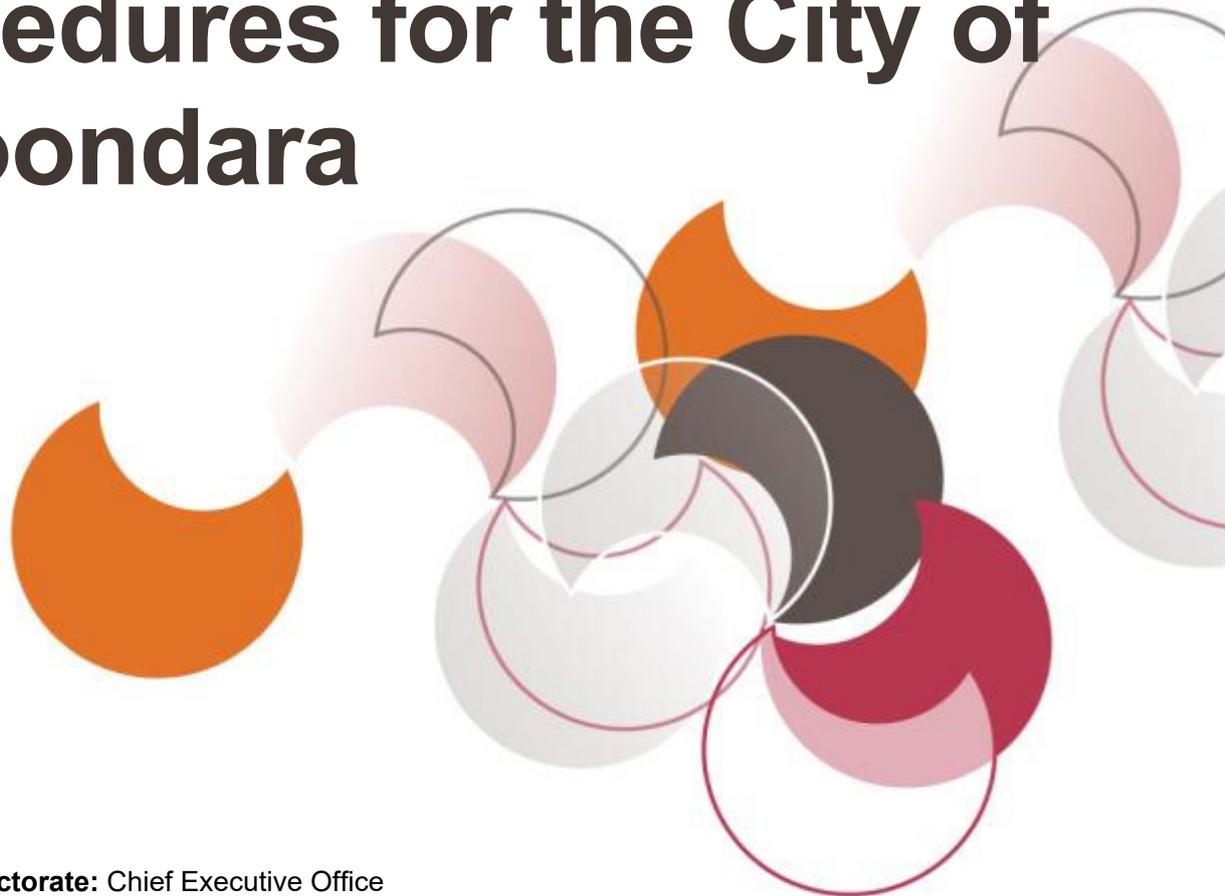




**Public Interest Disclosure Act 2012**

# **Public Interest Disclosure (Whistleblowers) Procedures for the City of Boroondara**



**Responsible Directorate:** Chief Executive Office  
**Authorised By:** ELT  
**Date of Adoption:** 20 December 2019  
**Review Date:** October 2023  
**Revocation/Sunset Date:** Nil  
**Policy Type:** Administrative



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## 1. Introduction

### 1.1. Statement of support to public interest disclosures (whistleblowers)

The City of Boroondara (CoB) is committed to the aims and objectives of the *Public Interest Disclosures Act 2012* (the Act). It does not tolerate improper conduct by its employees, officers or members, nor the taking of reprisals against those who come forward to disclose such conduct.

The CoB recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal corrupt conduct, conduct involving a substantial mismanagement of public resources, or conduct involving a substantial risk to public health and safety or the environment.

The CoB will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosure.

