



Gladstone Regional Council

Corporate Standard

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| Title | PUBLIC INTEREST DISCLOSURE PROCEDURE |
| Standard Number | CS-20/2015 |
| Date of Approval by Chief Executive Officer | 08 OCTOBER 2015 |
| Date of Effect | 08 OCTOBER 2015 |
| Date Review Due | 08 OCTOBER 2018 |

1.0 PURPOSE:

This corporate standard supports Council's commitment to assessing and responding to any Public Interest Disclosures (PIDs) under the *Public Interest Disclosure Act 2010*. Its purpose is to set out the procedure which will be followed to:

- encourage internal reporting of wrongdoing as defined in the *Public Disclosure Act 2010*
- support and provide feedback to Disclosers
- protect the rights of persons who are the subject of a public interest disclosure
- manage the risk of reprisal associated with a public interest disclosure.

2.0 SCOPE:

This corporate standard applies to all Council Personnel including:-

1. all councillors, council employees, contractors or volunteers regardless of their employment status, role or position (whether permanent, temporary, casual or part-time); and
2. any person who makes a Public Interest Disclosure in accordance with the *Public Interest Disclosure Act 2010*.

3.0 RELATED LEGISLATION:

- *Public Interest Disclosure Act 2010*
- *Crime and Corruption Act 2001*

4.0 RELATED DOCUMENTS:

- Gladstone Regional Council Administrative Action Complaint Management Policy
- Gladstone Regional Council Administrative Action Complaint Process Corporate Standard
- Gladstone Regional Council Councillor Code of Conduct Policy
- Gladstone Regional Council Code of Conduct Policy (for Employees)

GRC ECM Subject Index: File Reference:- CM29.1

- Gladstone Regional Council Dealing with Complaints involving the Chief Executive Officer Policy
- Gladstone Regional Council Anti-Discrimination Policy
- Gladstone Regional Council Anti-Harassment Policy
- Gladstone Regional Council Information Privacy Policy
- Gladstone Regional Council Fraud Control Plan Policy
- Gladstone Regional Council Employee Assistance Program Corporate Standard
- Crime and Corruption Act 2001 Guidelines.

5.0 DEFINITIONS:

To assist in interpretation of this policy the following definitions apply:

"Act" is the *Public Interest Disclosure Act 2010*.

"Council" means Gladstone Regional Council and, where the context implies, delegates of the Gladstone Regional Council (whether by delegation of Council or sub delegation by the Chief Executive Officer)

"Council Personnel" means Council councillors, employees, contractors or volunteers regardless of their employment status, role or position.

"Discloser" is a person who makes a Public Interest Disclosure in accordance with the Act.

"PID" means a Public Interest Disclosure as defined by the *Public Interest Disclosure Act 2010*.

"Subject Officer" means Council Personnel about who a PID is made.

"Support Person" means any person who a Subject Officer or Discloser elects to provide emotional and moral support.

6.0 STANDARD STATEMENT:

6.1 What is a Public Interest Disclosure?

A Public Interest Disclosure (PID) is a disclosure in the public interest, of information about wrongdoing in the public sector. For an allegation to be considered a PID it must meet three criteria:

6.1.1 ***Public interest information about substantial and specific wrongdoings or danger***

Any person, including a public sector officer, may disclose information about:

- a substantial and specific danger to the health or safety of a person with a disability
- a substantial and specific danger to the environment
- reprisal action following a PID.

A **public sector officer** may also disclose information about:

- corrupt conduct¹ by another person
- maladministration² that adversely affects someone's interests in a substantial and specific way
- a substantial misuse of public resources
- a substantial and specific danger to public health or safety
- a substantial and specific danger to the environment.

6.1.2 ***PID must be an appropriate disclosure***

An appropriate disclosure meets the subjective and objective tests set out in the PID Act. This means:

¹ As defined by Schedule 4 of the Public Interest Disclosure Act 2010

² As defined by Schedule 4 of the Public Interest Disclosure Act 2010

- the discloser honestly and reasonable believes the information provided tends to show the conduct or danger; or
- the information tends to show the conduct or danger regardless of the discloser's belief.

