disclosures made by members of the public about employees, members of special committees, and Councillors.

Definitions

Public Interest Disclosure	Disclosure by a natural person of information that shows / tends to show or information that the person reasonably believes shows / tends to show improper conduct or detrimental action (previously a protected disclosure or 'whistleblower' complaint)
Improper Conduct	<p>(1) Improper conduct is defined as;</p> <p>(a) corrupt conduct; or</p> <p>(b) conduct of a public officer or public body engaged in by the public officer or public body in their capacity as a public officer or a public body that constitutes—</p> <ul style="list-style-type: none"> (i) a criminal offence; or (ii) serious professional misconduct; or (iii) dishonest performance of public functions; or (iv) an intentional or reckless breach of public trust; or (v) an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body; or (vi) a substantial mismanagement of public resources; or (vii) a substantial risk to the health or safety of one or more persons; or (viii) a substantial risk to the environment; or <p>(c) conduct of any person that—</p> <ul style="list-style-type: none"> (i) adversely affects the honest performance by a public officer or public body of their functions as a public officer or public body; or (ii) is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and results in the person, or an associate of the person, obtaining— <ul style="list-style-type: none"> (A) a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or (B) an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or (C) a financial benefit or real or personal property; or

	<p>(D) any other direct or indirect monetary or proprietary gain— that the person or associate would not have otherwise obtained; or</p> <p>(d) conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to in paragraph (a), (b) or (c).</p> <p>(2) Despite subsection (1), conduct that is trivial does not constitute improper conduct for the purposes of the Act.</p>
Detrimental Action	<p>Action that is taken in reprisal for making a Public Interest Disclosure. It includes:</p> <ul style="list-style-type: none"> • Action causing injury, loss or damage; • Intimidation or harassment; and • Discrimination, disadvantage or adverse treatment in relation to a person’s employment, careers, profession, trade or business, including the taking of disciplinary action. <p>It is an offence for a person to take detrimental action against a person in reprisal for making a public interest disclosure.</p>
Natural person	A human being, not a legal entity like a corporate body.
Public Body	Includes local councils
Serious Professional Misconduct	<p>Not defined in the Act but includes:</p> <ul style="list-style-type: none"> • conduct that constitutes a serious breach of an established professional code of conduct and/or other serious departures from the person’s professional responsibilities. • serious failure to exhibit the skills and experience required to perform the functions of the office, as well as non-compliance with professional codes of conduct or the policies, procedures and laws that govern behaviour in the public sector and the workplace. • serious breach of delegated duties.

Procedure

Council is committed to ensuring a framework is in place that:

- encourages reporting;
- ensures accessibility both internally and externally to the organisation;
- educates staff in how to make a disclosure and ensures guidance is available on the website for external parties;
- ensures a Public Interest Disclosure Coordinator and Officer are in place to receive and handle disclosures;
- information is treated with confidentiality;
- disclosures are forwarded to the relevant investigating body in a timely fashion;
- protects disclosers from reprisals, including appointment of a welfare officer (where appropriate);
- investigations are conducted or supported in a way that complies with the Act;
- ensures compliance with records management and reporting requirements.

Please note that disclosures about Councillors must be referred direct to IBAC and not through Council channels. The discloser should therefore be asked to send their disclosure direct to IBAC.

Submitting a Public Interest Disclosure

Any person may make a public interest disclosure to a local council and a number of other public sector bodies including IBAC and the Victorian Ombudsman.

A full list of bodies able to receive PIDs can be seen at Appendix A

A public interest disclosure form is available on Council’s website however disclosures can be made in person, on the phone, by email, letter or other legitimate channel. Depending on the channel of

communication used any disclosures will be passed to the Public Interest Disclosure Coordinator or Officer for processing and passing to the correct body for investigation.

Roles and Responsibilities

Employees

Employees are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures.

All employees have an important role to play in supporting those who have made a legitimate disclosure. They must refrain from any activity that is, or could be perceived to be, victimisation or harassment, and protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

Penalties apply where employees breach the requirements of the Act eg in relation to confidentiality of information or identities, taking reprisals and failure to report reprisals.

Public Interest Disclosure Officer

The Public Interest Disclosure Officer will:

- Make arrangements for a disclosure to be made privately and discreetly and, if necessary, away from the workplace;
- Receive any disclosures made orally or in writing (from internal and external persons);
- Commit to writing any disclosure made orally;
- Take all necessary steps to ensure the content or information about the content of a disclosure and the identity of a person who has made a disclosure are kept confidential; and
- Forward all disclosures and supporting evidence to the Public Interest Disclosure Coordinator.

