

Protected Disclosures Policy

Approval Body:	Council
Endorsement Date:	3 September 2019
Council Plan Reference:	3.1
Current Version:	2.0 <i>Council policy documents change from time to time and it is recommended that you consult the electronic reference copy on Casey Council's Website to ensure that you have the current version. Alternatively, you may contact Customer Service on 9705 5200.</i>
Compulsory Review Cycle:	This policy will be reviewed every four years or upon significant change to the Act, the Regulations or IBAC's guidelines.
Review Date:	30 September 2023 <i>It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively. Examples include a change to the name of a Council department, a change to the name of a Federal or State Government department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be by resolution of Council.</i>
Responsible Department:	Governance
Relevant Legislation:	<i>Protected Disclosure Act 2012 Independent Broad-based Anti-Corruption Commission Act 2011 Local Government Act 1989</i>
Relevant Council Documents:	Protected Disclosure Welfare Management Process
Breaches:	The Act contains a number of offence provisions relating to unauthorised disclosure of information by either whistle-blowers or persons who have received disclosures. The penalties for breaching the confidentiality required by the Act include imprisonment, financial payments or both.
ECM ID:	252460

1. Purpose and Intent

Council recognises the value of transparency and accountability in its administrative and management practices and supports the making of disclosures that reveal improper conduct.

This policy outlines the way in which any individual, including members of the public, staff and Councillors can disclose information which enables the prevention of fraud and corruption.

This policy fulfils Council's requirement to establish and publish procedures under s 58 of the Act and in accordance with the Guidelines of the IBAC published under s 57 of the Act.1

The purpose of the Act is to encourage and facilitate the making of disclosures of improper conduct and detrimental action by public officers and public bodies.

Council will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosure. It will also afford natural justice to the person or body who is the subject of the disclosure. Council's process for Welfare Management of a Protected Disclosure is outlined in a separate process

An essential component of this protection is to ensure that information connected to a protected disclosure, including the identity of a discloser and the contents of that disclosure, are kept strictly confidential.

2. Scope

Council can only deal with disclosures which concern the Council, its employees, staff or officers.

The conduct or action being disclosed may be one which has taken place, is still occurring, or is believed is intended to be taken or engaged in. Disclosures may also be made about conduct that occurred prior to the commencement of the Act on 10 February 2013.

Disclosures about improper conduct or detrimental action by Council's Councillors **must** be made to the IBAC or to the Ombudsman. Those disclosures may not be made to the Council.

This policy encompasses:

- how disclosures may be made to Council
- how the Council manages the receipt of disclosures
- notifications Council is required to make about disclosures, to both disclosers and to the IBAC

3. Definitions

Key term	Definition
Act	<i>Protected Disclosure Act 2012</i>
Assessable disclosure	any disclosure made to Council which requires notification of the IBAC or relevant integrity agency for assessment under s 21 of the Act
Council	means Casey City Council, being a body corporate constituted as a municipal Council under the <i>Local Government Act 1989</i>
Councillors	means the individuals holding the office of a member of Casey City Council
Council officer	means the Chief Executive Officer and staff of Council appointed by the Chief Executive Officer.
Disclosure	any complaint, concern, matter, allegation or disclosure (however described) purported to be made in accordance with Part 2 of the Act

Guidelines	the Guidelines published by IBAC under s 57 of the Act as at October 2016, copies of which may be downloaded from https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures (last accessed on 13 August 2019)
IBAC	Independent Broad-based Anti-Corruption Commission
IBAC Act	<i>Independent Broad-based Anti-Corruption Commission Act 2011</i>
Investigative entity	any one of the four bodies authorised to investigate a protected disclosure complaint, being IBAC, the Victorian Ombudsman, the Chief Commissioner of Police and the VI
Principal officer	the administrative head of an organisation. In the case of a local council this is the Chief Executive Officer.
Protected disclosure	any complaint, concern, matter, allegation or disclosure (however described) made in accordance with Part 2 of the Act
Protected disclosure complaint	a protected disclosure which has been determined and assessed by IBAC to be a protected disclosure complaint under s 26 of the Act
Protected disclosure coordinator	the person appointed under these procedures to oversee and coordinate the receipt of protected disclosures and related activities
Protected disclosure officer	a person appointed under these procedures to take protected disclosures
Public officer	a person employed in any capacity, including as a third-party contractor, or holding any capacity in the public sector.
Regulations	protected Disclosure Regulations 2013
VI	Victorian Inspectorate

4. Policy

4.1. Council's internal reporting structures

Council will:

- ensure these procedures, including detailed information about how disclosures may be made and to whom, are accessible on its website and available internally and externally to staff, Councillors, employees and any individual in the broader community;
- afford natural justice and treat fairly those who are the subject of allegations contained in disclosures;
- take the appropriate disciplinary and other action against any staff, Councillors or employees engaged in the taking of detrimental action;
- ensure any staff involved with handling protected disclosures are trained to receive and manage protected disclosures appropriately;
- ensure that Council, as a whole, handles protected disclosures consistently and appropriately in accordance with its obligations under the Act, the Regulations, the IBAC's Guidelines and these procedures; and
- be visible, approachable, openly communicative and lead by example in establishing a workplace that supports the making of protected disclosures.

