

POLICY PURPOSE

In accordance with the *Public Interest Disclosures Act 1994* (PID Act), this policy provides information about the process and procedure for dealing with public interest disclosures.

POLICY SCOPE

This policy applies to all council staff and councillors including permanent, temporary and casual employees, consultants and individual contractors working for Edward River Council (Council). It also applies to members of committees and volunteers.

LEGISLATION

- Public Interest Disclosures Act 1994
- NSW Local Government Act 1993
- NSW Independent Commission Against Corruption Act 1998
- Government Information (Public Access) Act 2009

POLICY STATEMENT

Council is committed to encouraging, supporting the reporting and investigation, of wrongdoing within the council, and to protect those who make disclosures from any adverse action motivated by their report, keeping their identity confidential where possible.

WHAT SHOULD BE REPORTED?

You should report any suspected wrongdoing within Council. Reports about the five categories of serious misconduct include corrupt conduct, maladministration, serious and substantial waste of public money, breach of the GIPA Act, and local government pecuniary interest contravention will be dealt with under the PID Act as protected disclosures and according to this policy.

1. **Corrupt Conduct**

Corrupt conduct, as defined in the *Independent Commission Against Corruption Act 1988* is deliberate or intentional wrongdoing, not negligence or a mistake. It can take many forms, but generally corrupt conduct is the dishonest or partial exercise by a public official in the performance of their official functions. This could include:

- the improper use of knowledge, power or position for personal gain or the advantage of others;
- acting dishonestly or unfairly, or breaching public trust

2. **Maladministration**

Maladministration is conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives. This could include:

- decision making and/or taking action that is unlawful
- refusing to grant an approval for reasons that are not related to the merits of their application.
- Intimidation, harassment, bullying or the influencing of a Council official.

3. Serious and substantial waste of public money

Serious and substantial waste is the uneconomical, inefficient or ineffective use of resources that could result in losing or wasting public money. This could include:

- not following a competitive tendering process for a large-scale contract
- having bad or no processes in place for a system involving large amounts of public funds.
- using Council resources for personal gain and private purposes

4. Breach of the GIPA Act

A breach of the Government Information (Public Access) Act 2009 (GIPA Act) is a failure to properly fulfil functions under that Act. This could include:

- destroying, concealing or altering records to prevent them from being released
- knowingly making decisions that are contrary to the legislation
- directing another person to make a decision that is contrary to the legislation.

5. Local government pecuniary interest contravention

A local government pecuniary interest contravention is a failure to comply with requirements under the *Local Government Act 1993* relating to the management of pecuniary interests. These include obligations to lodge disclosure of interests returns, disclose pecuniary interests at council and council committee meetings and leave the meeting while the matter is being discussed.

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. This could include:

- a senior council staff member recommending a family member for a council contract and not declaring the relationship
- a Councillor participating in consideration of a DA for a property they or their family have an interest in.

REPORTING PUBLIC INTEREST DISCLOSURES

When will a report be treated as a Public Interest Disclosure?

For a report of wrongdoing to be treated as a protected disclosure it must meet the criteria under the PID Act. These are:

- the report must be about one of the five categories of serious wrongdoing and the person making the disclosure must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing
- the report must be made to one or more of the following
 - the General Manager or,
 - for reports about the General Manager the Mayor
 - a position nominated in this policy or one of the investigating authorities nominated in the PID Act.

Reports by staff are not public interest disclosures if they:

- mostly question the merits of government policy, including the governing body of Council

- are made with the sole or substantial motive of avoiding dismissal or other disciplinary action

How to make a report

You can report wrongdoing in writing or verbally. You are encouraged to make a report in writing as this can help to avoid any confusion or misinterpretation. It also allows an opportunity for the investigating authority to seek clarification if required. Council's Internal Reporting Form is also available for staff or councillors to use to make a report.

If a report is made verbally, the person receiving the report will make a comprehensive record of the report and ask the person making the report to sign this record. The reporter should keep a copy of this record.

