

ATTACHMENT TO AGENDA ITEM

Ordinary Meeting

15 March 2016

Agenda Item 8.4 Protected Disclosure Policy

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GREATER SHEPPARTON CITY COUNCIL

Policy Number 37.POL9

Protected Disclosure Policy

Version 1.0

Adopted **Day Month Year**

Last Reviewed **Day Month Year**

Business Unit:	Corporate Governance
Responsible Officer:	Manager Corporate Governance
Approved By:	Chief Executive Officer
Next Review:	Within Six Months of a General Election

PURPOSE

This Policy has been developed in accordance with the *Protected Disclosure Act 2012 (the Act)* to provide guidance on the process of making, assessing and handling a disclosure.

OBJECTIVE

This policy has been developed to facilitate the making of disclosures of improper conduct by public officers and public bodies, and to ensure they are investigated and handled in accordance with the *Act*.

The *Act* provides protection from detrimental action to any person affected by a protected disclosure, whether it be the person making a disclosure, the subject of a disclosure, or a witness to the investigation.

SCOPE

The Act applies to all public officers and public bodies, including employees and Councillors of Greater Shepparton City Council. The Act also extends to include any person engaged by, or acting on behalf of Council including all contractors and volunteers.

This policy provides advice on the process of making a disclosure, which may be relevant to any member of the public who has dealings with the Council.

DEFINITIONS

Reference term	Definition
The Act	Refers to the Protected Disclosure Act 2012
Assessable Disclosure	a) A disclosure that, under s21(2) of the Act, must be notified to IBAC; or b) A disclosure that, under s21(3), may be notified to IBAC; or c) A disclosure that, under s36(2), must be notified to IBAC; or d) A disclosure made in accordance with Division 2 of Part 2 of the Victorian Inspectorate under s17; or e) A disclosure made in accordance with Division 2 of Part 2 to the Victorian Inspectorate under section 17; or f) A police complaint disclosure that, under s22, must be notified to the IBAC; or g) A police complaint disclosure made directly to the IBAC
Protected Disclosure Coordinator (PDC)	Refers to the Manager Corporate Governance.
Corrupt Conduct	As defined in section 4 of the Independent Broad-based Anti-corruption Commission Act 2011.
Council	Refers to the Greater Shepparton City Council
Detrimental Action	Includes:- a) action causing injury b) intimidation or harassment c) discrimination, disadvantage or adverse treatment in

Reference term	Definition
	relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.
IBAC	Independent Broad-based Anti-corruption Commission established under section 12 of the Independent Broad-based Anti-corruption Commission Act 2011
Improper Conduct	<p>a) Corrupt conduct; or</p> <p>b) Conduct that is not corrupt conduct but that, if proved, would constitute</p> <p>i. A criminal offence</p> <p>ii. Reasonable grounds for dismissing or dispensing with, or otherwise terminating, the services of the officer who was, or is, engaged in that conduct.</p>
Protected Disclosure	As defined in the Protected Disclosure Act 2012;
Protected Disclosure Officer (PDO)	<p>Authorised officer of the Council to receive and assess disclosures relating to the Council, Councillors or staff. This includes:</p> <ul style="list-style-type: none"> • Manager People and Development • Team Leader Governance • Team Leader Information Management
Protected Disclosure Welfare Officer	Refers to the Team Leader People and Workforce.
Public Body	<p>a) as defined in section 6 of the Independent Broad-based Anti-corruption Commission Act 2011; or</p> <p>b) the IBAC; or</p> <p>c) any other body or entity prescribed for the purposes of this definition</p>
Public Officer	<p>a) as defined in section 6 of the Independent Broad-based Anti-corruption Commission Act 2011; or</p> <p>b) an IBAC Officer; or</p> <p>c) any other person prescribed for the purposes of this definition.</p>
Relevant Principal Officer	Refers to the Chief Executive Officer of Greater Shepparton City Council

POLICY

1. Making a Protected Disclosure

a. What is disclosure

A disclosure is a report made by a person regarding improper conduct, or detrimental action taken against a person or public body in reprisal for the making of a protected disclosure.

In addition to the above requirement, a disclosure is only present where the information available indicates, or the discloser believes on reasonable grounds that the improper conduct or detrimental action against a person has occurred, is occurring or is proposed to be engaged in by a person.

