

Organisational Procedure



5.08 Public Interest Disclosure (PID) Procedure

*A printed copy of this policy may not be current as Toowoomba Regional Council regularly reviews and updates its policies. The latest controlled version can be obtained from the Policy Register in the policy section of Council's intranet or by contacting Council's Coordinator Local Laws and Policy Development for a hard copy of the latest version. **A hard copy of this electronic document is uncontrolled.***

Where there is a delegation identified in this policy, the reader will need to confirm if an alternative delegation exists in any Register of Delegation. If there is a perceived conflict between the delegation/s identified in this policy and of those contained in a Register of Delegation, then the delegation/s in the Register takes precedence. The Chief Executive Officer will, if necessary, be the sole arbiter in resolving any issues of conflict.

1. Purpose

The purpose of this procedure is to further define the process to deal with Public Interest Disclosures (PIDs). This includes undertaking risk assessments and development of an appropriate and proportionate management plan and to define the support available to disclosers, witnesses and subject officers. This procedure should be read together with the Complaint Management Policy.

2. Scope and Applications

This organisational procedure is applied to any public interest disclosures made about Council operations, including those referred to Council by external agencies.

3. Content

3.1 Receiving and Assessing PIDS

3.1.1 Reporting of Wrongdoing

The reporting of suspected wrongdoing in the workplace by any person is encouraged. People with suspicions, concerns or information about wrongdoing are encouraged to:

- Observe what is occurring and make written notes, or take photographs if appropriate;
- Carefully consider the information that they have, and ask themselves if there are reasonable grounds to form an honest belief that the information tends to show conduct described in this procedure;
- If reasonable grounds exist, promptly report the information to an appropriate person or authority;
- Ensure that only those who need to know are informed;
- Not alert people who may possibly be involved; and
- Ensure that any notes and other evidence are kept in a safe place.

3.1.2 Making a Public Interest Disclosure

A public interest disclosure can be made:

- Internally, either verbally or in writing to a supervisor, Manager, General Manager or Chief Executive Officer; or
- Externally to other Agencies who can investigate the matter (e.g. Crime and Corruption Commission, Ombudsman, Department of Local Government, Racing and Multicultural Affairs, and Queensland Human Rights Commission,)

Council's firm preference is for disclosures to be made directly to Manager Governance & Legal Services or Council's Governance and Legal Services Compliance Officer. Alternatively, a restricted access email address (investigations@tr.qld.gov.au) can be utilised for written correspondence. The reason why this is preferred is that personnel in that area are best placed to maximise preservation of confidentiality, and to conduct assessments, and possible referrals to other agencies, that are required by law.

3.1.3 Assessment of Complaint as a Public Interest Disclosure

To determine that a complaint is a PID, the complaint must be assessed as being:

- An appropriate disclosure where the:
 - Discloser honestly and reasonably believes the information tends to show the conduct or danger; or
 - The information tends to show the conduct or danger regardless of the Discloser's belief;
- Of public interest.
 - Anybody can disclose:
 - Danger to the health or safety of a person with a disability;

- Danger to the environment¹;
 - Reprisal (e.g. any detriment, including bullying and harassment).
- Public Officers can disclose:
 - Corrupt conduct;
 - Maladministration that adversely affects a person's interests in a substantial and specific way;
 - Substantial misuse of public resources;
 - Substantial and specific danger to public health or safety; or
 - Substantial and specific danger to the environment.
- Made to a proper authority, including:
 - Council (including but not limited to Supervisors, Managers, General Managers, Chief Executive Officer (CEO), Councillors, Council's Governance and Legal Services Compliance Officer, a Health and Safety or Environmental Officer, a Workplace Relations Officer);
 - Other Agencies who can investigate the matter (e.g. Crime and Corruption Commission, Ombudsman, Department of Local Government, Racing and Multicultural Affairs, etc.).

3.1.4 Management of a Public Interest Disclosure

Where the proper authority's officer believes that a complaint may be a PID, it should be immediately referred to the Manager Governance and Legal Services Branch, with all the relevant information such as who the discloser is, all the details of the allegation/s and any supporting evidence/documentation.