Can a report be anonymous?

There will be some situations where you may not want to identify yourself when you make a report. Although these reports will still be dealt with by Council it is best if you identify yourself. This allows us to provide you with any necessary protection and support, as well as feedback about what action is to be taken or has been taken to deal with the issues raised in the report, or the outcome of any investigation.

It is important to realise that an anonymous disclosure may not prevent you from being identified by the subjects of the report or your colleagues. If we do not know who made the report, it is very difficult for us to prevent any reprisal should others identify you.

Feedback to staff who report wrongdoing

Staff and councillors who report wrongdoing will be kept informed about what is happening in response to their report.

a. Acknowledgement

When you make a report, Council will contact you to confirm that your report has been received and to advise:

- the timeframe within which you will receive further updates
- the name and contact details of the people who can tell you what is happening or handle any concerns you may have.

After a decision is made about how your report will be dealt with, the Council will send you an acknowledgment letter, providing:

- information about the action that will be taken in response to your report
- the likely timeframes for any investigation or other action
- information about the internal and external resources or services available that you can access for support.

We will provide this information to you within ten working days from the date you make your report. We will also advise you if we decide to treat your report as a public interest disclosure and provide you with a copy of this policy at that time, as required by the PID Act.

Please note, if you make a report which meets the requirements of the PID Act but the report was made under a statutory or legal obligation or incidental to the performance of your day to day functions, you will not receive an acknowledgement letter or a copy of this policy.

b. Progress updates

While your report is being dealt with, such as by investigation or making other enquiries, you will be given:

- information about the progress of the investigation or other enquiries and reasons for any delay
- advice of any decision by the Council not to proceed with the matter
- advice if your identity needs to be disclosed for the purposes of investigating the matter or making enquiries, and an opportunity to talk about this beforehand.

c. Feedback

Once the matter has been finalised you will be given:

- enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to your disclosure and any problem that was identified
- advice about whether you are likely to be called as a witness in any further matters, such as disciplinary or criminal proceedings.

Maintaining confidentiality

Council realises reporters may want their identity and the fact they have made a report to remain confidential. This can help to prevent any action being taken against them for reporting wrongdoing.

Where possible and appropriate we will take steps to keep your identity, and the fact you have reported wrongdoing, confidential. We will discuss with you whether it is possible to keep your identity confidential.

If confidentiality cannot be maintained, we will develop a plan to support and protect you from reprisal in consultation with you.

If you report wrongdoing, it is important that you only discuss your report with those responsible for dealing with it. This will include the Disclosures Coordinator and the General manager, or in the case of a report about the General Manager, the Disclosures Coordinator and the Mayor. The fewer people who know about your report, before and after you make it, the more likely it will be that we can protect you from any reprisal.

Any staff or councillors involved in the investigation or handling of a report, including witnesses, are also required to maintain confidentiality and not disclose information about the process or allegations to any person except for those people responsible for handling the report.

Managing the risk of reprisal and workplace conflict

When a staff member or councillor reports wrongdoing, the Council will undertake a thorough risk assessment to identify the risk to you of detrimental action in reprisal for reporting, as well as indirect but related risks of workplace conflict or difficulties. The risk assessment will also identify strategies to deal with those risks and determine the level of protection and support that is appropriate.

Depending on the circumstances, Council may:

- relocate the reporter or the staff member who is the subject of the allegation within the current workplace
- transfer the reporter or the staff member who is the subject of the allegation to another position for which they are qualified
- grant the reporter or the staff member who is the subject of the allegation leave of absence during the investigation of the disclosure.

These courses of action are not punishment and will only be taken in consultation with the reporter.

Protection against reprisals

The PID Act provides protection for who report wrongdoing by imposing penalties on anyone who takes detrimental action against another person substantially in reprisal for that person making a public interest disclosure.

These penalties also apply to cases where a person takes detrimental action against another because they believe or suspect the other person has made or may have made a public interest disclosure, even if they did not.

