

Council Procedure

Public Interest Disclosure Procedures

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1.0 Objective

The purpose of this procedure is to outline the actions that are to be taken by the City of Albany in relation to complaints about corrupt or improper conduct by a City of Albany elected member, employee or contractor in the exercise of their public functions, as required by the Public Interest Disclosures Act 2003.

2.0 Scope

This procedure covers:

- a. The appointment and role of the Public Interest Disclosure Officer; and
- b. The appropriate methodology to assess, investigate and take action under the PID Act.

3.0 Definitions

PID	Public Interest Disclosure
Public Interest Disclosure Act	The Act facilitates the disclosure of public interest information by providing protection for those who make disclosures and those who are the subject of disclosures.
Public Interest Disclosure	A disclosure must relate to a matter of public interest and tend to show wrongdoing by a public body when performing a public function.
Public bodies include:	a public authority (includes a State Government organisation, local government , regional local government or a public university. a public officer (includes a State public service officer, an employee of a public authority... a public sector contract (a person or organisation engaged by a public authority, or a subcontractor of this person, for the supply of goods and services or the performance of a public function).

4.0 Actions

A. Designation and Appointment of a Public Interest Disclosure (PID) Officer

The person acting in the position of Corporate Governance Officer is designated as the Public Interest Disclosure Officer, or PID Officer, of the City of Albany. The PID Officer is responsible for receiving disclosures of public interest information relating to matters falling within the sphere of responsibility of the City of Albany.

After assuming or beginning to act in the position of Corporate Governance Officer the person holding or acting in that position must forward a completed **PID Officer's Declaration (see FORMS)** to the Office of the Public Sector Standards Commissioner as soon as is practicable. A copy of the completed PID Officer's Declaration is to be retained on a file to be kept for that purpose.

B. Receiving Public Interest Disclosures

Before a discloser makes a public interest disclosure to a PID Officer, the PID Officer shall advise the discloser of the contents of the RIGHTS AND RESPONSIBILITIES A GUIDE FOR DISCLOSERS GUIDE. The PID officer should advise the disclosure that if they choose to make a public interest disclosure they will not as a result:

- incur any civil or criminal liability.
- be liable to any disciplinary action under State law.
- be liable to be dismissed or have his or her services dispensed with or otherwise terminated.
- be liable for any breach of a duty of secrecy or confidentiality or any other applicable restriction on disclosure.

The disclosure will only be protected if the PID Officer is the proper authority.

Not all proper authorities to which a disclosure may be made will be required or have the power to investigate the information disclosed. In some cases it may be necessary for the discloser or information to be referred to another proper authority with power to investigate the information. Other property authorities are detailed in the [What is a Public Interest Disclosure Guide \(see GUIDE\)](#).

C. Assessing a Public Interest Disclosure

The PID Officer must, on receiving the information confirm that the discloser, after receiving the advice referred to in section 1 of the Public Interest Disclosure Act, wishes to make a public interest disclosure under the Act. If they do the PID Officer must make an initial assessment of whether:

- the information disclosed relates to the City of Albany's performance of a public function by an elected member, officer or contractor;
- the information disclosed tends to show improper conduct.
- the improper conduct is of the kind for which the PID Officer is the proper authority.
- the discloser believes on reasonable grounds that the information is or may be true.
- the information is not protected by legal professional privilege.

If the above questions are all answered "yes", then the disclosure of information is a public interest disclosure to which the Act will apply.

In assessing whether a disclosure is a public interest disclosure, the PID Officer should consider the Flow Chart for Receiving and Assessing Disclosures (paragraph 10), consult the [Rights and Responsibilities – A Guide for Disclosures \(see GUIDE\)](#) and Part 1 of the **Public Interest Disclosures Register (See FORMS)**.

[Note: Where the City of Albany does not have the power to investigate a matter the person should be referred to the appropriate proper authority. However, if they still wish to make the disclosure to you, it should be assessed and if it is a public interest disclosure, it should be referred to the appropriate authority for investigation as provided for under the Act.]

D. Public Interest Disclosure Lodgement Form

If a disclosure is a public interest disclosure, the discloser and the PID Officer should complete the **Public Interest Disclosure Lodgement Form (see FORMS)**.

The PID Officer should also complete Part 2 of the **Assessment Form for Public Interest Disclosures (see FORMS)**.