6.1.3 PID must be made to a Proper Authority

Proper authorities are persons and organisations authorized under the PID Act to receive public interest disclosures. Examples of proper authorities are:

- The public sector organization that is the subject of the PID (for example, Councils)
- An agency that has authority to investigate the matter (for example, Queensland Ombudsman, the Crime and Corruption Commission)
- A Member of the Legislative Assembly (an MP).

6.2 How Public Interest Disclosures can be made - Internal Reporting Avenue

Council Personnel wishing to make a PID should do so using the internal reporting avenue in the first instance. Disclosures may be made to:

- The person who directly or indirectly, supervises or manages the Discloser (for example, immediate supervisor or the immediate supervisor's manager or director).
- Any other person in a management position within Council (for example, another director or manager);
- The PID Coordinator; or
- The Chief Executive Officer.

Consideration should be given to the best person to receive the disclosure; for example:

- if the matter relates to corrupt conduct – the Chief Executive Officer;
- if the matter relates to environmental issues – the Manager Regulatory Services;
- if the matter relates to intimidation – the Manager People and Performance.

If it is a matter that can be resolved by the manager, the PID should be made to that person. Managers can be one of the best sources of support when Council Personnel are disclosing wrongdoing. However if it is believed that the manager or senior Council Personnel may be involved, the disclosure can be made direct to the PID Coordinator or to the Chief Executive Officer.

Council Personnel may choose to make a disclosure in any form including:

- Verbally (in person or via telephone);
- In writing (for example, by letter/memo or via email);
- Anonymously; or
- Through an authorised third party (for example, legal counsel, union representative).

6.3 How Public Interest Disclosures can be made - External Reporting Avenue

Any person may choose to make a disclosure through the external reporting avenue in any way including:

- Verbally (in person or via telephone);
- In writing (for example, by letter or email);
- Anonymously; or
- Through an authorised third party (for example, legal counsel).

An external PID made in writing to Council should be directed to Council's mailing address:

Confidential - PID Coordinator
Gladstone Regional Council

PO Box 29
Gladstone Qld 4680
Or emailed to: info@gladstonerc.qld.gov.au

6.4 Anonymous disclosure

The likelihood of a successful outcome is increased greatly if, when making a disclosure, the disclosure's identity is known. Nonetheless, anonymous disclosures will still be received.

If it is decided to disclose anonymously, the Discloser will need to provide sufficient information for the matter to be investigated, as it will not be possible for Council to come back to the Discloser for clarification or more information. Also, with anonymous disclosures, it will not be possible for Council to keep the Discloser informed on the progress in handling the disclosure and the Discloser could experience difficulties in relying upon the protections afforded by the Act. If the disclosure is anonymous and enough information is provided, Council is committed to act upon the disclosure.

6.5 Information to disclose

To ensure a comprehensive and successful investigation of a perceived wrongdoing, persons making a PID are encouraged to provide all known information that might be relevant including:

- The circumstances of the incident/matter including dates, times and locations;
- The details of Council Personnel or others involved; and
- Possible sources of additional information or evidence, e.g. other people or files.

A person may make a public interest disclosure about -

- (a) Events that happened or may have happened, whether before or after the commencement of the Act; or
- (b) Events that are or may be happening; or
- (c) Events that will or may happen.

6.6 Roles and Responsibilities

6.6.1 Chief Executive Officer

The Chief Executive Officer has overall responsibility for ensuring that:

- all Council Personnel are aware that they are required to conduct their duties to high professional and ethical standards and always act in the public interest and in accordance with Council's Code of Conduct
- reasonable procedures are in place to deal with a PID and that those procedures are published to enable members of the public and Council Personnel to access them (Section 28 of the Act)
- PIDs are promptly and properly assessed, investigated and dealt with, including appropriate action being taken in relation to any wrongdoing in a PID
- Council Personnel making a PID receive support and protection from reprisal
- all legislative obligations in relation to reporting and investigation are met
- all matters involving suspected corrupt conduct are assessed against the *Crime and Corruption Act 2001* section 40 guideline and treated accordingly, including referral to the Crime and Corruption Commission where appropriate.

