

COUNCIL POLICY

Public Interest Disclosure Policy and Procedure



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LINK TO CORPORATE PLAN:	Our Governance – Transparent, Accountable and Engaged Governance

1. OBJECTIVE

- To create a positive reporting environment that encourages the making of Public Interest Disclosures;
- To provide processes that ensure Public Interest Disclosures are dealt with in a thorough and timely manner;
- To provide appropriate support and protection to Council personnel or members of the public who make a Public Interest Disclosure; and
- To ensure that Council fulfils its responsibilities under the *Public Interest Disclosure Act 2010* and the *Queensland Ombudsman Public Interest Disclosure Standard No. 1*.

2. DEFINITIONS

The Act - is the *Public Interest Disclosure Act 2010*.

Appropriate External Entity - is a public sector entity other than Council to which a Public Interest Disclosure may be made or referred under the Act, e.g. Crime and Corruption Commission (CCC), Ombudsman.

Detriment includes –

- a) personal injury or prejudice to safety; and
- b) property damage or loss; and
- c) intimidation or harassment; and
- d) adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business;
- e) financial loss; and
- f) damage to reputation, including, for example, personal, professional or business reputation.

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

Personnel - are all Councillors and Council employees regardless of their employment status, role or position, i.e. permanent, temporary, casual, part-time, contractors or volunteers.

Public Interest Disclosure (PID) - is a disclosure to Council or an Appropriate External Entity of information about a perceived wrong-doing by one or more persons within Council concerning an action or activity that the Discloser reasonably believes constitutes –

- Official Misconduct;
- Maladministration that adversely affects a person's interest in a substantial and specific way;
- A substantial misuse of public resources (other than an alleged misuse based on mere disagreement over policy that may properly be adopted about amounts, purposes or priority of expenditure);
- A substantial and specific danger to public health or safety;
- A substantial and specific danger to the health or safety of a person with a disability;

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- A substantial danger to the environment (including the commission of an offence against a provision mentioned in Schedule 2 of the Act and a contravention of a condition imposed under a provision mentioned in Schedule 2 of the Act); and
- The conduct of another person that could, if proved, be a reprisal.

Nominated Officer - is an officer authorised by the Chief Executive Officer to accept Public Interest Disclosures.

Authorised Officer - is an officer authorised by the Chief Executive Officer to manage / investigate PIDs. However, the Authorised Officer may instruct another person either within or outside of Council to investigate the PID, report on the result and recommend appropriate action.

3. ROLES AND RESPONSIBILITIES

This policy is to be –

- a) Implemented by Councillors and all employees; and
- b) Reviewed and amended in accordance with the "Review Triggers" by the Chief Executive Officer.

4. APPLICATION

This policy applies to Public Interest Disclosures concerning Council personnel that are made in accordance with the Act by Council personnel or members of the public. It is designed to complement the existing communication channels within Council and will operate in conjunction with existing policies.

PIDs may be entangled with personnel relations, complaints, grievances, performance management issues, or other general issues between people.

In all cases, it is important to distinguish the PID from the other issues and deal with each one using the appropriate mechanisms. It is also important to distinguish that a grievance is generally "owned" by the complainant whereas a PID relates to a matter of public interest which, once made, is no longer "owned" by the complainant and must be fully explored.

5. POLICY

Council is committed to upholding the principles of transparency and accountability in its management and administrative practices. It encourages the making of PIDs in accordance with the Act at the earliest reasonable opportunity.

Council personnel or members of the public who are aware of any activity or incident involving wrong-doing that could impact adversely on the operation of Council are encouraged to speak up. For the disclosure to receive the unique protections of the Act, it must be a PID.

This policy and attached procedures establish Council's procedures for dealing with PIDs. The Council will take appropriate steps to publicise the PID process. For example, the Council will place this document on its website and include training on the PID process in the induction process for new employees and in other appropriate staff training forums.

6. ATTACHMENTS

- Appendix 1 – Public Interest Disclosure Procedures

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7. REVIEW TRIGGER

This policy is to be reviewed whenever legislation changes, or every three (3) years if no changes have been required to be enacted, at the direction of the Chief Executive Officer.

8. PRIVACY PROVISION

Council respects and protects people's privacy and collects, stores, uses and discloses personal information responsibly and transparently when delivering Council services and business.

9. APPROVAL

Adopted at the July 2020 Council Meeting - Resolution Number 2926.

APPENDIX 1 - PUBLIC INTEREST DISCLOSURE PROCEDURES

1. OBJECTIVE

Flinders Shire Council (FSC) is committed to fostering an ethical, transparent culture. In pursuit of this, FSC values the disclosure of information about suspected wrongdoing in the public sector so that it can be properly assessed and, if necessary, appropriately investigated. FSC 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).

By complying with the PID Act, FSC 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 FSC 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
- a management program for PIDs made to FSC, consistent with the standard issued by the Queensland Ombudsman, is developed and implemented
- public officers who make PIDs are offered protection from reprisal by FSC or other public officers of FSC.