E. Investigating information received in a Public Interest Disclosure

Where the PID Officer determines that the disclosure is a public interest disclosure that should be investigated, the officer must investigate the disclosed matter himself or herself or engage another person to carry out the investigation.

F. Maintaining Investigation Confidentiality

The Act imposes strict confidentiality requirements in relation to the identity of the discloser and persons in respect of whom a public interest disclosure has been made. The disclosure of information which might identify or tend to identify these persons, except in accordance with the Act, is a serious offence, punishable with a maximum penalty of \$24,000 or two years.

The confidentiality provisions of the Act do not apply to all information disclosed in a public interest disclosure, but only to information that might identify or tend to identify the discloser and persons in respect of whom a public interest disclosure has been made.

One of the circumstances in which identifying information may be disclosed is with the consent of the person concerned. It is important that this consent be recorded. The **Consent to Disclosure of Identifying Information form (see FORMS)** should be used.

Identifying information relating to a discloser may be disclosed without the discloser's consent where:

- it is necessary to do so, having regard to the rules of natural justice; or
- it is necessary to do so to enable the matter to be investigated effectively.

However, before information is disclosed for these reasons the person making the disclosure must take all reasonable steps to inform the person whose identity is to be disclosed:

- that the disclosure is being made; and
- the reasons for the disclosure being made.

This information should be given, where practicable, in the form for **Notification of Disclosure of Identifying Information (see FORMS)**.

Where identifying information in relation to a discloser is conveyed to another person for these reasons, the other person should be warned that disclosure of the information to a third person may involve a serious offence.

Identifying information relating to a person in respect of whom a public interest disclosure has been made can be disclosed at the investigation stage where the disclosure:

- is necessary to enable the matter to be investigated effectively;
- there are reasonable grounds to believe that the disclosure of identifying information is necessary to prevent or minimise the risk of injury to any person or damage to any property.

In addition, disclosures made in accordance with section 152 or 153 of the *Corruption and Crime Commission Act* are exempt from these confidentiality requirements.

Particularly where a discloser works for the City of Albany, protecting the identity of the discloser is an important part of protecting the discloser from reprisals and victimisation. Careful consideration must be given as to whether the disclosure of information that might identify or tend to identify a discloser is necessary for the effective investigation of the matter or having regard to the rules of natural justice.

Where a PID Officer appoints a third person to conduct an investigation in relation to the public interest disclosure, he or she must consider whether it is necessary to inform the investigator of the identity of the discloser. In some cases it may not be necessary to provide the investigator with the identity of the discloser. Where it is necessary, to enable an effective investigation, or having regard to the rules of natural justice, to provide identifying information to the investigating officer, then the discloser should be notified in the manner described above.

When taking action, the confidentiality of identifying information must be maintained, unless its disclosure is authorised by the Act.

The only additional exception, beyond those identified in relation to investigations, is where disclosure of the identity of a person who is the subject of a public interest disclosure is necessary in taking action following the investigation.

G. Recording the Outcome of an Investigation

The outcome of an investigation should be clearly and comprehensively recorded. In addition to any investigation report, the person conducting the investigation should complete part 4 of the **Assessment Form for Public Interest Disclosure (see FORMS)**.

H. Taking Action Following an Investigation

The PID Officer must take action to prevent the matter the disclosure relates to from continuing or occurring.

Action that may be taken, where the PID Officer forms the opinion that a person: may be, or has been, or may in the future be, involved in improper conduct, includes referral of the matter to the Police or other appropriate body, or taking disciplinary action against a person responsible for the matter.

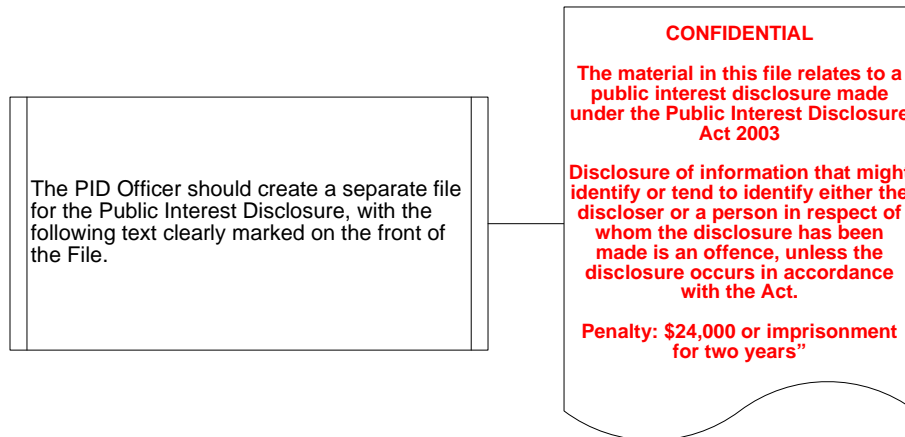
Before taking any action, the person against whom the action is to be taken is to be given the opportunity to make written or oral submissions.