4.2. Employees, staff, members and Councillors

Employees, staff, members and Councillors are encouraged to raise matters of concern internally in relation to Council staff or individual Councillors. In particular, employees, staff, and Councillors are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures.

All employees, staff, members and Councillors must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

4.3. Direct and indirect supervisors and managers

Employees who wish to make a protected disclosure may make that disclosure to that employee's direct or indirect supervisor or manager.

If a person wishes to make a protected disclosure about an employee of Council, that person may make the disclosure to that employee's direct or indirect supervisor or manager.

The supervisor or manager receiving the disclosure will:

- immediately bring the matter to the attention of the Protected Disclosure Coordinator for further action in accordance with the Act
- commit to writing any disclosures made orally
- take all necessary steps to ensure the information disclosed, including the identity of the discloser and any persons involved, is secured, remains private and confidential
- offer to remain a support person for the discloser in dealing with the Protected Disclosure Coordinator.

4.4. Protected Disclosure Officer

Council has appointed a Protected Disclosure Officer to receive disclosures and be the contact point for general advice about the operation of the Act for any person wishing to make a disclosure. The Protected Disclosure Officer is available to receive disclosures made internally within Council or from external sources. The Protected Disclosure Officer provides a confidential avenue of advice about the Act where staff or employees wish to raise a concern about their line managers, colleagues or supervisors.

The Protected Disclosure Officer will:

- arrange for a disclosure to be made privately and discreetly and, if necessary, away from the workplace
- receive any disclosure made orally or in writing from internal or external sources
- commit to writing any disclosure made orally
- where more than one Protected Disclosure Officer is appointed, forward all disclosures and supporting evidence to the Protected Disclosure Coordinator for further action in accordance with the Act
- take all necessary steps to ensure the information disclosed, including the identity of the discloser and any persons involved, is secured, remains private and confidential
- impartially assess the allegation and consider whether it is a disclosure required to be notified by the IBAC for assessment under s 21 of the Act
- where more than one Protected Disclosure Officer is appointed, offer to remain a support person for the discloser in dealing with the Protected Disclosure Coordinator.

4.5. Protected Disclosure Coordinator

Council's Protected Disclosure Coordinator has a central role in the internal reporting system and maintains oversight over the system.

The Protected Disclosure Coordinator is:

- contactable by external and internal persons making disclosures and has the authority to make enquiries of officers within the organisation;
- to receive all disclosures forwarded from Council's Protected Disclosure Officer;
- the contact point for general advice about the operation of the Act and primary liaison with the IBAC and relevant integrity agencies in regard to the Act
- responsible for ensuring that Council carries out its responsibilities under the Act, any regulations made pursuant to the Act and any guidelines issued by the IBAC;
- responsible for coordinating Council's reporting system;
- to take all necessary steps to ensure information received or obtained in connection with a disclosure, including the identities of the discloser and the person(s) to whom the disclosure relate, are kept secured, private and confidential at all times;
- required to consider each disclosure impartially to determine whether it should be notified to the IBAC for assessment under the Act;
- responsible for arranging any necessary and appropriate welfare support for the discloser, including appointing a Welfare Manager to support the discloser and to protect him or her from any reprisals;
- to advise the discloser, appropriately and in accordance with the Act, the stage at which the disclosure is at (whether it has been notified to the IBAC for assessment, etc.);
- to collate statistics on disclosures made; and
- to liaise with the CEO of Council.

4.6. Making a disclosure

4.6.1. What is a disclosure and who can make a disclosure?

A disclosure may be made about two things under the Act:

- (i) improper conduct of public bodies or public officers; and
- (ii) detrimental action taken by public bodies or public officers in reprisal against a person for the making of a protected disclosure.

Protected disclosures may be made about any person who adversely affects the honest performance of the functions of Councillors, Council or its officers and employees. That includes any conspiracy or attempt to engage in such conduct.

For example, if a planning applicant tries to bribe a City of Casey officer to obtain a planning permit, the applicant would have engaged in the conduct referred to.