### 1.2. Purpose of these procedures

These procedures establish a system for reporting disclosures of improper conduct or detrimental action by the CoB or its employees. The system enables such disclosures to be made to the Public Interest Disclosure Coordinator or to the Independent Broad-based Anti-corruption Commission (IBAC). Disclosures may be made by any person. This includes a person who is a member, officer or employee of the CoB.

Details of all contact information for the Protected Disclosure Coordinator are listed in **Appendix A**.

These procedures are designed to complement normal communication channels between supervisors and employees. Employees are encouraged to continue to raise appropriate matters at any time with their supervisors. As an alternative, employees may make a disclosure of improper conduct or detrimental action under the Act in accordance with these procedures.

For conduct not meeting the public interest disclosure provisions of the Act the CoB have contracted **Stoplevel Pty Ltd**. Complaints or allegations outside the Act criteria can be reported direct to **Stoplevel Pty Ltd** (See **Appendix A** for contact information). The CoB offers the same anonymity provisions and assurance that all reasonable steps will be taken to protect anyone making such reports.

The services of **Stoplevel Pty Ltd** is also available to all employees to seek advice on how to report matters relating to improper conduct should it be considered necessary to go “outside” the CoB.

## 2. Objects of the Act

By way of background, the *Protected Disclosure Act 2012* was renamed the *Public Interest Disclosures Act 2012* (the Act) in March 2019. The new legislation introduced some changes to the *Protected Disclosure Act 2012* to support people making disclosures which are in the public interest. On 1 January 2020, these changes took effect replacing existing 'protected disclosure' arrangements (PDs) with 'public interest disclosures' (PIDs).

The Act aims to:

- encourage and assist people to report improper conduct and detrimental action taken in reprisal for a public interest disclosure
- provide certain protections for people who make a disclosure or those who may suffer detrimental action in reprisal for a disclosure
- ensure that certain information about a disclosure is kept confidential - the identity of the person making the disclosure and the content of that disclosure

The Act has also established a new parliamentary oversight committee. The **Integrity and Oversight Committee** (IOC), consolidating the oversight of a number of Victorian integrity agencies, including the Independent Broad-based Anti-corruption Commission (IBAC), the Victorian Ombudsman (VO) and the Office of the Victorian Information Commissioner (OVIC).

## 3. The reporting system - making a disclosure

### 3.1. What is a public interest disclosure?

Public interest disclosures are reports about:

- improper conduct of public bodies or public officers (such as corrupt conduct)
- detrimental action that a public officer or public body has taken against a person in reprisal for them (or another person) having made a public interest disclosure or cooperated with the investigation of a public interest disclosure.

A disclosure can relate to conduct or action that:

- may have already taken place
- may be occurring now
- may happen in the future.

### 3.2. Who a public interest disclosure can be about

Disclosures can be made about:

- public bodies
- public officers
- conduct of a person who is not a public officer or is not employed by a public body, where their conduct is adversely affecting the honest performance of a public body or public officer, or is intended to adversely affect their effective performance.

**Public bodies** include:

- a council (established under the Local Government Act 1989)
- public sector bodies (including public entities and special bodies)
- incorporated or unincorporated bodies established under an Act for a public purpose, including universities
- Electoral Boundaries Commission
- a body performing a public function on behalf of the State or a public body or public officer (for example, a regulatory function or a function that is publically funded).

Public officers include:

- local government Councillors and council employees
- public servants, including IBAC officers
- university employees and teachers
- Victoria Police personnel
- Members of Parliament, including Ministers
- ministerial officers, parliamentary advisers and officers, electorate officers
- judicial officers, including coroners, members of the Victorian Civil and Administrative Tribunal (VCAT), associate judges, judicial registrars
- statutory office holders, including the Auditor-General and the Victorian Ombudsman, and the Director of Public Prosecutions
- the Governor, Lieutenant-Governor or Administrator of the State.

Further information about the types of public bodies and public officers about whom disclosures can be made is in the *Public Administration Act 2004*, and the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act).

Someone can still make a disclosure even if they can't identify the person or the organisation to which the disclosure relates.

### **3.3. Who can make a disclosure?**

Anyone can make a disclosure about improper conduct or detrimental action - both members of the public and employees of a public body. However, to fall within the scheme, disclosures must be made to an organisation that is authorised to receive disclosures.

Disclosures can be made by individuals or a group of people. A company or business cannot make a disclosure - but its officers or employees can.