Detrimental action means action causing, comprising or involving any of the following:

- injury, damage or loss
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to employment
- dismissal from, or prejudice in, employment
- disciplinary proceedings.

a. Responding to allegations of reprisal

If you believe that detrimental action has been or is being taken against you or someone else in reprisal for reporting wrongdoing, you should tell your supervisor, the Disclosures Coordinator or the General Manager immediately. In the case of an allegation of reprisal by the General Manager, you can alternatively report this to the Mayor.

All supervisors must notify the Disclosures Coordinator or the General Manager if they suspect that reprisal against a staff member is occurring or has occurred, or if any such allegations are made to them. In the case of an allegation of reprisal by the General Manager, the Mayor can alternatively be notified.

If a PID Officer becomes aware of or suspects that reprisal is being or has been taken against a person who has made a disclosure, they will:

- assess the allegation of reprisal to decide whether the report should be treated as a public interest disclosure and whether the matter warrants investigation or if other action should be taken to resolve the issue
- if the reprisal allegation warrants investigation, ensure this is conducted by a senior and experienced member of staff
- if it is established that reprisal is occurring against someone who has made a report, take all steps possible to stop that activity and protect the reporter
- take appropriate disciplinary action against anyone proven to have taken or threatened any action in reprisal for making a disclosure
- refer any breach of Part 8 of the council's code of conduct (reprisal action) by a councillor or the General Manager to the Office of Local Government.
- refer any evidence of an offence under section 20 of the PID Act to the ICAC or NSW Police Force.

If you allege reprisal, you will be kept informed of the progress and outcome of any investigation or other action taken in response to your allegation.

If you have reported wrongdoing and are experiencing reprisal which you believe is not being dealt with effectively, contact the Office of Local Government, the Ombudsman or the ICAC (depending on the type of wrongdoing you reported). Contact details for these investigating authorities are included at the end of this policy.

b. Protection against legal action

If you make a public interest disclosure in accordance with the PID Act, you will not be subject to any liability, and no action, claim or demand can be taken against you for having made the public interest disclosure. You will not have breached any confidentiality or secrecy obligations and you will have the defence of absolute privilege in defamation.

Support for those reporting wrongdoing

Council will make sure that staff who have reported wrongdoing, regardless of whether their report is treated as a public interest disclosure, are provided with access to any professional support they may need because of the reporting process – such as stress management or counselling services.

Access to support may also be available for other staff involved in the internal reporting process where appropriate. Reporters and other staff involved in the process can discuss their support options with the disclosures coordinator.

Sanctions for making false or misleading statements

It is important all staff and councillors are aware that it is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing. Council will not support staff or councillors who wilfully make false or misleading reports. Such conduct may also be a breach of the code of conduct resulting in disciplinary action. In the case of councillors, disciplinary action may be taken under the misconduct provisions of the *Local Government Act 1993* and may include suspension or disqualification from civic office.

THE RIGHTS OF PERSONS THE SUBJECT OF A REPORT

The Council is committed to ensuring staff or councillors who are the subject of a report of wrongdoing are treated fairly and reasonably. This includes keeping the identity of any person the subject of a report confidential, where this is practical and appropriate.

If you are the subject of the report, you will be advised of the allegations made against you at an appropriate time and before any adverse findings. At this time, you will be:

- advised of the details of the allegation
- advised of your rights and obligations under the relevant related policies and procedures
- kept informed about the progress of any investigation
- given a reasonable opportunity to respond to any allegation made against you
- told the outcome of any investigation, including any decision made about whether further action will be taken against you.

Where the reported allegations against the subject officer are clearly wrong, or have been investigated and unsubstantiated, Council will support the subject officer. The fact of the allegations and any investigation will be kept confidential unless otherwise agreed to by the subject officer.