6.6.2 PID Coordinator

The Manager of People and Performance will perform the role of PID Coordinator. This role will be responsible for the overall coordination of the PID process.

The key responsibilities of the PID Coordinator include:

- receive and assess PIDs
- refer PIDs to other agencies where required and involve higher authorities (i.e. the Chief Executive Officer, Business Improvement Committee and external agencies) in management decisions
- assess the risks of reprisal
- put in place means to monitor for any signs of reprisal
- take action on the PID, which may involve making recommendations to the Chief Executive Officer for the appointment of an internal or external investigator
- informing the Discloser of reasonable information
- identifying how issues raised in PIDs can be used to inform improvements to service delivery, business processes and internal controls
- regularly evaluate and monitor the effectiveness of PID procedures
- promote awareness of PIDs throughout the organisation
- retain records of and report on PIDs to the Queensland Ombudsman as required.

6.6.3 Directors, Managers, Co-Ordinators and Supervisors

Directors, Managers, Coordinators and Supervisors are responsible for:

- accepting and reporting to the PID Coordinator any PIDs reported to them
- for maintaining an ethical culture and leading by example
- providing clear guidance to Council Personnel on how to handle complex issues which may involve corrupt conduct, while maintaining confidentiality and natural justice
- ensuring that Council Personnel in their business area are aware of their obligations in relation to the requirements of this corporate standard
- continually monitoring and assessing the workplace for signs of reprisal against a Discloser or Subject Officer under the principles of natural justice and taking appropriate actions to protect that person or persons
- ensuring that, if PID allegations are substantiated, investigation recommendations are implemented quickly to reduce the risk of reoccurrence
- retaining management responsibility for their workplace and Council Personnel to the maximum extent possible during any PID process
- notifying the PID Coordinator in situations where any *detrimental actions*, as defined in Schedule 4 of the Act, are taken against the Discloser and discuss concerns and options for addressing the situation before it escalates.

6.6.4 Council Personnel

Council Personnel are responsible for:

- reporting PIDs in accordance with this corporate standard
- conducting their duties to high professional and ethical standards and always act in the public interest and in accordance with Council's Code of Conduct
- ensuring that they maintain confidentiality protocols established for the management and investigation of a PID.

6.7 Assessing a Public Interest Disclosure

All disclosures made to Council or referred to it by another entity will be assessed by the PID Coordinator with reference to the Act.

In assessing a disclosure, the PID Coordinator will determine if:

- the person making the disclosure is able to receive the protection of the PID Act and if the disclosure concerns a matter about which a PID can be made, the person making the disclosure honestly believes on reasonable grounds that the information tends to show the conduct, or if the person has information that tends to show the conduct;
- the disclosure has been made to an individual or entity who may receive a PID and been made in accordance with the agency's procedure or as permitted by the PID Act.

If there is doubt whether the disclosure is a PID, the PID Coordinator should assume that the disclosure is protected by the PID Act and manage the disclosure as if it were a PID. It is not necessary for the Discloser to identify a matter as a PID, it is Council's responsibility to identify a PID as such and address it accordingly.

Each separate allegation will be reported as a separate PID, unless the matters are clearly linked and it would be reasonable to view them as a single disclosure. Council will not decline to receive and/or assess any disclosure as a PID.

6.8 Referral to another entity

Where it is decided that a matter is to be referred to another entity, or when Council or the Chief Executive Officer is statutorily bound to refer the matter to an oversight agency (e.g. suspected corrupt conduct to the Crime and Corruption Commission), the referral will be done in accordance with the legislative and administrative processes provided for under the PID Act. This includes a requirement for the PID Coordinator to not refer a PID to another agency if there is an unacceptable risk that a reprisal would happen because of the referral.

In considering whether an unacceptable risk exists, the PID Coordinator will, wherever possible, consult with the Discloser.