### **3.4. Organisations that can receive a public interest disclosures**

Disclosures about some public bodies or officers must only be made to particular entities.

The following sets out where disclosures about specific public bodies or officers should be made.

- the Chief Commissioner of Police
- the Director of Public Prosecutions
- the Chief Crown Prosecutor
- the Solicitor-General
- the Governor
- the Lieutenant- Governor or Administrator
- the Director, Police Integrity
- the Electoral Commissioner
- a Commissioner or member of a Board of Inquiry appointed under the *Inquiries Act 2014*
- a judicial employee
- a Ministerial officer
- a Parliamentary adviser
- an electorate officer
- a Parliamentary officer
- a Minister of the Crown who is not a member of Parliament

→ IBAC

- a Councillor
- the Information Commissioner
- the Health Complaints Commissioner

→ IBAC or the Victorian Ombudsman

- the Chief Examiner or an Examiner appointed under the *Major Crimes (Investigative Powers) Act 2004*
- a Victorian Ombudsman officer
- a Victorian Auditor-General's officer
- a Judicial Commission officer (other than a judicial member of the Board of the Judicial Commission)

→ IBAC or the Victorian Inspectorate

- a member of police personnel (other than the Chief Commissioner)

→ IBAC or a Prescribed Member of Police Personnel

- a member of Parliament (Legislative Council)

→ President of the Legislative Council

- a member of Parliament (Legislative Assembly)

→ Speaker of the Legislative Assembly

- a Public Interest Monitor
- a IBAC officer

→ The Victorian Inspectorate

- a Judicial officer or a member of VCAT who is not a judicial officer

→ IBAC or the Judicial Commission

- a Victorian Inspectorate Officer

→ Integrity and Oversight Committee, the Speaker of the Legislative Assembly or the President of the Legislative Council

If the subject of the disclosure is not listed in the table above, the disclosure can be made to the following organisations that are authorised to receive public interest disclosures.

Organisation	Officer who can receive disclosures
<b>Council</b> All councils can receive disclosures that relate to the conduct of themselves, or disclosures made by their own members, officers or employees. Disclosures about councils can also be made to IBAC, or to the Victorian Ombudsman or the Victorian Inspectorate	<ul style="list-style-type: none"> <li>• Chief Executive Officer</li> <li>• A person identified in the council's procedures as a person who can receive a disclosure about that council, e.g. Public Interest Disclosure Coordinator</li> <li>• Manager or supervisor of the discloser</li> <li>• Manager or supervisor of the person who is the subject of the disclosure</li> </ul>
<b>IBAC</b>	<ul style="list-style-type: none"> <li>• The Commissioner</li> <li>• A Deputy Commissioner</li> <li>• The Chief Executive Officer</li> <li>• An IBAC employee</li> <li>• An IBAC consultant</li> </ul>
<b>Victorian Ombudsman</b>	<ul style="list-style-type: none"> <li>• A Victorian Ombudsman officer</li> </ul>
<b>Victorian Inspectorate</b>	<ul style="list-style-type: none"> <li>• The Victorian Inspector</li> <li>• A Victorian Inspectorate employee</li> </ul>
<b>Public Service body</b> Public service bodies can only receive disclosures that relate to the conduct of themselves, or disclosures made by their own members, officers or employees. Disclosures about public sector bodies can also be made to IBAC, or to the Victorian Ombudsman or the Victorian Inspectorate	<ul style="list-style-type: none"> <li>• Head of the relevant public service body</li> <li>• A person identified in the council's procedures as a person who can receive a disclosure about that council, e.g. Public Interest Disclosure Coordinator</li> <li>• Manager or supervisor of the discloser</li> <li>• Manager or supervisor of the person who is the subject of the disclosure</li> </ul>

### 3.5. Disclosures made to an organisation that is not authorised to receive public interest disclosures

If someone makes a disclosure to an agency that isn't authorised to receive public interest disclosures, the disclosure will not be protected under the Act. The person should be advised what organisations can receive disclosures.

### **3.6. How can a disclosure be made?**

A person may make a disclosure verbally or in writing. The disclosure may also be anonymous.

#### Private verbal disclosure

Disclosures can be made in person, by phone or by leaving a voice mail message.

Verbal disclosures must be made in private. This means the person making the disclosure must reasonably believe that only the following people (other than themselves) are present or able to listen to the conversation:

- a lawyer representing the person making the disclosure (if any)
- one or more people to whom a disclosure can be made under the Act or Regulations.