FSC's Public Interest Disclosure Procedure is available for public viewing on the Council's website. The Public Interest Disclosure Procedure will be reviewed and updated as required to ensure it meets the requirements of the PID Act and the standard issued by the Queensland Ombudsman.

2. DEFINITIONS

Administrative action

- a) means any action about a matter of administration, including, for example:
- i. a decision and an act; and
 - ii. a failure to make a decision or do an act, including a failure to provide a written statement of reasons for a decision; and
 - iii. the formulation of a proposal or intention; and
 - iv. the making of a recommendation and

Confidential information

- a) includes —
- i. information about the identity, occupation, residential or work address or whereabouts of a person —
 - 1) who makes a public interest disclosure; or
 - 2) against whom a public interest disclosure has been made; and
 - ii. information disclosed by a public interest disclosure; and
 - iii. information about an individual's personal affairs; and
 - iv. information that, if disclosed, may cause detriment to a person; and

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- b) does not include information publicly disclosed in a public interest disclosure made to a court, tribunal or other entity that may receive evidence under oath, unless further disclosure of the information is prohibited by law.

Corrupt conduct - As defined in section 15 of the *Crime and Corruption Act 2001*.

Detriment - includes –

- a) personal injury or prejudice to safety; and
- b) property damage or loss; and
- c) intimidation or harassment; and
- d) adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business; and
- e) financial loss; and
- f) damage to reputation, including, for example, personal, professional or business reputation.

Disability - As defined in section 11 of the Disability Services Act 2006, for the purposes of this procedure.

Discloser - A person who makes a disclosure in accordance with the *Public Interest Disclosure Act 2010*.

Employee - of an entity, includes a person engaged by the entity under a contract of service.

Journalist - a person engaged in the occupation of writing or editing material intended for publication in the print or electronic news media.

Maladministration - As defined in schedule 4 of the *Public Interest Disclosure Act 2010*.

Natural justice - Natural justice, also referred to as 'procedural fairness' applies to any decision that can affect the rights, interests or expectations of individuals in a direct or immediate way. Natural justice is at law a safeguard applying to an individual whose rights or interests are being affected.

The rules of natural justice, which have been developed to ensure that decision-making is fair and reasonable, are:

- avoid bias; and
- give a fair hearing.
- act only on the basis of logically probative evidence.

Organizational support - For the purposes of this procedure, organizational support means actions such as, but not limited to:

- providing moral and emotional support
- advising disclosers about agency resources available to handle any concerns they have as a result of making their disclosure
- appointing a mentor, confidante or other support officer to assist the discloser through the process
- referring the discloser to the agency's Employee Assistance Program or arranging for other professional counselling
- generating support for the discloser in their work unit where appropriate
- ensuring that any suspicions of victimization or harassment are dealt with
- maintaining contact with the discloser
- negotiating with the discloser and their support officer a formal end to their involvement with the support program when it is agreed that they no longer need assistance.

Proper authority - A person or organization that is authorized under the *Public Interest Disclosure Act 2010* to receive disclosures.

Public officer - A public officer of a public sector entity, is an employee member or officer of the entity.

Reasonable belief - A view which is objectively fair or sensible.

Reasonable management action - Action taken by a manager in relation to an employee, includes any of the following taken by the manager—

- a) a reasonable appraisal of the employee's work performance;
- b) a reasonable requirement that the employee undertake counselling;
- c) a reasonable suspension of the employee from the employment workplace;
- d) a reasonable disciplinary action;
- e) a reasonable action to transfer or deploy the employee;
- f) a reasonable action to end the employee's employment by way of redundancy or retrenchment;
- g) a reasonable action in relation to an action mentioned in paragraphs (a) to (f);
- h) a reasonable action in relation to the employee's failure to obtain a promotion, reclassification, transfer or benefit, or to retain a benefit, in relation to the employee's employment.

Reprisal - The term 'reprisal' is defined under the *Public Interest Disclosure Act 2010* as causing, attempting to cause or conspiring to cause detriment to another person in the belief that they or someone else:

- has made or intends to make a disclosure; or
- has been or intends to be involved in a proceeding under the disclosure Act against any person.

Reprisal under the *Public Interest Disclosure Act 2010* is a criminal offence and investigations may be undertaken by the Queensland Police Service.

Subject officer - An officer who is the subject of allegations of wrongdoing made in a disclosure.

Substantial and specific - Substantial means 'of a significant or considerable degree'. It must be more than trivial or minimal and have some weight or importance.

Specific means "precise or particular". This refers to conduct or detriment that is able to be identified or particularized as opposed to broad or general concerns or criticisms.

3. ROLES AND RESPONSIBILITIES

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

- commitment to encouraging the internal reporting of wrongdoing
- senior management endorsement of the value to FSC of PIDs and the proper management of PIDs
- a communication strategy to raise awareness among employees about PIDs and FSC's PID procedure
- a training strategy to give employees access to training about how to make a PID, information on the support available to a discloser, and advice on how PIDs will be managed
- specialist training and awareness about PIDs for senior management and other staff who may receive or manage PIDs, disclosers or workplace issues relating to PIDs
- the appointment of a specialist officer/unit to be 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
- regular review of the Public Interest Disclosure Procedure and evaluation of the effectiveness of the PID management program.

