

# Public Interest Disclosure Policy

## 1. RATIONALE

- 1.1 The City of Marion (the Council) is committed to upholding the principles of transparency and accountability in its administrative and management practices, it encourages the making of disclosures of public interest information.
- 1.2 The purpose of this Policy is to ensure that the Council:
- fulfils its responsibilities under the *Public Interest Disclosure Act 2018* (the PID Act);
  - encourages and facilitates Disclosures of Public Interest Information in accordance with the objects and requirements of the PID Act;
  - ensures there is appropriate oversight and reporting of all Disclosures of Public Interest Information, whether pertaining to Environmental and Health Information, or Public Interest Information, to the OPI in accordance with the Guidelines prepared by the Commissioner, and the PID Act;
  - ensures the protections under the PID Act are afforded to Informants who make a Disclosure under the PID Act; and
  - supports Informants, the Responsible Officer and, as appropriate, those Public Officers affected by any appropriate Disclosure made under the PID Act.

## 2. POLICY STATEMENT

- 2.1 This Policy applies to appropriate Disclosures of Public Interest Information, made in accordance with the PID Act by public officers, including Council Members, Officers and Employees of the Council, and by members of the public.
- 2.2 This Policy is intended to complement the reporting framework under the *Independent Commissioner Against Corruption Act 2012* (the ICAC Act) and the *Ombudsman Act 1972* (the Ombudsman Act).

## 3. OBJECTIVES

- 3.1 This Policy is also designed to complement the existing communication channels within Council, and operate in conjunction with other policies, including:
- Fraud & Corruption Management Policy;
  - Code of Conduct for Council Employees;
  - Code of Conduct for Council Members;
  - Complaint and Grievance Policy; and
  - Internal Review of Council Decisions Policy under section 270 of the *Local Government Act 1999*.
- 3.2 The Council is committed to:
- referring, as necessary, appropriate Disclosures of Public Interest Information to another Relevant Authority;

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- reporting all Disclosures of Public Interest Information, whether pertaining to Environmental and Health Information, or Public Administration Information, to the OPI in accordance with the Guidelines and the PID Act;
- facilitating the investigation of appropriate Disclosures 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.

## 4. POLICY SCOPE AND IMPLEMENTATION

- 4.1 Disclosures will be received and managed by the Council in accordance with the Public Interest Disclosure Procedure.
- 4.2 Nothing in this Policy prevents a person from making a Disclosure to a Relevant Authority external to the Council (i.e. the Ombudsman or the OPI). This is a choice to be made by the Informant at his/her discretion. The Council recommends an Informant have regard to the factors at clause 6.4 of the Public Interest Disclosure Procedure when deciding where to direct a Disclosure.

## 5. ROLES AND RESPONSIBILITIES

### 5.1. The Role of the Principal Officer

The Principal Officer is responsible for:

- 5.1.1. ensuring that one or more appropriately qualified Officers or Employees of the Council are designated as Responsible Officers of the Council for the purposes of the PID Act, who are required to undertake any training required by the Public Interest Disclosure Regulations; and
- 5.1.2. ensuring that the name and contact details of each Responsible Officer of the Council are made available to Officers and Employees of the Council; and
- 5.1.3. the preparation and maintenance of this Procedure, in accordance with the requirements of the PID Act and the Guidelines published by the Commissioner under section 14 of the PID Act.

### 5.2. The Role of the Responsible Officer

A person designated as a Responsible Officer for the Council:

- 5.2.1. Must:
- 5.2.1.1. receive appropriate Disclosures of Public Interest Information relating to the Council and ensure compliance with the PID Act, and the Public Interest Disclosure Procedure, in relation to any such Disclosures;
- 5.2.1.2. make appropriate recommendations to the Principal Officer of the Council in relation to dealing with Disclosures, including any suggested changes to this Policy or the Public Interest Disclosure Procedure; and

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- 5.2.1.3. provide advice to Officers and Employees of the Council in relation to the administration of the PID Act; and
- 5.2.1.4. complete any training courses approved by the Commissioner for the purposes of the Public Interest Disclosure Regulations.
- 5.2.2. A Responsible Officer for the Council must carry out any other functions as required under the PID Act.
- 5.2.3. Upon the receipt of a Disclosure, the Responsible Officer will deal with the Disclosure in accordance with the Public Interest Disclosure Procedure.
- 5.2.4. In making any determination or taking any action under this Policy, or pursuant to the Public Interest Disclosure Procedure:
  - 5.2.4.1. the Responsible Officer may seek legal advice from Council's lawyers and/or guidance from SAPOL, the OPI or the Ombudsman, in relation to the most appropriate course of action to pursue; and
  - 5.2.4.2. is authorised to incur costs in accordance with the Council's Budget for that purpose.
- 5.2.5. The Responsible Officer will liaise as required with the Informant and any Independent Assessor in relation to any investigation process undertaken in accordance with the Public Interest Disclosure Procedure and will ensure that the Informant is provided with support and protection as necessary and appropriate in the circumstances of the Disclosure.

