

**Policy Title: PUBLIC INTEREST DISCLOSURE MANAGEMENT**

Policy Subject: Governance

Policy No: #1968369

Directorate: Office of the CEO

Department: Strategic Integration

Section: Corporate Governance

Responsible Officer: Executive Manager Strategic Integration

Authorised by: Chief Executive Officer

Adopted Date: 16/03/2011

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Amended Date:

**OBJECTIVE:**

As a public sector entity Council is subject to the requirements of the *Public Interest Disclosure Act 2010* and all Council Employees and Elected Members are public officers for the purposes of the legislation.

The Fraser Coast Regional Council has obligations under this Act in relation to the receiving of public interest disclosures and ensuring that persons making such disclosures are protected from reprisals.

The objective of this policy is to comply with the *Public Interest Disclosure Act 2010* by providing a consistent and professional response to any public interest disclosures (PID's) made to Council in accordance with the Act.

In addition, the policy is intended to ensure all elected members and Council employees are aware of their responsibilities by reporting serious misconduct and other important matters adversely affecting the public interest or Council operations.

**POLICY:**

Council will adopt a Public Interest Disclosure Management Policy to assist Council, Management and staff by clearly outlining Council's approach to addressing a PID and to provide direction to employees contemplating making a disclosure. This policy is also intended to support other Council reporting mechanisms in relation to any alleged occurrences of wrongdoing or fraud.

**Philosophy**

This policy provides Councillors and Officers protection in accordance with the *Public Interest Disclosure Act 2010*, by protecting persons who disclose unlawful, negligent or improper public sector conduct, or conduct which endangers public health or safety or the environment.

Council will support individuals making a PID which promotes the public interest and those reporting occurrences of wrongdoing internal to Council. Overall, the philosophy is to encourage all officers to be accountable for their actions and to maintain high standards of professional conduct and service.

### **Role**

It is important for Council to establish an environment in which the reporting of negligent or improper behaviour is encouraged and to demonstrate a commitment to rigorous risk management.

The *Public Interest Disclosure Act 2010* promotes the public interest by protecting persons who disclose unlawful, negligent or improper public sector conduct or danger to public health or safety or the environment.

In addition, any person who suspects or is aware of any fraudulent behaviour or wrongdoing is encouraged, to report the matter to the Mayor, the Chief Executive officer, a Director, Executive Manager, Manager or Team Leader. Confidentiality of employees who report fraud or wrongdoing is guaranteed, and the reputation of those potentially involved must also be afforded the highest level of protection.

### **Authorities and Responsibilities**

- Council is responsible for ensuring that appropriate measures are in place to support persons who disclose unlawful, negligent or improper public sector conduct or danger to public health or safety or the environment.
- The Chief Executive Officer or Mayor are the responsible officers for receiving disclosures and acting on them. The Chief Executive Officer has primary responsibility for receiving disclosures. Where a disclosure may involve the actions of the Chief Executive Officer, these should be referred to the Mayor.
- Directors and Executive Managers are responsible for the implementation and support of this policy and procedures within their areas of responsibility.
- Employees are responsible for the detection and reporting of fraud or wrongdoing within their areas of responsibility.

### **Scope and Activities**

This policy applies to public interest disclosures within the meaning of the *Public Interest Disclosure Act 2010*.

### **Disclosure by Any Person**

Section 12 of the Act applies if a person (whether or not the person is a public officer) has information about:

1. A substantial and specific danger to the health or safety of a person with a disability; or
2. The commission of an offence against a provision mentioned in schedule 2 of the Act, if the commission of the offence is or would be a substantial and specific danger to the environment; or

3. A contravention of a condition imposed under a provision mentioned in schedule 2 of the Act, if the contravention is or would be a substantial and specific danger to the environment; or
4. The conduct of another person that could, if proved, be a reprisal.

The person may make a disclosure under section 17 of the Act in relation to the information to a proper authority. For the above, a person has information about the conduct of another person or another matter if:

- The person honestly believes on reasonable grounds that the information tends to show the conduct or other matter; or
- The information tends to show the conduct or other matter, regardless of whether the person honestly believes the information tends to show the conduct or other matter.

### ***Disclosure by a Public Officer***

Section 13 of the Act applies if a person who is a public officer has information about:

1. The conduct of another person that could, if proved, be:
  - Official misconduct; or
  - Maladministration that adversely affects a person's interests in a substantial and specific way; or
2. 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 priorities of expenditure); or
3. A substantial and specific danger to public health or safety; or
4. A substantial and specific danger to the environment.