This does not preclude a group of individuals from making a joint disclosure.

If the disclosure is made verbally, the person receiving the disclosure should make notes at the time. This person can also record the conversation, but should give prior warning that the conversation will be recorded. The conversation should not be recorded if the discloser objects.

#### Written disclosure

A written disclosure can be provided to the CoB by:

- delivering it in person to the office of the CoB
- mailing it to the office of the CoB
- emailing to the email address of the office of the CoB, or to the official email address of a person nominated to receive a disclosure in the CoB's procedures or in the Public Interest Disclosures Regulations
- completing the online form available on the IBAC and the Victorian Ombudsman websites.

A disclosure cannot be made by fax.

#### Anonymous disclosure

A discloser need not identify themselves to make a disclosure.

An anonymous disclosure can be made by using unverifiable email addresses, through anonymous phone calls or in a face-to-face conversation or meeting where the person refuses to identify themselves (provided that meeting or conversation takes place 'in private' in accordance with the Public Interest Disclosures Regulations).

If the disclosure comes from an email address where the identity of the person making the disclosure cannot be determined, the disclosure should be treated as an anonymous disclosure.

### **3.7. Who can receive disclosures?**

Disclosures of improper conduct or detrimental action by the CoB or its employees, may be made to the Public Interest Disclosure Coordinator.

The following officers of Council can receive disclosures:

- Chief Executive Officer; and
- Public Interest Disclosure Coordinator

The Manager Governance has been appointed as the Public Interest Disclosure Coordinator.

The Public Interest Disclosure Coordinator will be the main contact point within the CoB.

## **4. Definitions of key terms**

Disclosures can be made under the public interest disclosure regime where they relate to improper conduct or detrimental action. Definitions of these terms are set out below.

### **4.1. Improper conduct**

Improper conduct includes corrupt conduct, criminal offences and other conduct specified in the Act. If the conduct is trivial, it will not meet the threshold of improper conduct.

When assessing allegations of improper conduct, you need to identify that there is a link between the conduct and the official function of a public officer or public body.

#### **4.1.1 What improper conduct includes**

Improper conduct includes corrupt conduct and / or any of the following conduct by a public officer or public body in their capacity as a public officer or public body:

- a criminal offence
- serious professional misconduct
- dishonest performance of public functions
- an intentional or reckless breach of public trust
- an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body
- a substantial mismanagement of public resources
- a substantial risk to health or safety of one or more persons
- a substantial risk to the environment
- conduct of any person that:
  - adversely affects the honest performance by a public officer or public body of their public functions
  - is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and results in the person, or an associate of the person, obtaining:

- a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument
- an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument
- a financial benefit or real or personal property
- any other direct or indirect monetary or proprietary gain, that the person or associate would not have otherwise obtained.
- conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to above.

#### **4.2. Detrimental action**

It is an offence for a person to take, threaten to take or allow another person to take detrimental action against another person in reprisal for making a public interest disclosure.

Detrimental action includes:

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

The person need not have actually taken the detrimental action, but can just have threatened to do so or incited someone else to do so.

When assessing a disclosure for detrimental action the following will be considered as part of the assessment:

- both the nature of the detrimental action and whether it is being taken in reprisal for a public interest disclosure.
- did the person take or threaten the action (or incite or permit another person to take or threaten the action) because (or in the belief) that:
  - the other person (or anyone else) has made, or intends to make, the disclosure
  - the other person (or anyone else) has cooperated, or intends to cooperate, with an investigation of the disclosure.

The Act does not prevent a manager taking management action against a person who has made a disclosure provided that the making of the disclosure is not the reason for the management action being taken.

#### **4.3. Serious professional misconduct**

Serious professional misconduct is not defined in the Act. For the purpose of these procedures it will be thought about where there is a serious failure to exhibit the skills and experience required to perform the responsibilities of the office, as well as a serious breach of professional conduct expected in the workplace.

To identify whether serious professional misconduct has occurred, the following will be considered:

- if the person has behaved in a way that is inconsistent with the expectations, skills and responsibilities of their office
- the behaviour the person engaged in was in their capacity as a public officer
- the misconduct was serious.

The following factors will be considered when assessing whether the misconduct is serious:

- persistent, repeated or premeditated behaviour
- risks posed to others or the consequences of
- the behaviour (including for the public officer and others)
- the level of public trust and responsibility attached to the public office
- the amount of money involved in the wrongdoing
- how the conduct is perceived by the person’s peers
- whether the conduct would result in significant disciplinary or potentially criminal penalties
- the size of the discrepancy between what the person should have done and what they did
- whether it should have been apparent to the person that they were wrong.