The Chief Executive Officer has designated the following roles and responsibilities for managing PIDs within FSC:

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Role:	Responsibilities:	Officer:
PID Coordinator	<ul style="list-style-type: none">• principal contact for PID issues within FSC• document and manage implementation of PID management program• review and update PID procedure annually• maintain and update internal records of PIDs received• report data on PIDs to Queensland Ombudsman• assess PIDs received• 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	The Officer directly supervising Council's Governance Function e: gc@flinders.qld.gov.au Phone (07) 4741 2900
Investigator	<ul style="list-style-type: none">• conduct investigation of information in PID in accordance with terms of reference• prepare report for delegated decision-maker	An appropriate internal or external Investigator will be appointed for each PID investigated depending upon the type of disclosure and other relevant considerations.
Delegated decision- maker	<ul style="list-style-type: none">• review investigation report and determine whether alleged wrongdoing is substantiated	An appropriate decision-maker will be appointed for each PID investigated.

10. WHY MAKE A PID?

Employees who are prepared to speak up about public sector misconduct, wastage of public funds, suspected unlawful activity or danger to health, safety or the environment can be the most important sources of information to identify and address problems in public sector administration. FSC supports the disclosure of information about wrongdoing because:

- implementing systems for reporting and dealing with wrongdoing contributes to the integrity of FSC
- the outcomes of PIDs can include improvements to systems that prevent fraud and other economic loss to FSC
- the community's trust in public administration is strengthened by having strong processes in place for reporting wrongdoing.

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 FSC and employees of FSC 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.

11. WHAT IS A PUBLIC INTEREST DISCLOSURE?

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 occupational 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 FSC 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.

12. WHO CAN A PID BE DISCLOSED TO?

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 FSC first. If the matter is not resolved, or the discloser is concerned about confidentiality, the disclosure may be made to another appropriate agency.

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Who to contact within FSC:	Other agencies that can receive PIDs:
<p>Any person (including employees) can make a disclosure to:</p> <ul style="list-style-type: none">• any person in a supervisory or management position• the Human Resources unit• the Chief Executive Officer, Director of Corporate and Financial Services, or Governance Coordinator	<p>Disclosures can be made to an agency that has a responsibility for investigating the information disclosed:</p> <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 danger to the health and safety of a person with a disability• Department of Environment and Science disclosures about danger to the environment• A Member of the Legislative Assembly (MP) for any wrongdoing or danger• The Chief Judicial Officer of a court or tribunal in relation to a disclosure about wrongdoing by a judicial officer.

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.

13. HOW TO MAKE 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.

14. DECIDING WHETHER A MATTER IS A PID

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.

15. ASSESSING A PID

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

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

- that their information has been received and assessed as a PID
- the action to be taken by FSC 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 FSC support 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 FSC 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 FSC's Employee Assistance Program.

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

Upon receiving a PID, FSC 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, FSC will arrange any reasonably necessary support or protection for the discloser.

16. REFERRING A PID

If FSC 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 FSC.

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 FSC to communicate with another agency about the referral of a PID. Officers will exercise discretion in their contacts with any other agency.

17. DECLINING TO TAKE ACTION ON A PID

Under the PID Act, the FSC 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 FSC from the performance of its functions
- another agency with jurisdiction to investigate the information has informed FSC that an investigation is not warranted.

If a decision is made not to investigate or deal with a PID FSC 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 FSC within 28 days of receiving the written reasons for decision.

18. 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, FSC will review systems, policies and procedures to identify whether there are improvements that can be made and consider if staff training is required.

19. 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, FSC 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. FSC will ensure that communication with all parties involved will be arranged discreetly to avoid identifying the discloser wherever possible.

While FSC 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 FSC 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.

20. RIGHTS OF SUBJECT OFFICERS

FSC acknowledges that for officers who are the subject of a PID the experience may be stressful. FSC 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.

21. IMPLEMENTATION

In accordance with its obligations under the PID Act and the Public Records Act 2002, FSC 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.

22. RELATED LEGISLATION

- *Crime and Corruption Act 2001*
- *Local Government Act 2009*
- *Ombudsman Act 2001*
- *Public Interest Disclosure Act 2010*
- *Public Records Act 2002*
- *Public Sector Ethics Act 1994*

23. RELATED DOCUMENTS (LOCAL LAWS, POLICIES, DELEGATIONS ETC)

- Complaints Management Policy
- Complaint Involving Public Officials Policy
- Fraud and Corruption Prevention Policy
- Councillor Inappropriate Behaviour Investigation Policy

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- Employee Code of Conduct
- Councillor Code of Conduct
- Risk Management Policy

24. SUPPORTING INFORMATION

- Public Interest Disclosure Standard No. 1
- Disclosure Fact sheet 1: What is a disclosure
- Disclosure Fact sheet 2: Checklist for making a disclosure
- Disclosure Fact sheet 3: Discloser information and support