The person may make a disclosure under section 17 of the Act in relation to the information to a proper authority. For section 1 above, a person has information about the conduct of another person or another matter if:

- The person honestly believes on reasonable grounds that the information tends to show the conduct or other matter; or
- The information tends to show the conduct or other matter, regardless of whether the person honestly believes the information tends to show the conduct or other matter.

**Recording and Reporting Standards**

The Chief Executive Officer of a public sector entity must:

1. Establish reasonable procedures to ensure that:
  - Public officers of the entity who make public interest disclosures are given appropriate support; and
  - Public interest disclosures made to the entity are properly assessed and, when appropriate, properly investigated and dealt with; and
  - Appropriate action is taken in relation to any wrongdoing that is the subject of a public interest disclosure made to the entity; and
  - A management program for public interest disclosures made to the entity, consistent with any standard made under section 60 of the Act, is developed and implemented; and
  - Public officers of the entity are offered protection from reprisals by the entity or other public officers of the entity.
2. Ensure the procedures are published, as soon as practicable after the procedures are made, on a website that is maintained by the public sector entity and readily accessible to the public.
3. When a public interest disclosure is made, must keep a proper record of the disclosure, including:
  - The name of the person making the disclosure, if known; and
  - The information disclosed; and
  - Any action taken on the disclosure; and
  - Any other information required under a standard made under section 60 of the Act.
4. When a public interest disclosure is referred under section 31 or 34 of the Act, must keep a proper record of the disclosure, including:
  - The name of the person making the disclosure, if known; and
  - The information disclosed; and
  - The name of the public sector entity, or member of the Legislative Assembly, that referred the disclosure; and
  - Any action taken on the disclosure; and
  - Any other information required under a standard made under section 60 of the Act.

The Public Service Commission, as the oversight agency, may make, under section 60 of the Act, a standard that requires the Chief Executive Officer of a public sector entity to give to the oversight agency all or any of the information mentioned above. The standard may provide for the way in which and the period within which the information is to be given.

**HEAD OF POWER:**

Public Interest Disclosure Act 2010

The main objects of this Act are:

1. To promote the public interest by facilitating public interest disclosures of wrongdoing in the public sector; and
2. To ensure that public interest disclosures are properly assessed and, when appropriate, properly investigated and dealt with; and
3. To ensure that appropriate consideration is given to the interests of persons who are the subject of a public interest disclosure; and
4. To afford protection from reprisals to persons making public interest disclosures.

**RELATED LEGISLATION:**

- Local Government Act 2009
- Crime & Misconduct Act 2001
- Public Interest Disclosure Act 2010

**RELATED DOCUMENTS (LOCAL LAWS, POLICIES, DELEGATIONS, ETC):**

- Fraser Coast Regional Council Code of Conduct
- Councillors Code of Conduct

**ATTACHMENT TO POLICY:**

- Public Interest Disclosure Management Procedure

**DEFINITIONS:**Administrative Action

Means any action about a matter of administration, including, for example a decision and an act; a failure to make a decision or do an act, including a failure to provide a written statement of reasons for a decision; the formulation of a proposal or intention; the making of a recommendation, including a recommendation made to a Minister and an action taken because of a recommendation made to a Minister.

Corruption

Is defined by the Crime and Misconduct Commission as behaviour that may involve fraud, theft, misuse of position or authority or other acts that are unacceptable to an organisation and which may cause loss to the organisation, its clients or the general community. It may also include such elements as breaches of trust and confidentiality. The behaviour need not necessarily be criminal.

Detriment

Includes personal injury or prejudice to safety; property damage or loss; intimidation or harassment; adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business; financial loss and damage to reputation, including, for example, personal, professional or business reputation.

Maladministration

Is administrative action that was taken contrary to law; was unreasonable, unjust, oppressive, or improperly discriminatory; was in accordance with a rule of law or a provision of an Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory in the particular circumstances; was taken for an improper purpose or on irrelevant grounds or having regard to irrelevant considerations; was an action for which reasons should have been given, but were not given; was based wholly or partly on a mistake of law or fact; or was wrong.

Official Misconduct

Is defined as any misconduct connected with the performance of an officer's duties that is dishonest or lacks impartiality, involves a breach of trust, or is a misuse of officially obtained information. To be considered official misconduct, the conduct must constitute a criminal offence or be serious enough to justify dismissal.

### Oversight Agency

The Public Service Commission is the oversight agency. The main functions are to monitor the management of public interest disclosures, including, for example, by monitoring compliance with this Act, collecting statistics about public interest disclosures and monitoring trends in relation to public interest disclosures; review the way in which public sector entities deal with public interest disclosures generally, or particular public interest disclosures; perform an educational and advisory role, including for example by promoting the objects of this Act, providing advice about public interest disclosures and providing, or co-ordinating the provision of, education and training programs about public interest disclosures.