The term disclosure is interpreted under the Act in the ordinary sense of the word. The IBAC considers that a complaint or allegation that is already in the public domain will not normally be a protected disclosure. Such material would, for example, include matters which have already been subject to media or other public commentary.

A protected disclosure may:

- only be made by a natural person (or a group of individuals making joint disclosures),² disclosures cannot be made by a company or an organisation;
- be made anonymously;³
- be made even where the discloser is unable to identify precisely the individual or the organisation to which the disclosure relates; and
- also be a complaint, notification or disclosure (however described) made under another law.

The following are *not* protected disclosures under the Act:

- a disclosure that has not been made in accordance with all of the procedural requirements of Part 2 of the Act and the prescribed procedures in the Regulations (also see section 4.6.2 of this policy below);
- a disclosure made that expressly states in writing, at the time of making the disclosure, that the disclosure is not a disclosure under the Act;
- a disclosure made by an officer or employee of an investigative entity in the course of carrying out his or her duties or functions under the relevant legislation, unless the person expressly states in writing that the disclosure is a disclosure and the disclosure is otherwise made in accordance with Part 2 of the Act.

If Council receives any disclosures which do not meet all of the requirements of Part 2 of the Act or the prescribed procedures in the Regulations, Council will not be required to consider whether it is a protected disclosure under the Act.

However, Council will always consider whether it would be appropriate to inform the discloser how to make the disclosure in a way that would comply with the requirements of the Act and the Regulations in order to ensure that persons are properly afforded the opportunity to receive any appropriate protections available to them under the Act.

In addition, Council is required to consider whether a disclosure that does not meet the requirements of the Act and the Regulations should be treated as a complaint, notification or referral to Council in accordance with any other laws or internal policies and procedures.

4.6.2. What can a disclosure be made about?

A disclosure must be about where information shows, or a reasonable belief exists

- that a public body or public officer has engaged, is engaging in or is conspiring to engage in improper conduct in the performance of their functions or
- has, is or will engage in detrimental action as a reprisal for a disclosure made

Improper conduct

Improper conduct is defined in the Act to mean either corrupt conduct or specified conduct.

² It should be noted that some of the protections set out in the Act protecting a whistle-blower are available only to the person who makes a disclosure. The IBAC has pointed out that the consequence of this is, if a person makes a disclosure by 'notifying' the agency on behalf of another individual, then it is the 'notifier' who may receive those protections, and not the person on whose behalf they have made the disclosure. The person on whose behalf the disclosure has been made will only be entitled to protections against detrimental taken against them in reprisal for the disclosure made by the notifier.

³ Although this may create difficulties in Council being able to communicate with the whistle-blower, and some of the notification requirements imposed on Council in relation to disclosures will not apply in relation to an anonymously made disclosure. In addition, it may impede Council's ability to properly assess whether the complaint or allegation is a protected disclosure for the purposes of the Act.

Corrupt conduct

Corrupt conduct means any one of the following:

- conduct of any person that adversely affects the honest performance by a public officer or public body of his or her or its functions as a public officer or public body;
- conduct of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body;
- conduct of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust;
- conduct of a public officer or a public body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person; *or*
- conduct that could constitute a conspiracy or an attempt to engage in any of the conduct referred to above; **and**
- if that conduct could be proved beyond reasonable doubt at a trial, amounts to:
 - an indictable offence; *or*
 - one of the following three types of common law offences committed in Victoria:
 - perverting the course of justice
 - attempting to pervert the course of justice
 - bribery of an official.

Specified conduct

Specified conduct is any one of the above types of conduct, or conduct that involves substantial mismanagement of public resources, risk to public health or safety, or risk to the environment, which **would not** constitute “corrupt conduct” but would nevertheless, if proved, constitute either:

- a criminal offence; *or*
- reasonable grounds for dismissing or terminating the employment of the officer who engaged or is engaging in that conduct.

It should be noted the risk in relation to mismanagement or public health and safety or the environment must be “substantial”, requiring significant or considerable mismanagement, or significant or considerable risks to public health, safety or the environment.

Detrimental action

It is an offence under the Act for a public officer or body to take detrimental action against a person in reprisal for making a protected disclosure. There are two essential components here: whether there is in fact “detrimental action”, as defined by the Act, and whether that action is being taken in reprisal against a person for making or being connected with a protected disclosure.

Detrimental action as defined by the Act includes:

- action causing injury, loss or damage;
- intimidation or harassment; and
- discrimination, disadvantage or adverse treatment in relation to a person’s employment, career, profession, trade or business, including the taking of disciplinary action.