Persons making such disclosures will be advised that it is in their own interests to keep disclosures confidential by only discussing related matters with authorised persons within the Council, ie the Protected Disclosure Coordinator (PDC) or the Protected Disclosure Officer (PDO), or officers of the Independent Broad-based Anti-corruption Commission office (IBAC) or other persons, as authorised by law.

b. Who can make a disclosure

Any natural person (that is, an individual person rather than a corporation) can make a disclosure regarding improper conduct by public bodies and public officers. This includes individuals both internal and external to the body in which the disclosure relates to.

Disclosures may be made anonymously, however it is important to note that this can create difficulties throughout the assessment process.

Joint disclosures are also permitted, but may impose limitations as to whom will be provided protection under *the Act*.

c. About whom can a disclosure be made

Disclosures can be made about public bodies or public officers. With respect to this Policy, disclosures can be made about the Council, individual Councillors or Council Officers, and must relate to conduct undertaken in the capacity as a public body or public officer.

d. Who to Contact

Council can only receive disclosures which relate to its own conduct, officers, or employees. Disclosures relating to any other public body should be referred to the entity in which the disclosure relates to, or alternatively to the IBAC.

Disclosure about Councillors

Any disclosure relating to an individual or group of Councillors should be reported directly to the IBAC or the Victorian Ombudsman for investigation.

Disclosure about the Council or Council Officers

It is encouraged that disclosures relating to Council officers be reported directly to the organisations nominated Protected Disclosure Officers. This includes:

- Protected Disclosure Coordinator
- Protected Disclosure Officer

Alternatively, disclosures can be reported directly to IBAC or the Victorian Ombudsman.

Disclosure about the CEO

Any disclosure relating to the CEO can be reported directly to the PDC. Alternatively, disclosures can be reported directly to IBAC or the Victorian Ombudsman for investigation.

2. Roles and Responsibilities

a. Protected Disclosure Coordinator (PDC)

The PDC will:

- impartially assess each disclosure to determine whether it appears to be a protected disclosure
- coordinate the reporting system used by the organisation
- be a contact point for general advice about the operation of the Act and for integrity agencies such as IBAC
- be responsible for ensuring that the Council carries out its responsibilities under the Act and the Guidelines
- liaise with IBAC in regard to the Act
- arrange for appropriate welfare support for the person making the protected disclosure
- advise the person making a protected disclosure of the progress of an investigation into the disclosed matter
- establish and manage a confidential filing system
- collate statistics on disclosures made
- take all necessary steps to ensure the identity of the person making a protected disclosure and the identity of the person who is the subject of the disclosure are kept confidential.
- liaise with the CEO

Central oversight will be maintained by the PDC to ensure accurate reporting on outcomes.

b. Protected Disclosure Officer (PDO)

The PDO will:

- be a contact point for general advice about the operation of the Act and for integrity agencies such as IBAC
- arrange for appropriate welfare support for the person making a protected disclosure
- advise the person making a protected disclosure of the progress of an investigation into the disclosed matter
- manage a confidential filing system
- take all necessary steps to ensure the identity of the person making a protected disclosure and the identity of the person who is the subject of the disclosure are kept confidential.

The PDO will assist the PDC with the receipt of disclosures.

c. Protected Disclosure Welfare Officer (PDWO)

The PDWO will be responsible for monitoring the needs of the person making a protected disclosure and to provide advice and support.

The PDWO will provide reasonable support to a person making a disclosure and will discuss the issue of reasonable expectations.

The level of support provided to the person will require the written approval of the Chief Executive Officer and will be documented. A copy of the agreement reached will be provided to the discloser.

The PDWO will be engaged by the PDC where a protected disclosure proceeds to an investigation stage.

The PDWO will:

- i. examine the immediate welfare and protection needs of a person making a protected disclosure who has made a disclosure and seek to foster a supportive work environment
- ii. advise the person making a protected disclosure of the legislative and administrative protections available to him or her.
- iii. listen and respond to any concerns of harassment, intimidation, or victimisation in reprisal for making a disclosure.
- iv. keep comprehensive records of all aspects of the case management of the person making the protected disclosure, including all contact and follow up action.
- v. endeavour to ensure that the expectations of the person making a protected disclosure are realistic.

The PDWO will not divulge any details relating to the disclosed matter to any person other than the PDC or PDO or the investigator.

All meetings between the PDWO and the person making a protected disclosure will be conducted discreetly to protect the confidentiality of the person making a protected disclosure.

3. Handling Disclosures

a. Assessment Decisions

In order for a disclosure to be considered a protected disclosure, it must meet the requirements set out in Part 2 of the Act and the Protected Disclosure Regulations.