### Public Funds

Are funds available to, or under the control of, a public sector entity including, for example, public moneys within the meaning of the *Financial Accountability Act 2009*.

### **HISTORY:**

The *Whistleblowers Protection Act 1994* will be repealed upon the commencement of the *Public Interest Disclosure Act 2010*, effective January 2011.

**ATTACHMENT – Public Interest Disclosure Management Procedure****PURPOSE:**

The purpose of this procedure is to formalise the Council processes in relation to the receipt and actioning of a Public Interest Disclosure (PID).

**SCOPE:**

As a public sector entity Council is subject to the requirements of the *Public Interest Disclosure Act 2010* and all Council Employees and Elected Members are public officers for the purposes of the legislation.

Council has obligations under this Act in relation to the receiving of public interest disclosures and ensuring that persons making such disclosures are protected from reprisals. The objective of this procedure is to provide a consistent and professional response to any public interest disclosure made to Council in accordance with the Act.

**PROCEDURE:****Sources of Disclosures**

Council may receive disclosures from the general public, external agencies or internal staff members. These will normally relate to administrative action by the Council or alleged conduct breaches by Council employees or Councillors. In some cases, complaints may also relate to allegations of official misconduct by Council employees.

Disclosures could be received via:

- Verbally from members of the public;
- In writing from members of the public via mail or email;
- The online Administrative Action Complaints Process;
- The Ombudsman Office, Crime & Misconduct Commission or other external agency referring a matter to Council;
- External or internal Public Interest Disclosures;
- Internal complaints lodged by Council staff.

Any complaints of this nature would be directly referred to the Chief Executive Officer, Mayor or external agency dependant on the nature of the complaint. Council has a Public Interest Disclosure Management Policy in place which supports the reporting of matters affecting the public interest or Council operations.

Based on the nature of the complaint, the Chief Executive Officer, Mayor or a member of the Executive is to be made aware of such matters and may request separate updates. A detailed record of the disclosure and the tracking of any investigation, action or resolution is to be maintained in the Complaint Recording System.

**Public Interest Disclosures**

The Public Interest Disclosure Management policy provides Councillors and Officers protection in accordance with the *Public Interest Disclosure Act 2010*, by protecting persons who disclose unlawful, negligent or improper public sector conduct, or conduct which endangers public health or safety or the environment.

Disclosures can be made by any person (whether or not the person is a public officer) if they have information about:

1. A substantial and specific danger to the health or safety of a person with a disability; or
2. The commission of an offence against a provision mentioned in schedule 2 of the Act, if the commission of the offence is or would be a substantial and specific danger to the environment; or
3. A contravention of a condition imposed under a provision mentioned in schedule 2 of the Act, if the contravention is or would be a substantial and specific danger to the environment; or
4. The conduct of another person that could, if proved, be a reprisal.

In addition, if a person who is a public officer has information about the following, they may make a public interest disclosure:

5. The conduct of another person that could, if proved, be:
  - Official misconduct; or
  - Maladministration that adversely affects a person's interests in a substantial and specific way; or
6. 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 priorities of expenditure); or
7. A substantial and specific danger to public health or safety; or
8. A substantial and specific danger to the environment.

The person may make a disclosure in relation to the information to a proper authority.

For the above, a person has information about the conduct of another person or another matter if:

- The person honestly believes on reasonable grounds that the information tends to show the conduct or other matter; or
- The information tends to show the conduct or other matter, regardless of whether the person honestly believes the information tends to show the conduct or other matter.