**5. What standard needs to be applied?**

The disclosure needs to be assessed to decide if it is about improper conduct or detrimental action. There are two standards that should be considered.

<b>Shows or tends to show improper conduct or detrimental action</b>	<b>Reasonable belief that improper conduct or detrimental action has occurred</b>
Does the information provided show or tend to show there is improper conduct or detrimental action?	Does the discloser believe on reasonable grounds that improper conduct or detrimental action has occurred?
<b>Reliability of the information</b>	<b>Reasonable belief</b>
In assessing if there is improper conduct or detrimental action, look at all the information provided about the alleged conduct and about the discloser: • What is the discloser’s connection to the alleged conduct? Are they a victim, a witness, or a participant? • How did they come to know about the conduct? Were they directly involved in it? Did they observe it happening to another person? Did someone else tell them about it? • How detailed is the information provided? Is there sufficient information to enable you to consider whether there is improper conduct or detrimental action?	A person making a disclosure must reasonably believe that improper conduct or detrimental action has occurred or is going to occur.  This requires more than a suspicion, the belief must have supporting facts and circumstances. For example, it would not be sufficient for a person’s disclosure to consist simply of a one sentence statement like ‘I know XYZ is corrupt’.  The test is whether a reasonable person, possessed of the same information, could believe that the improper conduct had occurred.

<ul style="list-style-type: none"> <li>• How reliable is the information? Is it supported by other information?</li> </ul>	<p>Other matters that can be considered to determine if there are reasonable grounds for the discloser's belief is the reliability of the information they have provided, even if it is second or third hand. Consider how the person would have obtained the information and the amount of detail that has been provided.</p> <p>Consider the credibility of the discloser or the people who provided the discloser with information.</p>
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## 6. Handling disclosures

### 6.1. Receiving a disclosure

When the CoB receives a complaint, report or allegation of improper conduct or detrimental action, the first step will be to determine whether the disclosure may be a public interest disclosure by going through the assessment process set out in the previous section.

### 6.2. Notifying the outcome of the assessment

The CoB will make an assessment as to whether the disclosure is a public interest disclosure or it is not a public interest disclosure.

<b>It is a public interest disclosure</b>	<b>It is <u>NOT</u> a public interest disclosure</b>
<p><b>Notify the appropriate agency</b> The City of Boroondara (the CoB) will notify the appropriate agency in writing, within 28 days after the disclosure was made, that:</p> <ul style="list-style-type: none"> <li>• the disclosure may be a public interest disclosure</li> <li>• the CoB is sending the disclosure for assessment.</li> </ul> <p>The CoB will also provide the agency with any information obtained regarding the disclosure in the course of inquiries. Note - this information can be provided at the time of notification or at any later time.</p> <p>IBAC is the appropriate agency for all disclosures except the following:</p> <ul style="list-style-type: none"> <li>• Disclosures about IBAC or the Public Interest Monitor must be notified to the Victorian Inspectorate.</li> <li>• Disclosures about the Victorian Inspectorate must be notified to the Integrity and Oversight Committee.</li> </ul>	<p>The City of Boroondara (the CoB) will advise the discloser in writing, within 28 days after the disclosure was made, that:</p> <ul style="list-style-type: none"> <li>• the CoB does not consider the disclosure shows or tends to show improper conduct or detrimental action</li> <li>• the disclosure has not been sent to IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee for assessment</li> <li>• the discloser's identity doesn't have to be kept confidential, but protections under Part 6 of the Act apply, for example: <ul style="list-style-type: none"> <li>- they can't be fired, disciplined or bullied for making the disclosure</li> <li>- they are protected from legal actions such as defamation and civil liability.</li> </ul> </li> </ul> <p>Note - the CoB does not have to provide the discloser with this information unless the discloser has indicated, or it otherwise appears to the CoB, that they wish to receive the protections that apply to a public interest disclosure under the Act.</p>

<p><b>Notify the discloser</b> The CoB will notify the discloser in writing, within 28 days after the disclosure was made, that the disclosure has been sent to IBAC for assessment.</p>	<p>The CoB will consider whether the disclosure could be dealt with according to your organisation's normal complaint handling procedures.</p>
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### **6.3. Can a discloser ask that a complaint not be dealt with as a public interest disclosure?**

Yes. A discloser can advise that they do not want the disclosure treated as a public interest disclosure by stating so in writing at the time of making the disclosure or within 28 days of making the disclosure.