## **5.3. The Role of a Council Member, Employee or Officer of the Council**

A Council Member, Employee or Officer of the Council is responsible for:

- 5.3.1. ensuring they comply with this Policy and the Public Interest Disclosure Procedure when dealing with any Disclosure; and
- 5.3.2. immediately refer any Disclosure of Environmental and Health Information made to them by a member of the public, or any Disclosure of Public Interest Information made to them by a public officer, to the Responsible Officer.

## **5.4. Information to Elected Body**

- 5.4.1. As a matter of discretion, the Principal Officer may inform the elected body, on a confidential basis, of the fact that an investigation of a Disclosure under the PID Act took place and the outcome of the investigation, as outlined in the Public Interest Disclosure Procedure.

## **5.5. Protection for the Informant**

- 5.5.1. An Informant who makes an appropriate Disclosure of Public Interest Information under the PID Act, is entitled to:
  - 5.5.1.1. immunity from criminal or civil liability as provided for under section 5(1) of the PID Act;
  - 5.5.1.2. that his/her identity will be kept confidential, subject to the operation of the Guidelines and section 8 of the PID Act;
  - 5.5.1.3. protection against Victimisation as provided for in section 9 of the PID Act; and

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- 5.5.1.4. a prohibition against hindering, obstructing or preventing an Informant from making an appropriate Disclosure as provided for in section 11 of the PID Act.
- 5.5.2. The PID Act does not afford any protections to people who knowingly make Disclosures that are false or misleading.
- 5.5.3. A person who knowingly makes a Disclosure that is false or misleading in a material particular is guilty of an offence and may be prosecuted.
- 5.5.4. A person who personally commits an act of Victimisation against an Informant is guilty of an offence and may be prosecuted.
- 5.5.5. The Council will take action as appropriate in the circumstances of the relevant Disclosure/s to protect Informants from Victimisation. Such action may include acting in accordance with the risk minimisation steps set out in the Public Interest Disclosure Procedure and/or referring the matter to the SA Police.
- 5.5.6. Any Council Member, or Employee or Officer of the Council who:
  - 5.5.6.1. knowingly makes a disclosure that is false or misleading; or
  - 5.5.6.2. commits an act of Victimisation in relation to an Informant; or
  - 5.5.6.3. acts otherwise than in accordance with this Policy or the Public Interest Disclosure Procedure (including with respect to divulging the identity of an Informant) in relation to a Disclosure;may also face disciplinary action by the Council or the Principal Officer (as appropriate).

## 5.6. Confidentiality

- 5.6.1. The identity of an Informant will be maintained as confidential, subject to the requirements under section 8 of the PID Act, and the Guidelines.
- 5.6.2. A recipient of an appropriate Disclosure may only divulge the identity of an Informant where one of the following applies:
  - 5.6.2.1. the recipient believes on reasonable grounds that it is necessary to divulge the identity of the Informant in order to prevent or minimise an imminent risk of serious physical injury or death to any person, and the identity of the Informant is then divulged to a person or authority that the recipient believes on reasonable grounds is the most appropriate authority or person to be able to take action to prevent or minimise the imminent risk of serious physical injury or death to any person; or
  - 5.6.2.2. the recipient has been issued with a notice from the OPI advising that the identity of the Informant is required by the OPI, in which case the recipient must disclose the identity of the Informant to the OPI; or
  - 5.6.2.3. doing so is necessary for the matter to be properly investigated (but only to the extent necessary to ensure proper investigation); or
  - 5.6.2.4. the Informant consents to his/her identity being disclosed.

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- 5.6.3. The PID Act does not expressly require any other information relating to a Disclosure (including, for example, the nature of the allegations) to be maintained as confidential, but in considering whether to further disclose other information provided as part of an appropriate Disclosure, the recipient should be mindful of the prohibition against Victimisation under the PID Act.
- 5.6.4. An Informant may wish to remain anonymous, but in that event, must ensure that the allegation is sufficiently supported by the provision of necessary details and evidence to enable the matter to be properly investigated.