Where the Council determines that the disclosure is not an assessable disclosure under the Act, the person making the disclosure will be referred to the appropriate officer and the matter will be addressed in accordance with the Councils standard complaints handling process.

The person making the disclosure will be notified in writing within 28 days of making the disclosure, that:

- the Council does not consider the disclosure to be a protected disclosure
- the disclosure has not been notified to IBAC for assessment, and
- the protections under Part 6 of the Act apply, regardless of whether the disclosure is notified to IBAC for assessment.

Where a protected disclosure officer (PDO) considers that a disclosure meets the requirements of Part 2 of *the Act*, it is deemed to be an assessable disclosure and the officer will take the following action:

1. establish contact with the person making the disclosure (if that person has provided their identity and personal details)
2. advise the PDC
3. establish a confidential file relating to the disclosure
4. notify IBAC for assessment within 28 days of the disclosure being made
5. advise the person making the disclosure within 28 days of notifying IBAC

b. Notifications and Referral to IBAC

Once a decision has been made that the disclosure is in fact, an assessable disclosure, the following notifications must be made:

Notification to IBAC:

Within 28 days of the disclosure being made, the PDC or PDO must advise in writing that:

- the Council considers the disclosure may be a protected disclosure
- the Council is notifying the disclosure to IBAC for assessment.

The Council may also provide to IBAC any information obtained regarding the disclosure through the course of its inquiries leading up to the notification. This information can be provided at the time of notification or at any later time.

Notification to Discloser:

Within 28 days of the disclosure being made, the PDC or PDO must provide in writing the following information:

- the disclosure has been notified to IBAC for assessment
- it is an offence under section 74 of the Act to disclose that the disclosure has been notified to IBAC for assessment under the Act.

From this point, IBAC will notify the discloser of the outcome of their assessment and any associated actions arising from this determination.

IBAC may also provide written information about the commencement, conduct or result of an investigation, including any actions taken to the relevant principal officer. This information will not be provided if it is likely to lead to the identification of a discloser.

c. Protection for persons making a disclosure

Council is obligated to protect all persons making protected disclosures from detrimental action taken in reprisal for the making of the disclosure.

In accordance with Part 6 of the *Act*, protections will apply to any person who makes a disclosure under Part 2 of the *Act*. These protections will apply even if the public body (the Council) does not notify the disclosure to IBAC, and whether or not IBAC has determined that it is a protected disclosure complaint.

An employee of Council who has made a protected disclosure and believes on reasonable grounds that detrimental action will be, is being, or has been taken against them may request a transfer of employment or leave of absence.

d. Limitations on Protections

A discloser is not protected if they commit an offence under section 72 or 73 of the *Act*, including:

- provide false or misleading information that the person knows to be false or misleading
- claim the matter is the subject of a protected disclosure, knowing the claim to be false
- falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a protected disclosure complaint.

A public officer who makes a disclosure is not protected against legitimate management action and will still be held liable for their own conduct that they disclose as part of the protected disclosure.

e. Natural Justice

The Council will ensure that natural justice is adhered to in the receipt and management of a disclosure.

Public Officers who are the subject of a disclosure will be provided with notification, in writing, of the disclosure, where that notification does not compromise the identity of the person making the disclosure or the investigation into the disclosure.

4. Support and Welfare**a. Internal Disclosures**

Internal persons making protected disclosures are at risk of suffering reprisals in the workplace.

The PDWO will foster a supportive work environment and respond to any reports of intimidation or harassment against the person making the disclosure. Any such incidents will also be reported to the PDC.

b. External Disclosures

Reprisals may also be taken against external persons making protected disclosures.

The Council will appoint the PDWO for an external person making a protected disclosure.

c. Occurrence of Detrimental Action

If a person making a protected disclosure reports an incident of harassment, discrimination or adverse treatment that would amount to detrimental action apparently taken in reprisal for the making of the disclosure, the PDWO or the PDC will:

- record details of the incident
- advise the person making a protected disclosure of his or her rights under the *Act*

The PDC will inform IBAC where the detrimental action is of a serious nature likely to amount to a criminal offence. Where detrimental action is reported, the allegation will be assessed as a new disclosure under the *Act*.

Council will be extremely cautious about conducting enquiries or gathering information concerning an allegation of detrimental action, as a criminal offence may have been committed and any informal investigation may compromise the integrity of evidence.