KEY ROLES AND RESPONSIBILITIES**General Manager**

The General Manager has ultimate responsibility for maintaining the internal reporting system and workplace reporting culture, and ensuring Council complies with the PID Act. The General Manager can receive reports from staff and councillors and has a responsibility to:

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- assess reports received by or referred to them, to determine whether the report should be treated as a public interest disclosure, and to decide how the report will be dealt with
 - deal with reports made under the council's code of conduct in accordance with the council's adopted code of conduct procedures
 - ensure there are strategies in place to support reporters, protect reporters from reprisal and manage workplace conflict that may arise in relation to a report
 - make decisions following any investigation or appoint an appropriate decision-maker
 - take appropriate remedial action where wrongdoing is substantiated or systemic problems are identified
 - refer actual or suspected corrupt conduct to the Independent Commission Against Corruption (ICAC) refer any evidence of a reprisal offence under section 20 of the PID Act to the Commissioner of Police or the ICAC.

Council staff and councillors

Staff and councillors play an important role in contributing to a workplace where known or suspected wrongdoing is reported and dealt with appropriately. All council staff and councillors are obliged to:

- report all known or suspected wrongdoing and support those who have made reports of wrongdoing
- if requested, assist those dealing with the report, including supplying information on request, cooperating with any investigation and maintaining confidentiality
- treat any staff member or person dealing with a report of wrongdoing with courtesy and respect
- respect the rights of any person the subject of reports.

Staff and councillors must not:

- make false or misleading reports of wrongdoing
- victimise or harass anyone who has made a report

Additionally, the behaviour of all council staff and councillors involved in the internal reporting process must adhere to Councils code of conduct. A breach of the code could result in disciplinary action.

Disclosures Coordinator (Senior Governance Officer)

This position has a central role in Council's internal reporting system. The Disclosures Coordinator can receive and assess reports, and is the primary point of contact at Council for the reporter. The Disclosures Coordinator has a responsibility to:

- assess reports to determine whether a report should be treated as a public interest disclosure, and to decide how each report will be dealt with (either under delegation or in consultation with the General Manager)
- deal with reports made under the council's code of conduct in accordance with the council's adopted code of conduct procedures
- coordinate Council's response to a report
- acknowledge reports and provide updates and feedback to the reporter
- assess whether it is possible and appropriate to keep the reporter's identity confidential
- assess the risk of reprisal and workplace conflict related to or likely to arise out of a report, and develop strategies to manage any risk identified

- where required, provide or coordinate support to staff involved in the reporting or investigation process, including protecting the interests of any officer the subject of a report
- ensure Council complies with the PID Act
- provide six-monthly reports to the NSW Ombudsman in accordance with section 6CA of the PID Act.

Disclosures Officers

Disclosures officers are additional points of contact within the internal reporting system. They can provide advice about the system and the internal reporting policy, receive reports of wrongdoing and assist staff and councillors to make reports.

They have a responsibility to:

- document in writing any reports received verbally, and have the document signed and dated by the reporter
- make arrangements to ensure reporters can make reports privately and discreetly when requested, if necessary away from the workplace
- discuss with the reporter any concerns they may have about reprisal or workplace conflict
- carry out preliminary assessment and forward reports to the disclosures coordinator or general manager for full assessment.

Mayor

The Mayor can receive reports from staff and councillors about the General Manager. Where the Mayor receives such reports, the Mayor has a responsibility to:

- assess the reports to determine whether they should be treated as a public interest disclosure, and to decide how they will be dealt with
- deal with reports made under the council's code of conduct in accordance with the council's adopted code of conduct procedures
- refer reports to an investigating authority, where appropriate
- liaise with the disclosures coordinator to ensure there are strategies in place to support reporters, protect reporters from reprisal and manage workplace conflict that may arise in relation to a report
- refer actual or suspected corrupt conduct to the ICAC
- refer any evidence of a reprisal offence under section 20 of the PID Act to the Commissioner of Police or the ICAC.