Upon receipt of the matter the Manager Governance and Legal Services will assess it against the PID Criteria. Where the matter is assessed as a PID the Manager will:

- advise the CEO of the complaint and circumstances;
- initiate the appropriate action under the *Public Interest Disclosure Act 2010*, including completing the appropriate complaint lodgement forms as delegate of the CEO;
- undertake a Risk Assessment and where appropriate develop a Management Plan as a precursor to adopting the appropriate investigation procedure/plan;
- update the PID Database (<https://qo.qld.gov.au/fmi/webd>); and
- maintain the currency of Discloser status.

Appropriate information as detailed in 3.1.5 shall also be provided to the Discloser,

Where it is determined that the matter is not a PID, the complainant is to be notified of the decision and reasons why. If the complainant is not satisfied with the decision not to classify a complaint as a PID, the level of support or protection provided to the Discloser, or any other matter, the complainant has the right to seek an internal review (Administrative Action Complaint) of the assessment.

Notwithstanding whether the complaint has been assessed as a PID, the appropriate investigation procedure identified in the Complaint Management Policy will apply.

3.1.5 Information provided to Discloser

Following the making of a disclosure, the Governance and Legal Services Branch shall provide, to the Discloser the following information:

- A copy of Section 32 of the Public Interest Disclosure Act 2010;
- An indication of the likely timeframe for investigation;
- Advice of their likely involvement in the investigation process;

¹ Refer s12 of the PID Act

- Advice of the importance of maintaining confidentiality;
- Advice of the protections under the Act that will apply;
- Advice regarding the disclosure of their personal details;
- Advice on how they will be advised of the progress and outcomes;
- Who to contact if they want further information or are concerned about reprisals; and
- Advise that false or misleading information may result in disciplinary action against the complainant.

3.1.6 Investigation

Where appropriate, the investigation of the PID will be undertaken in accordance with Council's Complaint Management Policy.

3.1.7 Reporting Public Interest Disclosures to the Ombudsman

All PIDs shall be recorded in the Ombudsman Database at <https://qo.qld.gov.au/fmi/webd>

3.1.8 Disclosure to Journalists

The Act also provides protection to Disclosers when providing substantially the same information to journalists relating to the disclosure. However, that protection is only available if a person has made a PID and:

- The Council has decided not to investigate or deal with the disclosure; or
- The Council investigated the disclosure but did not recommend taking any action in relation to the disclosure; or
- The Council did not notify the person, within six months after the date of the disclosure about whether or not the disclosure was to be investigated or dealt with.

3.2 Support

Council will provide ongoing support and information to the Discloser. Depending on the nature of the case a Support officer may also be assigned to the subject officer(s) and other staff involved in an investigation. The Manager, Governance and Legal Services should contact them periodically or whenever something significant occurs (e.g. the start or completion of an investigation, when any decisions are made or outcomes released or the return of the subject officer(s) to the workplace) to:

- Advise them of progress;
- Ensure that they are not suffering any detriment; and
- Obtain any further information that may be relevant.

3.2.1 Risk Assessment for Reprisals

In consultation with Manager Governance and Legal Services Branch or delegate a Manager, General Manager or CEO receiving a PID, must assess the potential risk of reprisal for the Discloser. The process of risk assessment must have regard to the context, identified risks and ability to monitor the workplace. Risk assessments are tailored to focus on the risk of reprisal toward the discloser.

Having assessed the risk, a management plan to protect the Discloser must be developed.

The complainant will be referred to in all notes or reports by the term "Discloser", and not referred to by name or position to preserve anonymity.

3.2.2 Discloser

3.2.2.1 Protection

Where a complaint is determined to be a PID, the Discloser is entitled to the protections of the *Public Disclosure Act 2010*, i.e. immunity from liability (including defamation) and

protection from reprisal action. However, protection will not be extended where a disclosure is shown to be intentionally false or misleading.

3.2.2.2 Organisational Support

Where the Discloser is an employee and requires support, the Manager, Governance and Legal Services will ensure Council procedures are applied, with:

- The PID being acknowledged for taking the right action and is valued;
- The Discloser is supported by Council;
- A PID Support Officer being appointed to provide support (separate from the investigation) and regularly checking on the Discloser's wellbeing;
- The Discloser being aware of the Employee Assistance Program, and their entitlement to paid leave to attend counselling; and
- Where necessary, liaising with Health Safety and Wellbeing Unit to protect the employee's wellbeing.