## 6. DEFINITIONS

Term	Definition
Commissioner	means the person holding or acting in the office of the Independent Commissioner Against Corruption.
Corruption in public administration	<p>1. is defined in section 5(1) of the ICAC Act and means:</p> <p>1.1 an offence against Part 7 Division 4 (Offences relating to public officers) of the <i>Criminal Law Consolidation Act 1935</i>, which includes the following offences:</p> <ul style="list-style-type: none"><li>(i) bribery or corruption of public officers;</li><li>(ii) threats or reprisals against public officers;</li><li>(iii) abuse of public office;</li><li>(iv) demanding or requiring benefit on basis of public office;</li><li>(v) offences relating to appointment to public office; or</li></ul> <p>1.2 an offence against the <i>Public Sector (Honesty and Accountability) Act 1995</i> or the <i>Public Corporations Act 1993</i>, or an attempt to commit such an offence; or</p> <p>1.3 an offence against the <i>Lobbyists Act 2015</i>, or an attempt to commit such an offence; or</p> <p>1.4 any of the following in relation to an offence referred to in a preceding paragraph:</p> <ul style="list-style-type: none"><li>(i) aiding, abetting, counselling or procuring the commission of the offence;</li></ul>

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<i>Term</i>	<i>Definition</i>
	<p>(ii) inducing, whether by threats or promises or otherwise, the commission of the offence;</p> <p>(iii) being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;</p> <p>(iv) conspiring with others to effect the commission of the offence</p>
<i>Council</i>	means the City of Marion
<i>Detriment</i>	<p>includes:</p> <ul style="list-style-type: none"> <li>• loss or damage (including damage to reputation);</li> <li>• injury, harm (including psychological harm);</li> <li>• intimidation or harassment;</li> <li>• discrimination, disadvantage or adverse treatment in relation to a person's employment; and/or</li> <li>• threats of reprisal (which may be express or implied, and/or conditional or unconditional).</li> </ul>
<i>Guidelines</i>	is a reference to the Guidelines published by the Commissioner pursuant to section 14 of the PID Act, which are available on the Commissioner's website ( <a href="http://www.icac.sa.gov.au">www.icac.sa.gov.au</a> ).
<i>Disclosure</i>	<p>means an appropriate disclosure of Public Interest Information made by an Informant to a Relevant Authority.</p> <p>A person makes an <b>Appropriate Disclosure of Environmental and Health Information</b> if:</p> <p>(a) the person:</p> <ol style="list-style-type: none"> <li>believes on reasonable grounds that the information is true; or</li> <li>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</li> </ol> <p>(b) the disclosure is made to a Relevant Authority.</p> <p>A person makes an <b>Appropriate Disclosure of Public Administration Information</b> if:</p> <p>(a) the person:</p>



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<i>Term</i>	<i>Definition</i>
	<ul style="list-style-type: none"> <li>i. is a public officer; and</li> <li>ii. reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration; and</li> </ul> <p>(b) the disclosure is made to a Relevant Authority.</p>
<i>Employee</i>	refers to all the Council's Employees, whether they are working in a full-time, part-time or casual capacity.
<i>Environmental and Health Information</i>	means information that raises a potential issue of a substantial risk to the environment or to the health or safety of the public generally or a significant section of the public.
<i>Fraud</i>	includes an intentional dishonest act or omission done with the purpose of deceiving.
<i>ICAC Act</i>	is the <i>Independent Commissioner Against Corruption Act 2012</i> .
<i>Independent Assessor</i>	means the person designated by the Responsible Officer as being responsible for investigating a Disclosure made to a Relevant Authority at the Council in accordance with the Public Interest Disclosure Procedure.
<i>Informant</i>	means a person who makes an Appropriate Disclosure of Public Interest Information to a Relevant Authority.
<i>Maladministration in public administration</i>	<p>is defined in section 4 of the Ombudsman Act and means:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and</li> </ul> <p>includes conduct resulting from impropriety, incompetence or negligence; and</p> <p>is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.</p>
<i>Misconduct in public administration</i>	is defined in section 4 of the Ombudsman Act and means: an intentional and serious contravention of a code of conduct by a public officer while acting in their capacity as a public officer that constitutes a ground for disciplinary action against the officer.