In addition, a person can have taken detrimental action without having taken the action itself, but just by threatening to take such action. Further, the detrimental action need not necessarily have been taken (or threatened to be taken) against a person making a protected disclosure, but against any person connected with a protected disclosure.

Examples of detrimental action prohibited by the Act include:

- threats to a person's personal safety or property, including intimidating, harassing a discloser or the disclosers family or friends, otherwise causing personal injury or prejudice to the safety or damaging property of a discloser or their family or friends;
- the demotion, transfer, isolation or change in duties of a discloser due to their having made a disclosure;
- discriminating or disadvantaging a person in their career, profession, employment, trade or business; or
- discriminating against the discloser or their family and associates in subsequent applications for promotions, jobs, permits or tenders resulting in financial loss or reputational damage.

To substantiate detrimental action, the person (or the person incited to take detrimental action) must take or threaten the detrimental action, because, or in the belief that the:

- other person or anyone else has made, or intends to make the disclosure;
- other person or anyone else has cooperated or intends to cooperate with an investigation of the disclosure.

The reason for the person taking detrimental action in reprisal must be a 'substantial' reason for taking that action, or it will not be considered to be detrimental action.

4.6.3. How can a disclosure be made?

A disclosure must be made in accordance with Part 2 of the Act

Disclosures about improper conduct or detrimental action by Council or its employees and staff may be made to Council or one of four external authorities:

- The IBAC <https://www.ibac.vic.gov.au/reporting-corruption/report>
- The Ombudsman <https://www.ombudsman.vic.gov.au/Complaints/Make-a-Complaint>
- the VI in relation to limited types of disclosures <https://w.www.vic.gov.au/vicinspectorate/complaints/protected-disclosure-complaints.html>; or
- The Chief Commissioner of Police in relation to limited types of disclosures.

In most circumstances, disclosures about Council, its employees, agency staff or third-party contractors should be made to Council or to the IBAC.

If a person does not wish their allegation or complaint to be treated as a disclosure made under Part 2 of the Act, the person must, at the time of making the disclosure, expressly state in writing that the disclosure is not a disclosure for the purposes of the Act.

How to make a disclosure to Council

Oral disclosures

An oral disclosure to Council **must** be made in private and **may** be made:

- in person;
- by telephone to one of the persons authorised to receive disclosures set out in clauses 4.3, 4.4 and 4.5 of this policy, including by leaving a voicemail message on that telephone number; or

The oral disclosure **must** be made to one of the following persons:

- the CEO of Council;
- a Protected Disclosure Officer or Protected Disclosure Coordinator as identified in this policy;
- to the direct or indirect manager of the discloser, if an employee of Council; or
- to the direct or indirect manager of the person to whom the disclosure relates, if that person is an employee of Council.
- If the disclosure is made orally, the person receiving the disclosure will make notes at the time recording the disclosure. Recording of the conversation will only be done with the discloser's permission or by giving prior warning that the conversation will be recorded.

Written disclosures

A written disclosure to Council **must** be:

- delivered personally to the office of Council at:
City of Casey
Bunjil Place
2 Patrick Northeast Drive
NARRE WARREN VIC 3805
- sent by post addressed to the Protected Disclosure Officer/Coordinator of Council at
PO Box 1000
NARRE WARREN VIC 3805 or
- sent by email to the office of Council at: *caseycc@casey.vic.gov.au* or
- sent by email to the official email address of:
 - the direct or indirect supervisor or manager of the discloser, if the discloser is an employee of Council;
 - the direct or indirect supervisor or manager of the person to whom the disclosure relates, where that person is an employee of Council;
 - a Protected Disclosure Officer identified in this policy;
 - the Protected Disclosure Coordinator specified in this policy.

Council recommends that the discloser ensures that the disclosure be sealed in an envelope which is clearly marked with one or more of the following:

- "Re: Protected disclosure";
- "To the personal attention of the CEO: Protected Disclosure";
- "To the personal attention of the Protected Disclosure Coordinator"; or
- "To the personal attention of the Protected Disclosure Officer".

Where a protected disclosure is sent via email, it is recommended that the subject line refer to 'Protected Disclosure'.

4.7. Handling disclosures

4.7.1. Assessing a disclosure

When Council receives a complaint, report or allegation of improper conduct or detrimental action, it will confirm that the disclosure has been made in accordance with requirements of Part 2 of the Act.

This will be the case even if the discloser does not refer to the Act or require the protections of the Act.

The initial assessment is made on the nature of the information disclosed or on the belief that the discloser has about the nature of the information, and not the disclosers intention.

Assessment of Disclosure

Council will assess whether the information disclosed shows, or tends to show, that there is improper conduct or detrimental action taken in reprisal for the making of a protected disclosure.