3.2.2.3 Management Support

Management must monitor the workplace for signs of harassment or victimisation, anticipate potential problems as risk managers and initiate appropriate measures when required. Management will support the Discloser by:

- Acknowledging that making the PID was the right thing to do and is appreciated by the organisation;
- Making a clear statement of support to the Discloser – example: 'I will help you with this';
- Assuring the Discloser that management will take all reasonable steps to protect them; and
- Providing reasonable paid leave to attend counselling.

3.2.2.4 PID Support Officer

An officer, who the Discloser trusts will be assigned to act as the Discloser's support person in the workplace and to assist them throughout the process. The role may include:

- Attending interviews or meetings with the Discloser;
- Acting as a liaison point with management and investigators;
- Referring the Discloser to professional help as needed; and
- Providing a balanced, independent view of what, if anything is occurring in their workplace.

3.2.3 Subject Officer(s) Support

The employee/s about whom the complaint is made, is/are also likely to find the PID experience stressful. Subject Officers can be supported by:

- Assurances that the complaint will be dealt with impartiality, fairly and reasonably;
- Affirmation that the complaint is only an allegation unless evidence collected proves otherwise;
- Being provided with information about their rights, and the progress and outcome of any investigation;
- Being made aware of the Employee Assistance Program, and their entitlement to paid leave to attend counselling; and
- Where necessary, liaising with Council's Health Safety and Wellbeing Unit to protect the employee's wellbeing.

3.2.4 Employee Assistance Program (EAP) Support

Disclosers, Subject Officers and other officers are entitled to access Council's Employee Assistance Program which provides free, confidential and professional counselling services to employees. Specific advice on how to access the program can be obtained from any Manager,

or the People and Organisational Development Branch. Paid leave is available to access the services.

3.2.5 Managing Reprisals

Where reprisal action is alleged, the matter will be managed as a new PID complaint separately to the initial allegation and the Risk Assessment and Management Plan will be reviewed.

3.2.6 Reasonable Management Action

Determining whether management action is reasonable or unreasonable will depend on the circumstances of the individual situation, having regard to the duty each employee has to Council as the employer.

For example, where a work area is restructured with a resultant change to an employee's workload, this would constitute reasonable management action by the Council. However, the failure to provide adequate resources in relation to the increased workload may be viewed as the Council implementing the action in an unreasonable way.

Whenever Council contemplates taking action against a Discloser (because of their involvement in wrongdoing or other reason), it must be able to clearly demonstrate that:

- There are sufficient grounds to justify the management action;
- The action is reasonable, proportionate and consistent with similar cases;
- They have taken into account the Discloser's particular circumstances; and
- They are not taking action because the Discloser has made a PID.

3.2.7 Review Rights

A person who is dissatisfied with a decision may request either:

- An administrative action internal review (undertaken by Council's Governance and Legal Services Branch or Chief Executive Officer); or
- An external review (undertaken by The Queensland Ombudsman).

3.3 Training

Training will be provided to Officers involved in handling PIDs to ensure that they:

- Can identify wrongdoing;
- Know how to recognise a PID and what action to take when they receive PIDs or other information about wrongdoing;
- Are aware of their responsibility to their employees;
- Manage Public Interest Disclosures; and
- Be supportive when dealing with employees disclosing wrongdoing.

3.4 Roles and Responsibilities of Key Staff

3.4.1 General Responsibility for Public Interest Disclosures

All officers involved are expected to continually monitor the work environment for signs of reprisal or other detriment and, if necessary, take corrective action early. By ignoring or not challenging harassment, Council could be seen as condoning it and problems are likely to escalate. Council may also be exposed to allegations of maladministration and/or liability for damages.

If reprisal action against a Discloser is suspected, the Manager, Governance and Legal Services should be notified immediately. Managers must not conduct an inquiry or gather information, as a criminal offence may have been committed and those actions may compromise a subsequent investigation.

Investigations of reprisal will be handled by an experienced, senior and qualified person who has not been involved with the initial PID.

3.4.2 Supervisors and Managers

Where a Supervisor or Manager receives a PID, they are to immediately:

- Advise the Manager, Governance and Legal Services;
- Keep all information confidential;
- Consider what actions are needed to protect the Discloser from detriment or reprisal action and;
- Monitor the workplace.