Supervisors and Line Managers

Supervisors and line managers play an important role in managing the immediate workplace of those involved in or affected by the internal reporting process. Supervisors and line managers should be aware of the internal reporting policy and are responsible for creating a local work environment where staff are comfortable and confident about reporting wrongdoing. They have a responsibility to:

- encourage staff to report known or suspected wrongdoing within the organisation and support staff when they do
- identify reports made to them in the course of their work which could be public interest disclosures, and assist the staff member to make the report to an officer authorised to receive public interest disclosures under this policy

- implement local management strategies, in consultation with the disclosures coordinator, to minimise the risk of reprisal or workplace conflict in relation to a report
- notify the disclosures coordinator or general manager immediately if they believe a staff member is being subjected to reprisal as a result of reporting wrongdoing, or in the case of suspected reprisal by the general manager, notify the Mayor.

ASSESSMENT OF REPORTS

All reports will be promptly and thoroughly assessed to determine what action will be taken to deal with the report and whether the report will be treated as a public interest disclosure. The Director of Corporate Services or Senior Governance Officer are the Disclosure Coordinators under this policy. They are responsible for assessing reports, in consultation with the General Manager where appropriate.

All reports will be assessed on the information available to the disclosures coordinator at the time. It is up to the disclosures coordinator to decide whether an investigation should be carried out and how that investigation should be carried out. In assessing a report the disclosures coordinator may decide that the report should be referred elsewhere or that no action should be taken on the report.

Internal Investigating Authorities

Staff are encouraged to report general wrongdoing to their supervisor. However, the PID Act requires that, for a report to be a public interest disclosure, it must be made to certain public officials identified in this policy or any supporting procedures.

The following positions are the only people within Council who are authorised to receive a public interest disclosure. Any supervisor who receives a report that they believe may be a public interest disclosure is obliged to assist the staff member to make the report to one of the positions listed below. If your report involves a councillor, you should make it to the General Manager. If your report relates to the general manager, you should make it to the Mayor.

Role	Contact Person	Telephone Number
General Manager	Adam McSwain	03 5898 3047
Mayor	TBA	
Director Corporate Services	TBA	
Director Economic Development	TBA	
Disclosures Coordinator	TBA – Senior Governance Officer	

External Investigating Authorities

Staff and councillors are encouraged to report wrongdoing within Council, but internal reporting is not your only option. You can also make a public interest disclosure to:

- An investigating authority.
- A Member of Parliament or a journalist, but only in the limited circumstances outlined below.

The PID Act lists investigating authorities in NSW that staff and councillors can report wrongdoing to and the type of wrongdoing each authority can deal with. In certain circumstances, it may be

preferable to make a report of wrongdoing to an investigating authority, for example a report about either the general manager or the Mayor.

The relevant investigating authorities for the Council are:

- the Independent Commission Against Corruption (ICAC) — for reports about corrupt conduct
- the Ombudsman — for reports about maladministration
- the Information and Privacy Commissioner — for disclosures about a breach of the GIPA Act or Privacy Complaints
- the Office of Local Government— for disclosures about local councils.

You should contact the relevant investigating authority for advice about how to make a disclosure to them. Contact details for each investigating authority are provided at the end of this policy.

You should be aware that the investigating authority may well discuss any such reports with the Council. We will make every effort to assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately and there is a satisfactory outcome. We will also provide appropriate support and assistance to staff or councillors who report wrongdoing to an investigating authority, if we are made aware that this has occurred.

Members of Parliament or journalists

To have the protections of the PID Act, staff reporting wrongdoing to a Member of Parliament (MP) or a journalist must have already made substantially the same report to one of the following:

- the General Manager
- a person nominated in this policy, including the Mayor for reports about the General Manager
- an investigating authority.

Also, the Council or the investigating authority that received your initial report must have either:

- decided not to investigate the matter
- decided to investigate the matter, but not completed the investigation within six months of the original report
- investigated the matter but not recommended any action as a result
- not told the person who made the report, within six months of the report being made, whether the matter will be investigated.