6.9 A decision not to investigate the disclosure

Action must be taken on a PID unless it is assessed that no action may be taken. Council will provide written reasons to a Discloser of its decision not to investigate or otherwise deal with a PID where:

- the matter has already been investigated or dealt with through another appropriate process
- Council reasonably considers that the disclosure should be dealt with by another appropriate process
- the age of the information disclosed makes it impractical to investigate
- Council reasonably considers that the disclosure is minor enough not to warrant an investigation and that treating the matter as a PID would not be using Council resources appropriately
- another entity that has jurisdiction to investigate the disclosure has notified Council that investigation of the disclosure is not warranted.

The Discloser may contact another appropriate agency in relation to the PID (for example, the Queensland Ombudsman). Even if no action is taken by Council, PID confidentiality requirements and protections continue to apply.

Under the PID Act, a Discloser may make a PID to a journalist if they have already made essentially the same disclosure to a public sector entity that is a 'proper authority' and:

- the entity has decided not to investigate or deal with the disclosure, or
- the entity investigated the disclosure but did not recommend taking any action, or
- the Discloser was not notified within six months of making the disclosure whether or not the disclosure was to be investigated or dealt with.

6.10 Informing the Discloser

The PID Coordinator will provide the Discloser or the entity that referred the disclosure reasonable information about the disclosure in writing, including:

- confirmation that the disclosure was received by Council

- a description of the action proposed to be taken, or taken, by Council in relation to the disclosure;
- the likely timeframes (if possible)
- their involvement in the investigation process
- the importance of maintaining confidentiality
- the protections under the Public Interest Disclosure Act 2010 that will apply
- that Council will keep the information disclosed, including the Discloser's identify, confidential, except as allowed under the Public Interest Disclosure Act 2010
- how they will be advised of the progress and outcomes and
- who to contact if they require further information or are concerned about reprisals.

6.11 Risk assessment

As soon as possible after receiving a PID, a risk assessment will be conducted by the PID Coordinator to determine the level of risk of a reprisal to the Discloser and to any other persons associated with the disclosure.

Appropriate protections, proportionate to the level of risk and the potential consequences of a reprisal, will be put in place where a risk has been identified. This may include developing specific strategies to reduce the level of risk to the Discloser in the workplace and may include consideration of the suspension or secondment of the person about who the disclosure is made (the Subject Officer).

If the risk is determined to be sufficiently high, the PID Coordinator will, in consultation with the Discloser and any other relevant stakeholder, develop a protection plan for the Discloser and provide ongoing support including:

- acknowledging that the making of the PID was the right thing to do and is valued
- making a clear statement that Council will support the Discloser through this process
- ensuring that the Discloser has appropriate support and protection from reprisal
- regularly checking the Discloser's well-being where warranted
- providing information to the Discloser about Council's employee assistance program
- liaising with the officers responsible for occupational health and safety if the Discloser's health becomes a concern.

Where a reprisal is alleged or suspected of occurring, the PID Coordinator will:

- attend to the Discloser's safety and wellbeing and/or that of any other affected parties as a matter of priority
- take all practical steps to minimise the possibility of reprisal by reviewing the risk assessment and protective measures provided to the Discloser
- manage any allegation of reprisal as a PID in its own right.

The PID Coordinator will advise the Discloser when all organised support arrangements have been completed, although the obligation to provide protection from reprisal and maintain confidentiality about PID matters continues after the investigation is closed. The PID Coordinator may continue to monitor the Discloser's welfare (in association with the relevant manager) for an additional period after the PID has been finalised.

6.12 Disclosures made about an individual

All people involved in PIDs (ie. the Discloser or Subject Officer) will be offered an appropriate level of support and case management. Action will be taken to ensure, where possible, that people's identities and the details of the disclosure remain confidential.

Subject officers who have had a PID made against them are assumed to be innocent of any adverse allegation until there is evidence to the required standard of proof to show otherwise. The rules of natural justice apply to any Subject Officer under investigation in respect of an allegation made against them. In such instances, and through the PID Coordinator, the Subject Officer has the right to:

- know the substance of the allegations if a decision is going to be made about their conduct

- have a reasonable opportunity to put their case forward (whether in writing, at a hearing or otherwise)
- have a decision maker act fairly and without bias.