3.4.3 Officer Responsible for Managing PIDs

The Manager, Governance and Legal Services shall be responsible for:

- Determining whether the complaint involves a PID;
- Managing any PID assessment, including internal and external PID reporting;
- Managing the support provided to Disclosers and inform the direct supervisor and line manager of the Discloser that they will be held responsible for supporting the Discloser and to take preventative measures to protect against harassment, victimisation or any other form of reprisal by colleagues or any subject officers;
- Reviewing the effectiveness of Council's PIDs and report to the CEO. The review shall consider whether:
 - Council's policies and procedures are consistent with better practice and current law;
 - PIDs are being recorded appropriately;
 - Action taken in response to PIDs is in accordance with Council procedures;
 - Confidentiality issues are being handled effectively;
 - Employees believe they have been treated well after making a PID;
 - Timely and constructive information is being provided to those involved; and
 - Employees are aware of, and trust, Council's program.

3.4.4 Delegations and Authorisations

Investigating Officers are authorised to access officers involved in the matter and access relevant Council documents.

The Manager, Governance and Legal Services is authorised to report PIDs to Queensland Ombudsman.

4. Definitions

Term	Definition
Administrative Action	<p>An Administrative Action complaint is defined in s268(2) of the <i>Local Government Act 2009</i>, that is made by an Affected Person about an Administrative Action of a local government, including the following examples:</p> <ul style="list-style-type: none"> • A decision, or failure to make a decision, including a failure to provide a written statement of reasons for a decision; • An act, or failure to do an act; • The formulation of a proposal or intention; • The making of a recommendation.

Term	Definition
Affected Person	<p>An Affected Person for Administrative Action complaints is a person who is apparently directly affected by an Administrative Action of a local government.</p> <p>An Affected Person for Competitive Neutrality concerns or complaints is a person who:</p> <ul style="list-style-type: none"> • Competes with the local government in relation to the Business Activity; and • Claims to be adversely affected by a competitive advantage that the person alleges is enjoyed by the local government; or • A person who wants to compete with the local government in relation to the Business Activity; and • Claims to be hindered from doing so by a competitive advantage that the person alleges is enjoyed by the local government.
Affiliate	<p>An Affiliate includes contractors, suppliers, volunteers, members of Advisory Committees, work experience students and other people who have a particular relationship with Council.</p>
Appropriate Disclosure	<p>An Appropriate Disclosure is a disclosure about:</p> <ul style="list-style-type: none"> • Corrupt Conduct; • Maladministration that adversely affects a person's interests in a substantial and specific way; • A substantial misuse of public resource; • A substantial and specific danger to public health or safety; • A substantial and specific danger to the environment; • A substantial and specific danger to the health or safety of a person with a disability; or • Reprisal Action.
Complainant	<p>A Complainant is a person or entity who makes a complaint.</p>
Corrupt Conduct	<p>Is defined in s15 of the Crime and Corruption Act.</p>
Discloser	<p>A Discloser is a person who makes a Public Interest Disclosure (PID) and does not need to be personally affected by the matter they are disclosing.</p>
Employee	<p>An Employee includes:</p> <ul style="list-style-type: none"> • a person employed by Toowoomba Regional Council (TRC) or its controlled entities; • a person who provides services to the Council under contract; or • affiliate
External Investigator	<p>An External Investigator is a person who may be appointed to investigate a complaint or undertaking an internal review.</p>
Frivolous Matter	<p>A Frivolous Matter is one which is viewed as trivial, lacking in substance, or unworthy of serious attention.</p> <p>Considerations include whether:</p> <ul style="list-style-type: none"> • the Complainant has a history of making false or unsubstantiated complaints;