5. Confidentiality

Section 52 of the *Act* requires any person who receives information due to the handling or investigation of an assessable disclosure, not to disclose that information, except in certain limited circumstances. These circumstances include:

- where exercising the functions of the Council under the *Act*
- when making a report or recommendation under the *Act*
- when publishing statistics in the annual report of the Council.

The *Act* prohibits the:

- inclusion of particulars in any report or recommendation that is likely to lead to the identification of the person making a protected disclosure
- disclosure of particulars in an annual report and other reports to Parliament that might lead to the identification of a person against whom a protected disclosure is made.

A breach of section 52 constitutes a criminal offence.

Exceptions:

The following circumstances exist where information may be disclosed:

- where the disclosure is made in accordance with the consent of the disclosing person to the disclosure of their identity
- where IBAC or the Victorian Inspectorate has determined that the assessable disclosure is not a protected disclosure and the person or body subsequently discloses the information
- an investigating entity publishes a report to Parliament, made in accordance with its confidentiality requirements
- for the purposes of a proceeding for an offence against a relevant *Act*
- for the purpose of obtaining legal advice
- to an interpreter
- to a parent or guardian of a person who is under 18 years of age
- to an independent person, for the purposes of enabling a person who is suffering a disability to understand an obligation under this *Act*.

6. Criminal Offences

The Act creates the following offences for certain actions:

a. Criminal Offences

Detrimental Action

It is an offence for a person to take or threaten action in reprisal when:

- a protected disclosure has been made
- a person believes a protected disclosure has been made
- a person believes that another person intends to make a protected disclosure.

Breach of confidentiality

It is an offence for a person to divulge information obtained as a result of the handling or investigation of a protected disclosure without legislative authority.

Provision of False Information

It is an offence for a person to knowingly provide false information under the Act with the intention that it be acted on as a protected disclosure.

b. Civil Action

A person who takes detrimental action against a person in reprisal for a protected disclosure may be found liable in damages to that person. The public body may also be found to be vicariously liable.

RELATED POLICIES AND DIRECTIVES

- Councillor Code of Conduct
- Employee Code of Conduct | 46.CEOD8
- Freedom of Information Policy
- Prevention of Harassment, Discrimination, Bullying & Occupational Violence | 46.CEOD7

RELATED LEGISLATION

- *Independent Broad-based Anticorruption Commission Act 2011*
- *Independent Broad-based Anticorruption Commission Regulations 2013*
- *Ombudsman Act 1973*
- *Protected Disclosure Act 2012*
- *Protected Disclosure Regulations 2013*

Note – the Freedom of Information Act 1982 **does not apply** to any document in the possession of the Council which relates to a protected disclosure, assessable disclosure or that is likely to lead to the identification of a person who made an assessable disclosure.

REVIEW

This Policy is to be reviewed by the Manager Corporate Governance no less than every four years, within six months of a general election. Reviews may be undertaken sooner in response to changes in legislation or the organisations processes.

Peter Harriott
Chief Executive Officer

Date

Protected Disclosure Policy

Attachment 1: Protected Disclosure Assessment Process

Step 1 | Receipt of Disclosure

- Is made by an individual or group of individuals
- Made verbally (in private) to PDC or CEO or made in writing (not by fax).
- Made to the correct body (i.e. the Council)
- Made about a Council officer/employee acting in their official capacity



- The disclosure may be a protected disclosure under the Protected Disclosure Act 2012
- Protected Disclosure Policy to be applied.

Step 2 | Assessment of Disclosure

- Does the information show / tend to show there is improper conduct or detrimental action?
- Does the discloser believe on reasonable grounds that the information shows / tends to show there is improper conduct or detrimental action?



If **YES**, it is a protected disclosure and the Protected Disclosure Policy will apply.



If **NO**, it is likely that it is not a protected disclosure and may be dealt with through the Councils standard complaint handling processes.

Step 3 | Notifications

The disclosure has been determined to be a possible protected disclosure



- Inform IBAC in writing, within 28 days of receiving the disclosure.
- Summarise the disclosure and attach supporting documentation.
- Provide IBAC with details of Councils contact person.
- Inform discloser of notification to IBAC within 28 days of that notification.
- Notify the subject that a disclosure has been made against them.

The disclosure has been determined **NOT** to be a possible protected disclosure



- Inform the discloser within 28 days of the assessment.
- Determine alternative suitable processes to handle the matter.
- Inform the discloser that they have the option of referring the matter to IBAC for consideration.