

WHISTLEBLOWERS' PROTECTION

Policy Type	Council Policy
Responsible Department	People & Governance
Responsible Officer	General Manager
Related Policies and Procedures	Code of Conduct for Council Members Code of Conduct for Council Employees Fraud and Corruption Prevention Policy Whistleblowers' Protection Reporting Procedure
Date Adopted	C103/11; 28 March 2011
Last Review Date	26 October 2015
Next review due	October 2018
ECM doc set I.D.	1839990

1. POLICY STATEMENT

The City of Unley is committed to upholding the principles of transparency and accountability in its administrative and management practices. Therefore, the Council encourages the making, in the public interest, of appropriate disclosures that reveal information of maladministration, waste, and/or corruption or illegal conduct in the organisation.

2. COMMUNITY GOAL

O5.3 Good governance & legislative framework

3. PRINCIPLES

This Policy applies to appropriate disclosures of public interest information that concerns a public officer, and is made in accordance with the *Whistleblowers' Protection Act 1993* (the Act) by Council Members, Employees of the Council, and members of the public. This policy is also intended to complement the reporting framework under the *Independent Commissioner Against Corruption Act 2012* (ICAC Act).

This Policy is designed to complement the existing communication channels within Council, and operate in conjunction with existing policies, including:

- Fraud & Corruption Prevention Policy;
- Code of Conduct for Council Employees;

- Code of Conduct for Council Members; and
- Internal Review of a Council Decisions Procedure under section 270 of the *Local Government Act 1999*.
- Whistleblowers' Protection Reporting Procedure.

The Council is committed to:

- referring, as necessary, appropriate disclosures to the appropriate authority, which, depending on the nature of the disclosure include a Minister of the Crown, the SA Police, the Anti-Corruption Branch of the SA Police, the Auditor-General or the Ombudsman. Further, where the disclosure relates to Corruption it must be reported directly to the Office for Public Integrity ('OPI') in accordance with the ICAC Directions and Guidelines. A report of misconduct or maladministration may be made to the OPI, but it **must** be reported to the OPI if the disclosure gives rise to a reasonable suspicion of serious or systemic misconduct and/or maladministration unless there is knowledge that the disclosure has already been reported to the State Ombudsman.
- otherwise facilitating the investigation of all appropriate disclosures of public interest information in a manner which promotes fair and objective treatment of those involved; and
- rectifying any substantiated wrongdoing to the extent practicable in all the circumstances.

In accordance with section 6 of the Act, a person who discloses public interest information must assist with any investigation or risk forfeiting the protection of the Act except where circumstances under section 6(2) apply.

4. POLICY OBJECTIVES

The purpose of this Policy is to ensure that the City of Unley:

- properly fulfils its responsibilities under the Act;
- encourages and facilitates disclosures of public interest information which may include occurrences of maladministration and waste within the Council, and corrupt or illegal conduct in general, so that internal controls may be strengthened;
- provides a process by which disclosures may be made so that they are properly investigated;
- provides appropriate protection for those who make disclosures in accordance with the Act;
- recognises the need to appropriately support the Whistleblower, the Responsible Officer and, as appropriate, those public officers affected by any allegation that affects them; and
- provides for the appointment of an Independent Assessor where appropriate.

The Whistleblower will be notified of the progress of any investigation by the Responsible Officer and, wherever practicable and in accordance with the law, of the final outcome.

5. CONFIDENTIALITY

The identity of a Whistleblower will be maintained as confidential in accordance with the Act. Confidentiality will remain in all circumstances, unless the Whistleblower consents to his/her identity being disclosed, or disclosure is otherwise required so that the matter may be properly investigated. The Act does not expressly require any other information relating to a disclosure (i.e. the nature of the allegations) to be maintained as confidential.

A Whistleblower may wish to remain anonymous. In the event that an anonymous disclosure is made, the Whistleblower must ensure that the allegation is sufficiently supported by the provision of necessary details and evidence to enable the matter to be properly investigated. Accordingly, if an allegation is not supported by sufficient evidence it will not be investigated under the provisions of the Act.