Term	Definition
	<ul style="list-style-type: none"> • there is no information to support the allegation in any way; • the allegation is not serious or sensible, and is of such a nature that a reasonable person could not treat it as being bona fide; • the allegation is without any foundation and appears to be designed to harass, annoy or embarrass the Subject Officer; • the allegation is inherently improbable and there is no information that in any way supports it.
Investigating Officer	<p>An Investigating Officer is the officer selected to investigate the complaint and may be a supervisor, manager, general manager or an External Investigator.</p> <p>The Investigating Officer will:</p> <ul style="list-style-type: none"> • be more senior to the Subject Officer or original decision maker in review matters; • have had no previous involvement in the matter; • possess the necessary breadth of expertise to investigate the complaint; • have access to technical and legal advice; • be unbiased and objective; • have no conflict of interest in dealing with the matter.
Management Action	<p>Management Action is any act by a person in a more senior position that impacts on an Employee. Examples include:</p> <ul style="list-style-type: none"> • transferring, demoting, disciplining, redeploying or dismissing an Employee; • deciding not to promote, reclassify, transfer or grant a leave of absence; • performance management; • task allocation, workloads and training.
PID Support Person	<p>A PID Support Officer is an officer of the entity, delegated by the chief executive officer or the PID Coordinator with responsibility for providing support to a discloser, subject officer or witness who is involved in the management of a PID.</p>
Proper Authority	<p>The Proper Authority for all disclosures relating to the Toowoomba Regional Council and its controlled entities is Council's Chief Executive Officer, Crime and Corruption Commission, or Queensland Ombudsman.</p>
Public Interest	<p>The Public Interest refers to the 'common wellbeing' or 'general welfare' of the community and government affairs.</p>
Public Officer	<p>An Employee or elected member of Council.</p>
Public Interest Disclosure (PID)	<ul style="list-style-type: none"> • A PID is an Appropriate Disclosure where the: <ul style="list-style-type: none"> ○ Discloser honestly and reasonably believes the information tends to show the conduct or danger; or ○ the information tends to show the conduct or danger regardless of the Discloser's belief; • Of Public Interest. Anybody can disclose: <ul style="list-style-type: none"> ○ danger to the health or safety of a person with a disability;

Term	Definition
	<ul style="list-style-type: none"> ○ danger to the environment; ○ reprisal (e.g. any detriment, including bullying and harassment). • Made by the proper person. Public Officers can disclose: <ul style="list-style-type: none"> ○ Corrupt conduct; maladministration that adversely affects a person's interests in a substantial and specific way; ○ substantial misuse of public resources; ○ substantial and specific danger to public health or safety; or ○ the environment. • Made to a Proper Authority, including: <ul style="list-style-type: none"> ○ Council (including Supervisors, Managers, General Managers and Chief Executives); ○ Other Agencies who can investigate the matter (e.g. Crime and Corruption Commission, Ombudsman, Department of Local Government, etc.).
Reprisal Action	<p>A reprisal is a form of detriment to a person because it is believed that somebody has made or intends to make a complaint or disclosure. Examples include:</p> <ul style="list-style-type: none"> • threatening or harassing a Discloser or those close to them; • inclusion on, or exclusion, from on call rosters; • discriminating against a Discloser in subsequent job applications.
Subject Officer	The Subject Officer is a person about whom an allegation has been made.
Vexatious Complaint	A Vexatious Complaint is one which is intended to, or perceived to intend to cause distress, embarrassment, or to harass the subject of the complaint (may also relate to Frivolous complaints).

5. Relevant Law

[Crime and Corruption Act 2001](#)

[Public Interest Disclosure Act 2010](#)

[Corruption in Focus – a guide for dealing with corrupt conduct in the Queensland public sector, Crime and Corruption Commission \(CCC\) Queensland.](#)

6. Related Policies/Documents

2.33 Corruption and Fraud Control Policy DM#7580323

2.52 Complaint Management Policy DM#7733272

4.09 Enterprise Risk Management Policy DM#7840755

5.20 Making and Receiving Complaints Procedure DM#6862315

5.21 Assessing and Investigating Complaints Procedure DM#7027359

Toowoomba Regional Council Code of Conduct for Employees

Audit and Risk Committee Charter

Annual Internal Audit Plan

Crime and Responding Complaint Assessment Report Template DM#6054571

Crime and Corruption Commission Investigation Report DM#6085507

Risk Assessment Management Plan - PID DM#6079115

Public Interest Disclosure Acknowledgement Letter Template DM#6079244

Fact Sheet for Managing a Public Interest Disclosure DM#8254363

7. Policy Details

Policy Category	Organisational Procedure
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Contact Officer	Manager, Governance and Legal Services Branch
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8. Revision History

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1.00	18 September 2012	4048397v2
2.00	01 September 2015	6081950v2
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