Providing natural justice does not mean that the Subject Officer should be advised of the allegation as soon as it is received. The Subject Officer need not be told about an allegation if it is:

- misleading
- has no substance
- not intended to act on the allegation.

Persons against whom an allegation has been made should be reassured by the PID Coordinator that the PID will be assessed impartially, objectively and reasonably and that it is only an allegation until any evidence collected shows otherwise. They should be provided with information of their rights, and the progress and outcomes of any investigation undertaken.

Council Personnel who are the subject of an allegation may seek assistance from their legal or union representative, a Support Person or the services of Council's employee assistance program for advice and counselling.

Protection exists for those against whom an intentionally false PID is made. It is an offence under section 66 of the PID Act, punishable by up to two years imprisonment, to intentionally make a false or misleading statement intending it to be acted upon as a PID. Making a false and misleading disclosure may also result in a disciplinary action being commenced against the Discloser.

Any substantiated allegations of adverse treatment of a Discloser or Subject Officer by other Council Personnel may result in disciplinary action being taken.

It is the responsibility of the PID Coordinator to provide feedback to the PID Discloser (both Council Personnel and a Discloser who is not a public officer) about the progress and the outcome of PIDs.

Any apparent conflict between disclosure and confidentiality will be risk-managed by Council through a clear focus on the prevention of fraud, wrongdoing and unethical behaviour.

6.13 Managing Reprisals

Council has a duty of care to support and protect Council Personnel and any other person making a PID, from negative action including reprisals that occur as a result of disclosure. Reprisals will not be tolerated by Council.

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

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

Any Council Personnel found to have engaged in reprisals will be the subject of disciplinary action. Criminal action may be taken with respect to reprisal and in accordance with Public Interest Disclosure Act 2010 substantial fines and/or terms of imprisonment may apply.

Reasonable management action is not prevented in relation to Council Personnel who have made a public interest disclosure. Any management action can only be taken if the manager's reasons for the taking action **do not** include the fact the person has made a public interest disclosure.

6.14 Reporting Responsibilities

The PID Coordinator is responsible for recording and reporting information regarding PIDs received by Council.

The PID Coordinator will maintain a record of each PID which will include:

- the name of the person making the PID (if known)
- the subject of the PID
- any action taken on the PID
- any other information needed to comply with the reporting requirements of the Queensland Ombudsman, including:
 - a. the date the disclosure was received, and who it was received from
 - b. the gender and status of the Discloser (i.e. Council Personnel, staff from another entity, member of the public, anonymous)
 - c. the gender and status of the Subject Officer (Council Personnel, non-staff member)
 - d. the relationship between the Discloser and the Subject Officer
 - e. a summary of the allegation/information received
 - f. the involvement of an external agency/party
 - g. the action taken to minimize the risk of reprisal
 - h. the date the inquiry/investigation commenced and was completed
 - i. the outcome of the assessment, inquiry/investigation
 - j. the date the PID was resolved or closed
 - k. when the outcome was advised to the Discloser, and where required, the Subject Officer
 - l. if no action was taken, the reason for the decision
 - m. other legal processes associated with the disclosure.

6.15 Record Keeping Responsibilities

All documentation relating to a PID will be stored in a confidential file in Council's central recordkeeping system with appropriate levels of security attached. Responsibility for creating records and for fulfilling Council's reporting obligations rests with Council's PID Coordinator.

7.0 ATTACHMENTS:

Nil.

8.0 REVIEW TRIGGER:

This standard will be reviewed when any of the following occur:

1. The related legislation/documents are amended or replaced.
2. Other circumstances as determined from time to time by the CEO.
3. Periodic Review – 3 years from date of adoption.

| TABLE OF AMENDMENTS | |
|----------------------------|------------------------|
| Originally Approved: | 08 OCTOBER 2015 |
| Amendment 1 | <INSERT DATE APPROVED> |
| Amendment 2 | <INSERT DATE APPROVED> |
| Amendment 2 | <INSERT DATE APPROVED> |

APPROVED:

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STUART RANDLE
CHIEF EXECUTIVE OFFICER