Most importantly – to be protected under the PID Act – if you report wrongdoing to an MP or a journalist you will need to be able to prove that you have reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true

Other external reporting

If you report wrongdoing to a person or authority that is not listed above, or make a report to an MP or journalist without following the steps outlined above, you will not be protected under the PID Act. This may mean you will be in breach of legal obligations or our code of conduct – by, for example, disclosing confidential information.

For more information about reporting wrongdoing outside Council, contact the Disclosures Coordinator or the NSW Ombudsman's Public Interest Disclosures Unit. Their contact details are provided at the end of this policy.

POLICY REVIEW

This policy will be reviewed by Council within the first year of an election or as a result of changes to legislation.

ADDITIONAL INFORMATION AND RESOURCES

Staff can seek advice and guidance from the Disclosures Coordinator and the NSW Ombudsman's website at www.ombo.nsw.gov.au or the external investigating authorities listed below.

For disclosures about corrupt conduct:

Independent Commission Against Corruption (ICAC)
Phone: 02 8281 5999
Toll free: 1800 463 909
Tel. typewriter (TTY): 02 8281 5773
Facsimile: 02 9264 5364
Email: icac@icac.nsw.gov.au
Web: www.icac.nsw.gov.au
Address: Level 7, 255 Elizabeth Street, Sydney NSW 2000

For disclosures about maladministration:

NSW Ombudsman
Phone: 02 9286 1000
Toll free (outside Sydney metro): 1800 451 524
Tel. typewriter (TTY): 02 9264 8050
Facsimile: 02 9283 2911
Email: nswombo@ombo.nsw.gov.au
Web: www.ombo.nsw.gov.au
Address: Level 24, 580 George Street, Sydney NSW 2000

For disclosures about breaches of the GIPA Act or Privacy Act:

Information & Privacy Commissioner
Toll free: 1800 472 679
Facsimile: 02 8114 3756
Email: ipcinfo@ipc.nsw.gov.au
Web: www.ipc.nsw.gov.au
Address: Level 11, 1 Castlereagh Street, Sydney NSW 2000

For disclosures about local councils:

Office of Local Government
Phone: 02 4428 4100
Tel. typewriter (TTY): 02 4428 4209
Facsimile: 02 4428 4199
Email: olg@olg.nsw.gov.au
Web: www.dlg.nsw.gov.au
Address: 5 O'Keefe Avenue, Nowra, NSW 2541

POLICY HISTORY AND VERSION CONTROL

Policy Title	Public Interest Disclosure Policy
Policy No.	5.6.1
Department	Corporate Services
Function	Governance
Policy Group	Leadership
Responsible Officer	Director Corporate Services
Version	1
Adopted	17 May 2017
Next revision	17 May 2018

INTERNAL REPORT FORM

To be completed by an internal reporter and submitted to a nominated Disclosures Officer

Details of reporter (You can make an anonymous report by leaving this section blank)

Name:		
Position:		
Division/Unit:		Preferred method of contact
Telephone:		<input type="checkbox"/> Telephone
Email:		<input type="checkbox"/> Email
Postal address:		<input type="checkbox"/> Post

Details of the wrongdoing being reported

Description:	
<ul style="list-style-type: none"> • What happened? • Where did this happen? • When did this happen? • Is it still happening? <p>[Attach an additional page if required]</p>	

How did you become aware of this?	
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Name and position of people involved in the wrongdoing:	Name		Position	

Attach any additional relevant information or indicate where supporting evidence may be found:	Supporting evidence		Attached
			<input type="checkbox"/>
			<input type="checkbox"/>

Name and position of other people who may have additional information:	Name		Position	

Statement

I honestly believe that the above information shows or tends to show wrongdoing.

<hr/> Signature of reporter <i>(Do not sign if you want to make an anonymous report)</i>	<hr/> Date report submitted <i>(Essential information)</i>
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