This may require Council to:

- seek further information;
- conduct a discreet initial enquiry;
- seek (further) evidence from the discloser;
- ascertain whether there is sufficient supporting material to demonstrate that the conduct or actions covered by the Act have occurred, are occurring or are likely to occur.

If it is not clear that the information disclosed shows or tends to show that there is improper conduct or detrimental action, then Council will assess if the discloser has substantiated a reasonable belief that improper conduct or detrimental action has, is or will occur.

According to the IBAC, simply stating that improper conduct or detrimental action is occurring, without providing any supporting information, would not be a sufficient basis for having a reasonable belief. In the IBAC's view, a belief cannot be based on a mere allegation or conclusion unsupported by any further facts or circumstances.

Other matters that the IBAC suggests Council can consider are:

- the reliability of the information provided by the discloser, even if it is second- or third-hand. For example, how would the discloser have obtained the information?
- the amount of detail that has been provided in the information disclosed; and
- the credibility of the discloser, or of those people who have provided the discloser with information.

Where urgent action is required while an assessment is still being made

In some circumstances, the disclosure may be about improper conduct that may pose an immediate threat to health and safety of individuals, preservation of property, or may consist of serious criminal conduct.

Examples of this provided by the IBAC include where the disclosure may be about:

- a child protection worker allegedly sexually assaulting children in care;
- a council worker allegedly lighting bush fires; or
- a person is threatening to poison the water supply.

In these situations, Council can take immediate action while continuing to assess the disclosure.

It may be necessary to report criminal conduct to Victoria Police for immediate investigation or take management action against an employee to prevent future conduct.

The Act allows Council to disclose the content of the disclosure by a person or body *“to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of an assessable disclosure including disciplinary process or action”*. However, the IBAC notes that this does not allow the identity of the discloser to be revealed.

Assessment decisions – Not deemed to be a Protected Disclosure

If Council does not consider the matter to be a protected disclosure, then it may refer the matter to other relevant internal complaint or grievance management processes.

If the discloser had indicated a wish to receive protections under the Act, Council will within 28 days of receiving the disclosure notify the discloser in writing that

- Council considers the disclosure is not a protected disclosure;
- the disclosure has not been notified to the IBAC for assessment under the Act; and

- regardless of whether the disclosure is notified to the IBAC for assessment under the Act, the protections under Part 6 of the Act apply, as detailed below in 4.9.2.

Assessment decision – Deemed to be protected disclosure

If Council decides a matter may be a protected disclosure under the Act, it will within 28 days of receiving the disclosure

- notify the IBAC that:
 - Council considers the disclosure may be a protected disclosure; and
 - Council is notifying the disclosure to the IBAC for assessment under s 21 of the Act

In addition, at the time of notifying the IBAC under s 21 of the Act or at any later time, Council may also provide the IBAC with any information obtained by Council regarding the disclosure in the course of its enquiries leading up to its notification of the disclosure to the IBAC.

and

- notify the discloser that:
 - the disclosure has been notified to the IBAC for assessment under the Act; and
 - it is an offence under s 74 of the Act to disclose that the disclosure has been notified to the IBAC for assessment under the Act.

If the disclosure satisfies Part 2 of the Act, the discloser is entitled to receive protections under Part 6 of the Act (see Welfare Management Process).

4.8. Assessment by the IBAC

Once a disclosure has been notified to the IBAC, the IBAC must determine whether it is a protected disclosure complaint.

The IBAC must inform Council of its determination as to whether or not the disclosure is a protected disclosure complaint

- in writing; and
- within a reasonable time after making the determination.

In making its assessment, the IBAC may seek additional information from Council or from the discloser if the IBAC considers there is insufficient information to make a decision.

4.8.1. If the IBAC determines the disclosure is not a protected disclosure complaint

If the IBAC determines the disclosure is not a protected disclosure complaint, the IBAC must advise the discloser in writing and within a reasonable time after the determination is made, that:

- the IBAC has determined that the disclosure is not a protected disclosure complaint; and
- as a consequence of that determination:
 - the disclosure will not be investigated as a protected disclosure complaint; and
 - the confidentiality provisions under Part 7 of the Act no longer apply in relation to the disclosure; and
- regardless of whether the IBAC has determined that the disclosure is a protected disclosure complaint, the protections under Part 6 apply to the disclosure.
- In addition, if the IBAC is of the view that the disclosure, although not a protected disclosure complaint, may be able to be dealt with by another entity, the IBAC may advise the discloser that:
- the matter which is the subject of the disclosure may be able to be dealt with by an entity other than as a protected disclosure complaint; and

- if the discloser wishes to pursue the matter, to make a complaint directly to that entity.
If this is the case, the IBAC will also advise the relevant notifying entity that the discloser has been given this advice.