6. DEFINITIONS

For the purposes of this Policy the following definitions apply.

Act means the *Whistleblowers Protection Act 1993*.

An **Appropriate Authority** that receives disclosure of public interest information includes:

- a *Minister of the Crown*;
- a *member of the police force* - where the information relates to an illegal activity;
- the *Auditor-General* – where the information relates to the irregular or unauthorised use of public money;
- the *Ombudsman* – where the information relates to a public officer;
- a *Responsible Officer*, where the information relates to a matter falling within the sphere of responsibility of a Local Government body; or
- any other person¹ to whom, in the circumstances of the case, it is reasonable and appropriate to make the disclosure.

Corruption in **public administration** means:

- An offence against Part 7 Division 4 (offences relating to public officers) of the *Criminal Law Consolidation Act 1935*, which includes the following offences:
 - (i) bribery or corruption of public officers;
 - (ii) threats or reprisals against public officers;
 - (iii) abuse of public office;

¹ Such a person may include:

- A Council employee (such as the Chief Executive Officer) to whom the Whistleblower feels comfortable making the disclosure; and/or
- The OPI where the disclosure relates to corruption, maladministration or misconduct in public administration.

- (iv) demanding or requiring benefit on basis of public office;
 - (v) offences relating to appointment to public office.
- Any other offences (including an offence against Part 5 (Offences of dishonesty) of the *Criminal Law Consolidation Act 1935*) committed by a public officer while acting in his or her capacity as a public officer or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or an attempt to commit such an offence; or
 - Any of the following in relation to an offence referred to in a preceding paragraph:
 - (i) aiding, abetting, counselling or procuring the commission of the offence;
 - (ii) inducing, whether by threats or promises or otherwise, the commission of the offence;
 - (iii) being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;
 - (iv) conspiring with others to effect the commission of the offence.

Detriment includes:

- injury, damage or loss; or
- intimidation or harassment; or
- discrimination, disadvantage or adverse treatment in relation to a person's employment; or
- threats of reprisal.

Directions and Guidelines is a reference to the Directions and Guidelines issued pursuant to section 20 of the ICAC Act, which are available on the Commissioner's website (www.icac.sa.gov.au)

Disclosure means an appropriate disclosure of public interest information made by the Whistleblower to an appropriate Authority, including to a Responsible Officer.

A person makes an **appropriate disclosure** of public interest information if –

- (a) the person-
 - i. believes on reasonable grounds that the information is true; or
 - ii. is not in a position to form a belief on reasonable grounds about the truth of the information but believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated; and
- (b) the disclosure is made to an Appropriate Authority.

Employee refers to all the Council's employees and includes trainees, work experience students, volunteers, and contractors whether they are working in a full-time, part-time or casual capacity.

Fraud is an intentional dishonest act or omission done with the purpose of deceiving.

ICAC Act is the Independent Commissioner Against Corruption Act 2012

Immunity is an undertaking given by the Council (in accordance with the Act) to a Whistleblower in relation to action it does not intend to take against a Whistleblower as a result of receiving an appropriate disclosure of public interest information from the Whistleblower.

Independent Assessor is the person responsible for investigating a disclosure made to the Responsible Officer. The Independent Assessor may be appointed by the Responsible Officer, on a case-by-case basis (depending upon the nature of the disclosure), in accordance with clause 5.3 of the Whistleblowers' Protection Reporting Procedure. The Council may prepare a list of pre-approved persons who may be appointed as an Independent Assessor in any given circumstances, in which case, the Responsible Officer must have regard to this list in appointing the Independent Assessor.

Maladministration is defined in the *Whistleblowers' Protection Act 1993* to include impropriety or negligence. Section 4 of the *Independent Commissioner Against Corruption Act 2012* defines maladministration in public administration;

- (a) means –
 - (i) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or
 - (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
- (b) includes conduct resulting from impropriety, incompetence or negligence; and
- (c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

Misconduct in public administration defined at Section 4 of the ICAC Act means:

- contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or
- other misconduct of a public officer while acting in his or her capacity as a public officer.