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<i>Term</i>	<i>Definition</i>
<i>Office for Public Integrity (OPI)</i>	<p>is the office established under the ICAC Act that has the function to:</p> <ul style="list-style-type: none"> <li>• receive and assess complaints about public administration from members of the public;</li> <li>• receive and assess reports about corruption, misconduct and maladministration in public administration from inquiry agencies, public authorities and public officers;</li> </ul> <p>to refer complaints and reports to inquiry agencies, public authorities and public officers or to determine to take no action in accordance with this section 17 of the ICAC Act.</p>
<i>Ombudsman</i>	<p>means the person holding or acting in the office of the Ombudsman under the Ombudsman Act who has functions including to receive, assess and investigate with complaints made or referred to the Ombudsman about public administration, and to receive, assess and investigate reports about misconduct and maladministration in public administration, made or referred to the Ombudsman.</p>
<i>Ombudsman Act</i>	<p>means the <i>Ombudsman Act 1972</i>.</p>
<i>Public administration</i>	<p>defined at section 4 of the ICAC Act and, without limiting the acts that may comprise public administration, an administrative act within the meaning of the <i>Ombudsman Act 1972</i> will be taken to be carried out in the course of public administration.</p>
<i>Public Administration Information</i>	<p>means information that raises a potential issue of corruption, misconduct or maladministration in public administration.</p>
<i>Public Interest Information</i>	<p>means Environmental or Health Information, or Public Administration Information.</p>
<i>PID Act</i>	<p>means the <i>Public Interest Disclosure Act 2018</i>.</p>
<i>Principal Officer</i>	<p>for the purposes of the PID Act, means the Chief Executive Officer of the Council.</p>
<i>Public Officer</i>	<p>has the meaning given by section 4 and Schedule 1 of the ICAC Act, and includes:</p> <ul style="list-style-type: none"> <li>• a Council Member; and</li> <li>• an Employee or Officer of the Council; and</li> <li>• a person performing contract work for the Council.</li> </ul>



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CITY OF

MARION



<i>Term</i>	<i>Definition</i>
<i>Relevant Authority</i>	means the person or entity that receives an Appropriate Disclosure of Public Interest Information in accordance with the PID Act, as set out in Appendix A to this Policy.
<i>Responsible Officer</i>	is a person who has completed any training courses approved by the Commissioner for the purposes of the <i>Public Interest Disclosure Regulations 2019</i> and has been designated by the Principal Officer as Responsible Officer under section 12 of the PID Act.
<i>Victimisation</i>	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.

## 7. REFERENCES

### City of Marion

- Fraud & Corruption Management Policy;
- Code of Conduct for Council Employees;
- Code of Conduct for Council Members; and
- Complaint and Grievance Policy

### Other

- Guidelines published by the Commissioner under the *Public Interest Disclosure Act 2018*
- *Independent Commissioner Against Corruption Act 2012*
- *Local Government Act 1999*
- *Ombudsman Act 1972*
- *Public Interest Disclosure Act 2018*

## 8. REVIEW AND EVALUATION

- 8.1. This Policy will be available for inspection at the Council's Offices during ordinary business hours and via the Council's website [www.marion.sa.gov.au](http://www.marion.sa.gov.au);
- 8.2. Copies will also be provided to the public upon request;
- 8.3. The Council will review and update this policy no less than every four (4) years in line with the Council's Policy Framework.

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## Appendix A Relevant Authorities

Where the information relates to...	the relevant authority is...
<p>a public officer*</p> <p>*as defined in section 4 and set out in Schedule 1 of the <i>Independent Commissioner Against Corruption Act 2012</i> - relevantly, this includes Council Members, Officers and Employees of local government bodies</p>	<p>either:</p> <ul style="list-style-type: none"> <li>the person who is designated by the Guidelines as being taken to be responsible for management or supervision of the public officer; or</li> <li>the person who is in fact responsible for the management or supervision of the public officer; or</li> <li>the relevant Responsible Officer (as designated by the Council in accordance with section 12 of the PID Act)</li> </ul>
a public sector agency or public sector employee	<p>either:</p> <ul style="list-style-type: none"> <li>the Commissioner for Public Sector Employment; or</li> <li>the responsible officer for the relevant public sector agency</li> </ul>
an agency to which the <i>Ombudsman Act 1972</i> applies	the Ombudsman
a location within the area of a particular council established under the <i>Local Government Act 1999</i>	a Council Member, Officer or Employee of that Council
a risk to the environment	the Environment Protection Authority
an irregular and unauthorised use of public money or substantial	the Auditor-General
the commission, or suspected commission, of any offence	a member of SAPOL
a judicial officer	the Judicial Conduct Commissioner
a member of Parliament	the Presiding Officer of the House of Parliament to which the member belongs

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Where the information relates to...	the relevant authority is...
a person or a matter of a prescribed class <sup>1</sup>	an authority declared by the regulations to be a relevant authority in relation to such information
<ul style="list-style-type: none"><li>any Disclosure of Public Interest Information</li></ul>	<ul style="list-style-type: none"><li>the OPI;</li><li>a Minister of the Crown; or</li><li>any other prescribed person or person of a prescribed class</li></ul>

<sup>1</sup> at this stage, no prescribed persons or classes have been identified