The IBAC is also able to consider whether it wishes to treat the assessable disclosure as a notification made to the IBAC under the IBAC Act.

4.8.2. If the IBAC determines the disclosure is a protected disclosure complaint

Notification to the discloser

If the IBAC determines a matter is a protected disclosure complaint, the IBAC must advise the discloser in writing and within a reasonable time after the determination is made, that:

- the IBAC has determined that the disclosure is a protected disclosure complaint;
- regardless of the determination, the protections available to a discloser of a protected disclosure under Part 6 of the Act apply;
- the discloser has rights, protections and obligations under the Act as contained in ss 72, 74 and Parts 6 and 7 of the Act, including an explanation of the effect of those sections and Parts of the Act; and
- it is an offence under s 74 of the Act to disclose that the IBAC has determined that the disclosure is a protected disclosure complaint.

Once the IBAC has determined that a disclosure is a protected disclosure complaint, the discloser cannot withdraw that disclosure. However, under the IBAC Act, the IBAC can decide not to investigate a protected disclosure complaint if the discloser requests that it not be investigated.

Further actions the IBAC may take⁴

Under the IBAC Act, the IBAC may dismiss, investigate, or refer a protected disclosure complaint.

If the IBAC dismisses a protected disclosure complaint, then it must do so on one of the grounds specifically set out in the IBAC Act. In particular, the IBAC **must** dismiss a protected disclosure complaint if the matter disclosed is a matter that neither the IBAC nor an investigating entity may investigate.

Depending on the action decided to be taken by the IBAC, the IBAC must also provide certain other information to the discloser. That information is set out at the chart on page 25 of the IBAC's Guidelines for Making and Handling Protected Disclosures.⁵

Other investigative entities' investigations of a protected disclosure complaint⁶

If the IBAC or another investigative entity is conducting an investigation of a protected disclosure complaint, it may be in contact with Council or person about which the disclosure has been made. This will be for the purpose of conducting investigative enquiries.

Council or the person who has disclosed will be able to disclose information about the protected disclosure complaint to the investigative entity without breaching the confidentiality requirements of the Act.

The relevant investigative entity may also disclose the identity of the discloser and the content of the disclosure if necessary, to do so for the purposes of their investigative action.

⁴ This section of the procedures comprises a summary of points drawn from pp 24 to 25 of the IBAC's Guidelines for Making and Handling Protected Disclosures (<https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures>), last accessed 13 August 2019). For further information, please refer to those Guidelines.

⁵ Available at <https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures> (last accessed 12 June 2019).

If this is the case, then Council or the person to whom the information has been disclosed, is bound by the confidentiality requirements of Part 7 of the Act.

In addition, if Council or a public officer is advised of the identity of the discloser then they will be required to look after the welfare of the discloser and provide protection against possible detrimental action.

At the conclusion of its investigation, the relevant investigative entity must generally provide the discloser with information about the results of its investigation, including any action taken by the investigative entity and any recommendation by the investigative agency that action or further action be taken.

The investigative entity may provide written information about the commencement, conduct or result of an investigation, including any actions taken and any recommendation made that any action or further action be taken to the relevant principal officer. However, the investigative entity must not provide any information that is likely to lead to the identification of a discloser.

The investigative entity does not have to provide this information to either the discloser or the relevant principal officer in specified circumstances set out in the IBAC Act or the *Ombudsman Act 1973*.

4.8.3. Protections for persons making a protected disclosure

Part 6 protections available to disclosers

Part 6 of the Act sets out the protections provided to persons who make a disclosure that is a 'protected disclosure', i.e., one that is made in accordance with Part 2 of the PD Act. In summary, they are as follows:

- the discloser is not subject to any civil or criminal liability for making the protected disclosure;
- the discloser is not subject to any administrative action (including disciplinary action) for making the protected disclosure;
- by making the protected disclosure, the whistle-blower is not committing an offence against the *Constitution Act 1975* or any other law that imposes obligations of confidentiality or otherwise restricts the disclosure of information;
- by making the protected disclosure, the discloser is not breaching any other obligation (made by oath, rule of law or practice) requiring them to maintain confidentiality; and
- the discloser cannot be held liable for defamation in relation to information included in a protected disclosure made

The protections in Part 6 apply from the time at which the disclosure is made. They apply even if Council receiving the disclosure does not notify the disclosure to the IBAC, and even if the IBAC has determined that the protected disclosure is not a protected disclosure complaint.