Public Interest Disclosure Coordinator

The Public Interest Disclosure Coordinator will:

- Receive disclosures forwarded from the Public Interest Disclosure Officer or any other person prescribed in the Regulations.
- Receive phone calls privately, emails and letters from members of the public or employees seeking to make a disclosure.
- Coordinate the reporting system used.
- Be a contact point for general advice about the operation of Public Interest Disclosures Act 2012 (the Act) and for integrity agencies such as the IBAC or the Victorian Ombudsman.
- Impartially consider whether the disclosure may be a disclosure made in accordance with Part 2 of the Act (that is 'a public interest disclosure').
- Be responsible for ensuring that the public body carries out its responsibilities under the Act and the guidelines, including notifying the IBAC of assessable disclosures and working with the IBAC to determine the most secure way in which an assessable disclosure can be notified to IBAC.
- Liaise with the IBAC in regards to the Act.
- Be responsible for ongoing education and training for selected personnel in receipt, handling, assessing and notifying disclosures.
- Appoint a Welfare Manager to support the person making a public interest disclosure, anyone involved in the investigation and, where appropriate, the person who is the subject of a disclosure.
- Establish and manage a confidential filing system.
- Collate statistics on the number of disclosures received.
- Take all necessary steps to ensure that the content or information about the content of a disclosure and the identity of a person who has made a disclosure are kept confidential.
- Liaise with the Chief Executive Officer where appropriate.

Council is committed to the protection of people who make public interest disclosures. The Public Interest Disclosure Coordinator is responsible for ensuring disclosers are protected from detrimental action.

Welfare Manager

The Welfare Manager is responsible for looking after the general welfare of a person who has made a disclosure and also managing the welfare needs of other people who have been involved in an investigation.

Management of the Person(s) Who is the Subject of a Disclosure

Council recognises that employees against whom disclosures have been made must also be supported during the handling and investigation process. A person who is the subject of a disclosure who is made aware of their status may, potentially, have a welfare manager appointed or be referred to Council's employee assistance program for welfare assistance.

Council will take all reasonable steps to ensure the confidentiality of the person who is the subject of the disclosure. Where the disclosure is dismissed or investigations do not substantiate the allegations made against the person, the fact of the investigation, its results, and the identity of the person subject of the disclosure should still be kept confidential.

Confidentiality

The main elements of the confidentiality requirements are to:

- ensure that all bodies to whom a public interest complaint is referred, are permitted to disclose information necessary to perform their investigative functions.
- make it clear that complainants may always seek advice and support from specified categories of persons without seeking permission.
- change the statutory requirements to make it a presumption that in relevant circumstances agencies will be entitled to disclose restricted matters to certain categories or persons, unless the issuing agency makes a direction to the contrary.

Council will ensure confidentiality of identities and information in accordance with the requirements of the Act. This includes maintenance of a secure filing system for all information relating to protected disclosures with access being strictly restricted.

Application of the Freedom of Information Act

The Freedom of Information Act 1982 does not apply to any document in the possession of any person or body that relates to a public interest disclosure or where release of the information is likely to lead to the identification of the person who made a disclosure.

Council will ensure that its employees are aware of this requirement.

Protections for Persons Making Disclosures

The protections under the Act apply to a disclosure made under Part 2 of the Act from the time at which the disclosure is made to either Council or IBAC. They apply even if Council does not notify the disclosure to IBAC and whether or not IBAC has determined that it is a public interest disclosure complaint.

A discloser is not protected if they commit certain offences under the Act.

Collating and Publishing Statistics

The Public Interest Disclosure Coordinator will establish a secure register to record the information required to be published in the annual report, and to keep account of the status of public interest disclosures. The register will be confidential and will not record any information that may identify the person making the disclosure.

Mandatory Reporting Requirements

The Chief Executive Officer has an obligation to report suspected corrupt conduct by public officers (staff, contractors, unpaid workers and Councillors) to IBAC. In some cases this reporting will overlap with the public interest disclosure process.

A flowchart summary of the mandatory reporting process is included at Appendix B.

References

Public Interest Disclosures Act 2012 (the Act).
 IBAC – Independent broad-based anti-corruption commission
<https://www.ibac.vic.gov.au/>

Records

Records shall be retained for at least the period shown below.

Record	Retention/Disposal Responsibility	Retention Period	Location
Disclosures	Public Interest Disclosure Coordinator	7 Years	Held electronically in 'confidential' security setting only accessible by the Public Interest Disclosure Coordinator and/or Officers and others strictly on a 'need to know' basis.

Document History

Version	Document History	Approved by – Date
1	Amended	EMT – 8 January 2020

Appendix A – Public service bodies who can receive public interest disclosures

State Government departments:

- Department of Education and Training
- Department of Environment, Land, Water and Planning
- Department of Health and Human Services
- Department of Jobs, Precincts and Regions
- Department of Justice and Community Safety
- Department of Premier and Cabinet
- Department of Transport
- Department of Treasury and Finance.