### **How a Disclosure May Be Made**

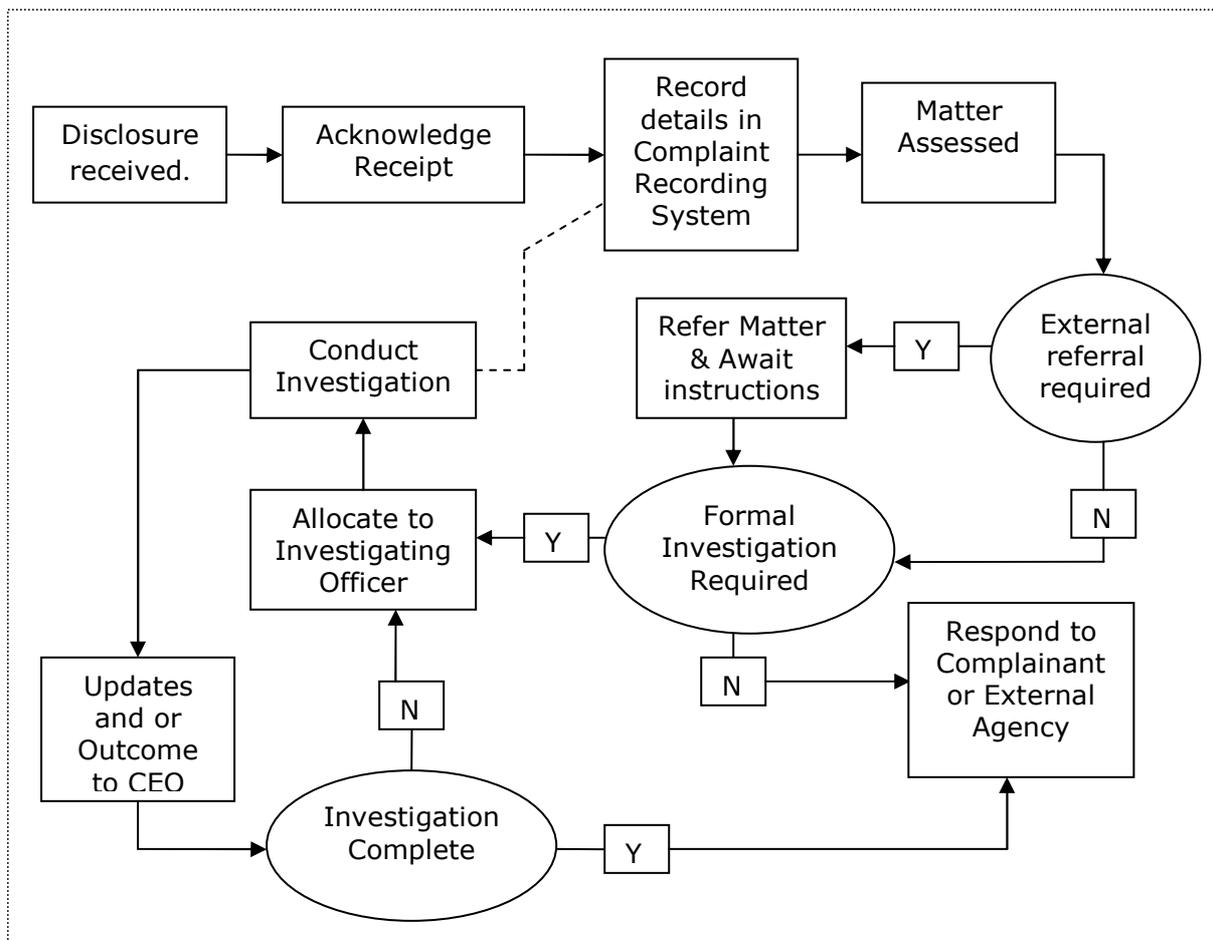
A person may make a disclosure in any way, including anonymously. If a disclosure is made anonymously, it is difficult to protect the person making the disclosure from any retributive action or reprisal. As such, anonymous disclosures, although permitted, are discouraged.

Disclosures should be made directly to the Chief Executive Officer, however a Council employee may make a public interest disclosure to their Supervisor, Executive Manager, Director, Chief Executive Officer or in need the Mayor being appropriate entities. In the case of a matter relating to alleged official misconduct, disclosures can be made directly to the Crime and Misconduct Commission.

When a disclosure is made to a supervisor, the supervisor must communicate the disclosure immediately to the Chief Executive Officer. The Chief Executive Officer has primary responsibility for receiving disclosures. Where a disclosure may involve the actions of the Chief Executive Officer, these should be referred to the Mayor. Unless specifically reported as a "public interest disclosure", the Chief Executive Officer or Mayor will assess whether a disclosure or reported matter is a "public interest disclosure" within the meaning of the Act. The Chief Executive Officer or Mayor may, where reasonable, communicate this determination to the discloser.

A disclosure should be in writing, although it may be made orally. If an appropriate entity receives a public interest disclosure, they should encourage the discloser to put the information in writing. If the discloser does not, the supervisor must promptly make a written note recording the precise matters raised and this should be referred to the Chief Executive Officer or to the Mayor.

**Overview of Process**



### Reporting Requirements

Although public interest disclosures are required to be kept confidential, Council has some reporting and record-keeping obligations imposed on it, both under the Public Interest Act 2010 and other Acts that prevail over this obligation of confidentiality.

The Chief Executive Officer or the Mayor must keep a record of all public interest disclosures or purported public interest disclosures received by Council. These records will be kept in the central records system as limited access files and will be strictly confidential.