The protections also apply to further information relating to a protected disclosure made by the original discloser, if the further information has been provided, verbally or in writing, to:

- the entity to which the protected disclosure was made
- the IBAC or
- any investigative entity investigating the protected disclosure.

Loss of protections caused by actions of the discloser

However, a discloser is not protected if they commit an offence under s 72 or s 73 of Act, as follows:

- provide false or misleading information, or further information that relates to a protected disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a protected disclosure (maximum penalty: a fine of 120 penalty units, 12 months' imprisonment, or both)

- claim that a matter is the subject of a protected disclosure knowing the claim to be false (maximum penalty: a fine of 120 penalty units, 12 months' imprisonment, or both)
- falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a protected disclosure complaint (maximum penalty: a fine of 120 penalty units, 12 months' imprisonment, or both).

Other limitations on protections afforded to disclosers

A person who has made a disclosure is not protected against legitimate management action being taken by Council in accordance with the Act.

In addition, although the person making a protected disclosure is not subject to criminal or civil liability for making the disclosure, the Act specifically provides that a person remains liable for their own conduct even though the person has made a disclosure of that conduct under the Act. Therefore, the discloser will still be held liable for their own conduct that they disclose as part of making a protected disclosure.

If the person making the disclosure is implicated in the improper conduct or detrimental action that is the subject of the disclosure

Where a discloser is implicated in improper conduct, Council will handle the disclosure and protect the discloser from reprisals in accordance with the Act, the IBAC's guidelines and this policy. Council acknowledges that the act of disclosing should not shield disclosers from the reasonable consequences flowing from any involvement in improper conduct. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

The management of the welfare of a discloser may become complicated when that person is implicated in misconduct, whether or not that misconduct is related to the disclosure.

Taking disciplinary or other action against a person who has made a protected disclosure invariably creates the perception that it is being taken in reprisal for the disclosure.

The CEO will make the final decision on the advice of the Protected Disclosure Coordinator as to whether disciplinary or other action will be taken against a discloser. Where disciplinary or other action relates to conduct that is the subject of the disclosure, the disciplinary or other action will only be taken after the disclosed matter has been appropriately dealt with. In all cases where disciplinary or other action is being contemplated, any such action will not be taken without Council's CEO ensuring that:

- the fact that a person has made a protected disclosure is not a substantial reason for Council taking the action against the employee;
- there are good and sufficient grounds that would fully justify action against any other person in the same circumstances;
- there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

Council will take all reasonable steps to thoroughly document its decision-making process, including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not being taken in retribution against the discloser for making the disclosure, so that it will be able to clearly demonstrate that the disciplinary or other action was taken for the appropriate and permitted reasons under the Act.

4.9. Confidentiality

4.9.1. General obligation of confidentiality on Council and all individuals

Maintaining confidentiality in relation to protected disclosure matters is crucial, among other things, in ensuring reprisals are not made against a discloser. Council will take all reasonable steps to protect the identity of the disclosure and the matters disclosed.

The obligation of confidentiality extends to any person receiving a disclosure or making a disclosure. It is in the interest of the discloser to ensure he or she does not discuss any

related matters other than with authorised persons within Council, officers of the IBAC, or other persons authorised by law.

4.9.2. Steps taken by Council to ensure confidentiality

Data Management

Council will ensure all data related to the disclosure is kept securely and accessible only by the Protected Disclosure Coordinator or Protected Disclosure Officer. Where necessary, a Welfare Manager may be able to gain access as appropriate to related welfare matters.

The Welfare Manager will not divulge any details relating to the disclosed matter to any person other than the Protected Disclosure Coordinator, an investigator appropriately authorised under the Act or the IBAC Act, or the CEO. All meetings between any relevant persons, including the Protected Disclosure Officer, the Welfare Manager and a discloser will be conducted discreetly to protect the confidentiality of the person making a protected disclosure.

All relevant data will be stored on an appropriate storage device with specific password protection.

Exemption from the Freedom of Information Act 1982 (“FOI Act”)

The FOI Act provides a general right of access for any person to seek documents in the possession of Council.

However, the Act provides that certain information related to protected disclosures as contained in documents in the possession of Council will be exempt from the application of the FOI Act.

Such information excluded from the operation of the FOI Act includes:

- any information relating to a disclosure made in accordance with the Act;
- any information relating to a disclosure notified to the IBAC by Council under s 21 of the Act for assessment; and
- any information that is likely to lead to the identification of a discloser.

Council is required to contact the IBAC prior to providing any document originating from the IBAC or relating to a protected disclosure, if that document is sought under the FOI Act.