Office for Public Integrity (OPI) is the office established under the ICAC Act that has the function to:

- receive and assess complaints about public administration from members of the public;
- receive and assess reports about corruption, misconduct and maladministration in public administration from the Ombudsman, the Council and public officers;
- make recommendations as to whether and by whom complaints and reports should be investigated;
- perform other functions assigned to the Office by the Commissioner.

Public administration defined at section 4 of the ICAC Act means without limiting the acts that may comprise public administration, an administrative act within the meaning of the *Ombudsman Act 1972* will be taken to be carried out in the course of public administration.

Public interest information² means information that tends to show –

- (a) that an adult person, a Council or other Government Agency, is or has been involved in:
 - i. an illegal activity; or
 - ii. an irregular and unauthorised use of public money; or
 - iii. substantial mismanagement of public resources; or
 - iv. conduct that causes a substantial risk to public health or safety, or to the environment; or
- (b) that a public officer is guilty of maladministration in or in relation to the performance of official functions.

Public Officer includes:

- an Elected Member of the Council, including the Mayor;
- an Independent Member of the Council's Development Assessment Panel;
- an Independent Member of a Council Committee established under Section 41 of the *Local Government Act 1999* or a subsidiary of the Council, and
- an Employee or Officer of the Council.

Responsible Officer is a person appointed pursuant to Section 302B of the Local Government Act 1999 who is authorised to receive and act upon public interest information received from a Whistleblower³. Each Council must ensure that a member of the staff of the Council (with qualifications prescribed by the Regulations⁴) is designated as a Responsible Officer for the Council for the purposes of the Act.

Victimisation occurs when a person causes detriment to another on the ground, or substantially on the ground, that the other person (or a third person) has made or intends to make an appropriate disclosure of public interest information.

Waste refers to the waste of public resources (including public money), which occurs as a result of the substantial mismanagement, irregular or unauthorised use of public resources.

Whistleblower is any person who makes an appropriate disclosure of public interest information.

7. LEGISLATION / REFERENCES

Criminal Law Consolidation Act 1935
Independent Commissioner Against Corruption Act 2012
Local Government Act 1999
Whistleblowers' Protection Act 1993

² This definition captures conduct that constitutes corruption, misconduct and maladministration in public administration.

³ It is recommended that the Responsible Officer is one or two Council Officers and is not the Chief Executive Officer, the Mayor, Council Member or a Council Committee. A Council Member should not be appointed as a Responsible Officer as Council Members are not equipped to properly deal with an appropriate disclosure in terms of the roles and responsibilities of their office. Furthermore the Responsible Officer is an administrative role and the principles of good governance require division between the administrative and governing bodies of a Council.

⁴ Regulation 21B of the *Local Government (General) Regulations 1999*, states that the prescribed qualifications are the qualifications determined by the Minister. The Minister has not yet made any determination.

8. POLICY DELEGATIONS

Nil applicable.

9. ROLES AND RESPONSIBILITIES

A Disclosure made to the Responsible Officer may be made in person, by telephone or in writing. The relevant contact details are:

- Telephone 08 8372 5436
- Email whistleblowers@unley.sa.gov.au
- Address **Confidential**
Whistleblowers
PO Box 1
UNLEY SA 5061

10. AVAILABILITY

The policy is available for public inspection during normal office hours from;

Civic Centre
181 Unley Road
Unley SA 5061

A copy may be purchased for a fee as determined annually by Council.

It is also available for viewing, download and printing free of charge from the Council's website, www.unley.sa.gov.au

11. DOCUMENT HISTORY

Date:	Council/Committee/Internal	Comment:
8 February 2011	Audit Committee; (7/11)	
21 March 2011	City Strategy & Policy Committee; CSP10/11	
28 March 2011	Council; C103/11	
8 October 2012	CSP Committee; CSP132/12	
22 October 2012	Council; C564/12	
12 November 2013	Audit Committee; A76/13	
25 November 2013	Council; C962/13	
26 October 2015	Council; C291/15	Was policy no. COU 60