The Chief Executive Officer is responsible for fulfilling the Council's reporting obligations under the Act, when a public interest disclosure is made, the CEO must keep a proper record of the disclosure, including:

- The name of the person making the disclosure, if known; and
- The information disclosed; and
- Any action taken on the disclosure; and
- Any other information required under a standard made under section 60 of the Act.

Likewise, when a public interest disclosure is referred under section 31 or 34 of the Act, the CEO must keep a proper record of the disclosure, including:

- The name of the person making the disclosure, if known; and
- The information disclosed; and
- The name of the public sector entity, or member of the Legislative Assembly, that referred the disclosure; and
- Any action taken on the disclosure; and
- Any other information required under a standard made under section 60 of the Act.
- The Public Service Commission, as the oversight agency, may make, under section 60 of the Act, a standard that requires the Chief Executive Officer of a public sector entity to give to the oversight agency all or any of the information mentioned above. The standard may provide for the way in which and the period within which the information is to be given.

### Investigation Procedure

The assessment about whether the reported conduct constitutes a public interest disclosure and the determination of appropriate action to be taken will be determined on a case by case basis.

If a disclosure is considered a public interest disclosure, the Chief Executive Officer or Mayor may develop an investigation and protection plan (in consultation with the discloser) in order to ensure the information is investigated and the discloser is protected from any retributive action. The plan will address whether immediate action needs to be taken to halt the conduct or remedy the danger to which the public interest disclosure relates and will recommend action to be taken to avoid reprisals against the disclosure.

The Chief Executive Officer or Mayor may consult with other relevant Council officers (while maintaining the confidentiality of the person making the disclosure). Council may choose to appoint an internal or external investigator, as appropriate. However, the disclosure will not be referred outside Council without first consulting the discloser.

Any person (whether internal or external to Council) involved in the investigation will be fully briefed on their obligations under the Act and the consequences of any breach of the obligations. The disclosure may also request information about the progress of any investigation, and any action taken on the disclosure. Council will provide such information where it is reasonable to do so.

Once a disclosure has been investigated, a report of the investigation will be delivered to the Chief Executive Officer or the Mayor. The report may contain recommendations for further action. Where reasonable, the report (or an edited extract of the report) will be forwarded to the discloser. The Chief Executive Officer or the Mayor will decide what further action (if any) will be taken on the disclosure.

In some cases the Chief Executive Officer or the Mayor may be bound to inform other agencies about the contents of a disclosure, such as the Crime and Misconduct Commission who has investigative powers for matters relating to official misconduct.

If a report of official misconduct is received, the Chief Executive Officer is required to report the matter to the Crime and Misconduct Commission for further advice on actions to be taken.

In other cases, the Chief Executive Officer or Mayor may be of the view that it is appropriate for other agency staff to be informed. In all cases, the confidentiality of the identity of the person making the disclosure will be protected to the greatest extent permitted by law and the Chief Executive Officer or the Mayor will (where practical) consult with the discloser before informing any other agency.

### **Communication**

Appropriate communication and consultation between key parties to an enquiry is the most effective method of ensuring all facets have been considered.

The key communication and consultation aspects of this procedure are as follows:

- The status or results of any investigations will be disclosed or discussed only with those persons who require knowledge of such in the performance of their office or function;
- People making public interest disclosures will be guaranteed strict confidentiality and advised of investigation outcomes;
- Council expects all staff to be familiar with and act in accordance with the Code of Conduct and expects similar standards from contractors, volunteers, agencies or organisations that do business with the Council;
- An employee who has an interest in a matter in relation to which he or she is required or authorised to act in the course of official duties must disclose the interest to the Chief Executive Officer and must not, unless the CEO otherwise determines, act in relation to the matter;
- Consultation with management to verify the integration of the Public Interest Disclosure Management requirements;
- Chief Executive Officer to be immediately advised upon receipt of a public interest disclosure;

- At the conclusion of any investigation, the investigating officer in charge must submit a written report to the Chief Executive Officer;
- Matters relating to a criminal offence will be reported to the police as early as possible to avoid jeopardising potential police investigation.

**Duties and Behaviour**

Council expects its elected members and staff to maintain a high standard of ethical conduct in all activities, in particular with respect to resources, information and authority. The community rightly expects the Council to conduct its business in a fair and honest manner.

Furthermore, Council is responsible for ensuring that appropriate measures are in place to support persons who disclose unlawful, negligent or improper public sector conduct or danger to public health or safety or the environment.

Staff should also be familiar with and act in accordance with the Fraser Coast Regional Council Code of Conduct and elected members to comply with the Code of Conduct for Councillors.