Limited exceptions permitted by the Act

The Act makes it a crime to disclose information connected with a disclosure made in accordance with the Act. Limited exceptions to the prohibition on disclosure are specified by the Act, include circumstances such as:

- where disclosure is required by Council (or one of its officers) in the exercise of functions of Council under the Act;
- where necessary for the purpose of the exercise of functions under the Act;
- by an investigating entity for the purpose of exercising that entity’s functions under the IBAC Act;
- in accordance with a direction or authorisation given by the investigating entity that is investigating the disclosure;
- to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of an assessable disclosure including a disciplinary process or action;
- where the IBAC or the Victorian Inspectorate has determined that the assessable disclosure is not a protected disclosure and the whistleblower or City of Casey subsequently discloses the information;
- when an investigating entity had published a report to Parliament, in accordance with its confidentiality obligations;
- for the purpose of obtaining legal advice in relation to matters specified in the Act;

- in order to enable compliance with the Act:
 - where a person does not have a sufficient knowledge of the English language, to obtain a translation from an interpreter;
 - where a person is under 18 years of age, to a parent or guardian of a;
 - where a person is suffering a disability and is not able to understand, to an independent person;
- in disciplinary actions or legal proceedings for certain offences in the Act or other specified Acts.

Training for all staff

Council will:

- ensure that staff employees, officers and Councillors have access to a copy of this policy
- incorporate into its induction process training about Council's general obligations under the Act and the rights and obligations of all employees, Councillors and staff
- introduce periodic refresher courses for existing staff, Councillors, and members about their rights and obligations under the Act
- provide additional training and assistance to:
 - any members of Council with specific responsibilities and functions to handle and manage protected disclosures under the Act, including the Protected Disclosure Coordinator and people involved in welfare management
 - its complaint handling staff to ensure that any complaints received will be dealt with consistently and in accordance with the Act as required
 - any staff with functions and duties under the FOI Act or with responsibilities for information management, to ensure that no prohibited information is disclosed under the Act and to ensure there is appropriate liaising with the staff of the IBAC or other investigative agencies where required in response to a request for access under the FOI Act; and
 - all staff and employees dealing with customers to ensure any potential disclosures received from external sources can be handled appropriately in accordance with the Act and these procedures.

4.9.3. Collating and publishing statistics

Council is required to publish certain statistics about the Act in its annual reports. That information relates mainly to how these procedures may be accessed, and the number of disclosures notified to the IBAC for assessment under s 21 of the Act during the financial year.

The Protected Disclosure Coordinator will establish a secure register to record such information, and to generally keep account of the status of disclosures made under the Act.

The Act prohibits the inclusion of any details, in any report or recommendation, that is likely to lead to the identification of a whistleblower.

The Act also prohibits the identification of the person who is the subject of the disclosure in any particulars included in an annual report or any reports to Parliament.

4.10. Responsibilities

Who	What
Protected Disclosure Coordinator	<p>Provide statistics related to Protected Disclosures for incorporation in Annual Report.</p> <p>Provide training to Council employees.</p> <p>Make readily available, internally and to members of the public Council's process to receive and manage Protected Disclosures.</p>
Protected Disclosure Officer	Fulfil legislative obligations of Protected Disclosure Officer including requirements regarding confidentiality.

4.11. Breaches

Breaches of Confidentiality

The Act contains a number of offence provisions relating to unauthorised disclosure of information by either disclosures or persons who have received disclosures. The penalties for breaching the confidentiality required by the Act include imprisonment, financial payments or both.

The criminal offences set out in the Act relating to confidentiality include:

1. Divulging information obtained in connection or as a result of the handling or investigation of a protected disclosure without legislative authority. Maximum penalty: 60 penalty units, six months imprisonment, or both.
2. Disclosing that a disclosure has been notified to the IBAC for assessment under the Act. Maximum penalty: 60 penalty units, six months imprisonment, or both.
3. Disclosing that a disclosure has been assessed by the IBAC or the VI to be a protected disclosure complaint under the Act. Maximum penalty: 60 penalty units, six months imprisonment, or both.

4.11.1. Protections for public officers

A public officer is given specific protections under the Act to provide information to other public officers or to the IBAC in dealing with a disclosure they have received. When a public officer acts in good faith and in accordance with the Act, Regulations and the IBAC's Guidelines, the public officer does not commit an offence under laws imposing a duty to maintain confidentiality or restricting the disclosure of information.

5. Relevant Forms

N/A

6. Document History

Date approved	Change Type	Version	Next Review Date
03/09/2019	Major Amendments: to reflect the application of the <i>Protected Disclosures Act 2012</i>	2.0	30/09/2023
30/06/2018	Minor Administrative changes	1.3	30/06/2022