Administrative offices:

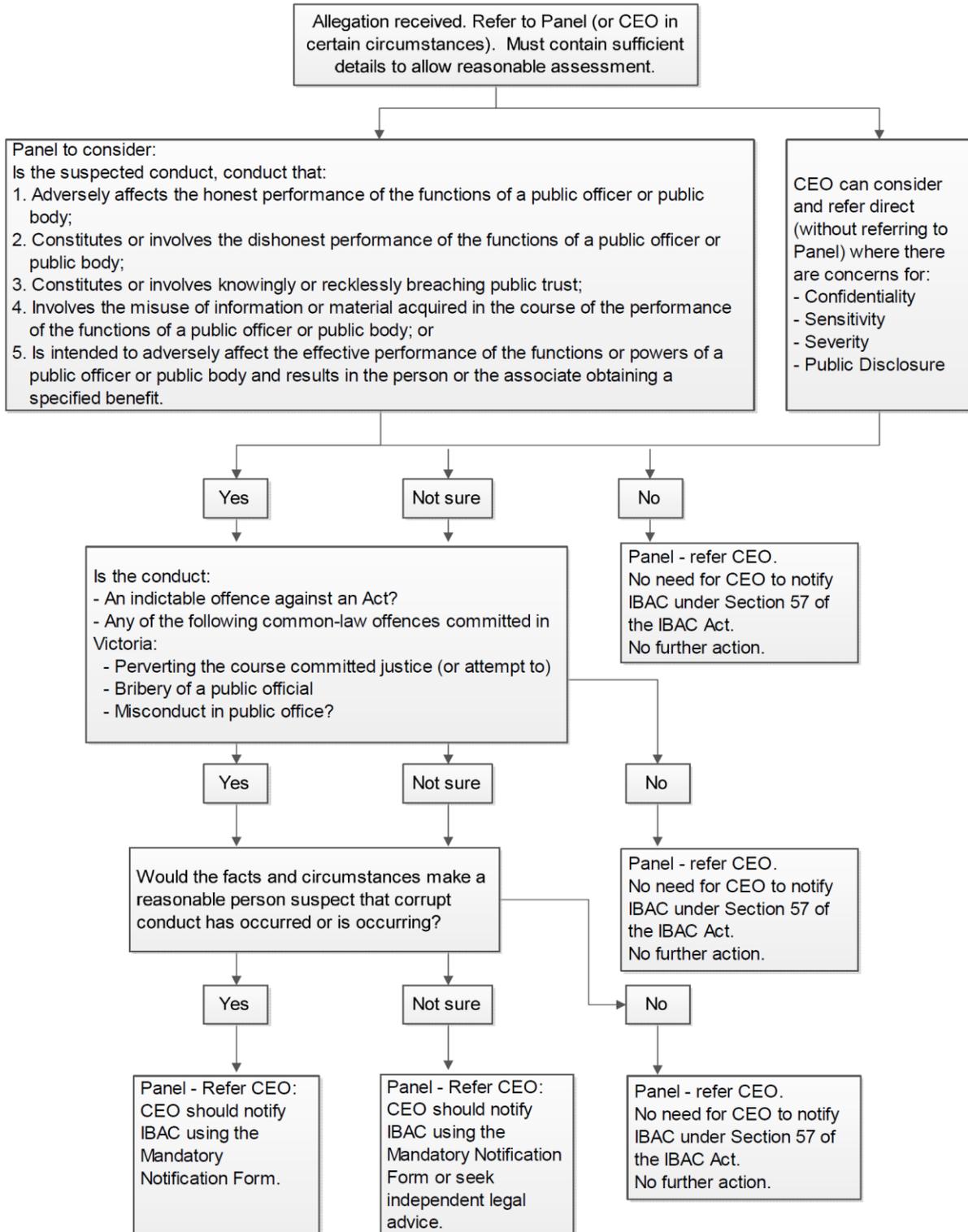
- Family Safety Victoria
- Latrobe Valley Authority
- Local Government Inspectorate
- Major Transport Infrastructure Authority
- Office of Projects Victoria
- Office of the Chief Parliamentary Counsel
- Office of the Governor
- Office of the Victorian Government Architect
- Public Record Office Victoria
- Safer Care Victoria
- Service Victoria
- Victorian Agency for Health Information
- Victorian Government Solicitors Office.

All local councils

Victorian Public Sector Commission

Appendix B – Process for determining mandatory notifications to IBAC

Process for Determining Mandatory Notifications to IBAC



Judgment may sometimes be required in determining if something is or is not corrupt conduct or is a relevant offence as it may not be clear-cut. It will always depend on the particular facts and circumstances of a case. Panel or CEO to seek independent legal advice if needed. If in doubt, submit a notification to IBAC for their assessment.