In taking that action the PID Officer remains limited by the powers and functions that are conferred by the legislation under which the Officer operates. The Act does not give the PID Officer additional powers to take action.

As well as being limited to matters within the functions and powers of the PID Officer, the action to be taken is guided by what is necessary and reasonable.

I. Recording Action Taken

In addition to keeping other records, the PID Officer shall complete Part 5 of the **Assessment Form for Public Interest Disclosures (see FORMS)** and record a summary of the action taken in the Public Interest Disclosure Register. All reporting requirements to the Commissioner for Public Sector Standards required under the Act will be based on extracts from this Register.



J. Reporting to a discloser on the progress of an investigation

Where the PID Officer decides not to investigate information disclosed under the Act, or discontinues an investigation, the Officer must give the person who made the disclosure reasons for doing so.

Within three months of the disclosure being made the PID Officer must notify the discloser of the action taken or proposed to be taken in relation to the disclosure.

A discloser may also request a progress report.

If an investigation is not complete, the PID Officer may provide to the discloser a progress report on the current status of the investigation.

If an investigation is complete, the PID Officer must provide a final report to the discloser, stating the outcome of the investigation and the reason for taking action following the investigation.

In providing information and reports to disclosers, the PID Officer must not give information that, in the officer's opinion, would be likely to adversely affect:

- any person's safety;
- the investigation of an offence or possible offence; or
- necessary confidentiality as to the existence or identity of another person who has made a disclosure of public interest information under the Act.

K. Victimization and Reprisals

The City of Albany will not tolerate any acts of victimisation or reprisal as a result of a person making, or proposing to make, a public interest disclosure.

Steps taken to prevent acts of victimisation or reprisal should be recorded in a manner that they will be accessible for reference, should legal action be taken against the City of Albany.

5.0 Public Interest Disclosure Register

The City of Albany shall maintain a Public Interest Disclosure Register recording a unique register number and key information for each disclosure.

6.0 Reporting Requirements

Under the Act public authorities will need to report to the Commissioner each year as outlined below.

Principal Executive Officer Report. Under section 23 (f) of the Act, the City of Albany is required to report annually to the Commissioner for Public Sector Standards on:

- the number of public interest disclosures received over the report period;
- the results of any investigations conducted as a result of the disclosures; and
- the action, if any, taken as a result of each investigation.
- Commissioner's Compliance Report

Report Format and Submission

An electronic format for the Principal Executive Officer Report and the information for the Commissioner's Compliance Report will be provided each year by the Commissioner and both will be able to be submitted in a single electronic submission. The reports will cover the period 1 July in any year to 30 June in the subsequent year.

Where there has been no action on a disclosure in the reporting period the format of the report will provide for a simple nil return. Where action relating to one or more disclosures has occurred, all data required will be obtainable as a simple extract from the Public Interest Disclosure Register.

7.0 Enabling Policy or Strategy

- Nil

8.0 Review Position and Date

- Corporate Governance Coordinator on or before 30/06/2011

9.0 Associated Documents

- Public Interest Disclosure Act 2003
- [Public Interest Disclosure Act 2003 – Guidelines](#)
- Office of the Public Section Standards
 - Guidelines:
 - [Your Guide to Public Interest Disclosures](#)
 - [What is a Public Interest Disclosure](#)
 - [A Guide for Managers and Supervisors](#)
 - [Rights & Responsibilities – A guide for disclosures](#)
 - Forms:
 - PID Officer Declaration Form
 - Public Interest Disclosure Lodgement Form
 - Assessment Form For Public Interest Disclosures
 - Public Interest Disclosure Register
 - Notification of Disclosure of Identifying Information
- Local Government (Rules of Conduct) Regulations 2007