### **6.4. Protection for public officers**

When a public officer acts in good faith and in accordance with the public interest disclosure scheme, they do not commit an offence under section 95 of the *Constitution Act 1975* or any other Act that imposes a duty to maintain confidentiality, and do not breach confidentiality obligations or information disclosure restrictions.

### **6.5. If urgent action is required while a disclosure is being assessed**

When a public officer acts in good faith and in accordance with the public interest disclosure scheme, they do not commit an offence under section 95 of the *Constitution Act 1975* or any other Act that imposes a duty to maintain confidentiality, and do not breach confidentiality obligations or information disclosure restrictions.

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

Examples could include a child protection worker allegedly assaulting children in care, a council worker allegedly lighting bush fires, or a person threatening to poison the water supply.

In these cases, the CoB will take immediate action while considering whether or not it is a disclosure that must be notified to IBAC. The CoB may also take immediate action while awaiting IBAC's decision on a notified matter.

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.

While the Act limits the release of information about disclosures, it allows the CoB to disclose the content of the disclosure 'to the extent necessary for the purpose of taking lawful action' in relation to conduct that is the subject of a disclosure, including disciplinary process or action. However, this does not allow the CoB to reveal the identity of the discloser.

There is also an exception that allows both disclosure content and the discloser's identity to be shared with Victoria Police where an investigating entity has previously disclosed information to the Chief Commissioner of Police relating to actual or potential criminal conduct and the information is relevant to an investigation by Victoria Police of the criminal conduct.

**7. IBAC assessment**

Once a notification is made to IBAC, then IBAC must assess whether, in IBAC's view, the assessable disclosure is a public interest complaint. If IBAC is of the view that the assessable disclosure is a public interest complaint, then the discloser is protected.

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

If IBAC determines that a disclosure is a public interest complaint, it will investigate or refer a disclosure, or it may take no further action.

**7.1. IBAC's determination**

Once IBAC has determined whether a disclosure is a public interest disclosure, it:

- advises the relevant notifying entity of its determination
- advises the discloser of the determination and the action it intends to take (this applies to disclosers who have made their disclosures directly to IBAC and those who have had their disclosures notified to IBAC).

**7.1.1. Information IBAC will provide to a discloser following its determination**

IBAC will provide the following information to a disclosure following its determination:

<b>It is a public interest complaint</b>	<b>It is NOT a public interest complaint</b>
<p>IBAC must advise the discloser of the determination and the action it will take. This includes advising the discloser whether IBAC has decided to investigate or refer the complaint or take no further action.</p> <p>If IBAC decides to take no further action it must give reasons for its decision.</p> <p>If IBAC decides to investigate or refer the complaint it must provide a written statement advising the discloser that it is an offence to disclose IBAC's action.</p> <p>IBAC must notify the discloser in writing and within a reasonable time. However, IBAC may decide not to notify the discloser or the entity that has notified the disclosure if it considers that notifying would have one of the adverse consequences set out in the IBAC Act.</p>	<p>IBAC must advise the discloser in writing within a reasonable time, that:</p> <ul style="list-style-type: none"> <li>• IBAC has determined their disclosure is not a public interest complaint</li> <li>• the disclosure will not be investigated as a public interest complaint</li> <li>• their identity does not have to be kept confidential.</li> </ul> <p>IBAC will advise the notifying entity of its determination.</p> <p>IBAC may also consider treating the disclosure as a complaint under the IBAC Act which engages its powers to refer the matter to a more appropriate agency to investigate, including the agency the complaint is about.</p> <p>IBAC will consult with the discloser prior to doing so.</p>

These adverse consequences include putting a person's safety at risk, or prejudicing an investigation under the IBAC Act.	
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## **7.2. IBAC - investigating complaints**

IBAC may choose to investigate the alleged conduct if it is corrupt conduct that is serious or systemic.

### **7.2.1. Confidentiality and welfare issues**

During the investigation of a public interest complaint, IBAC or another investigating entity may need to contact the public body that is the subject of the complaint.

If so, the public body or public officer will be able to disclose information about the public interest complaint without breaching the confidentiality requirements of the Act.

IBAC or the relevant investigating entity may also disclose the identity of the discloser and the content of the complaint if necessary. If so, the public body or public officer to whom the information has been disclosed is bound by the confidentiality requirements of the Act.

In addition, if the public body or 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.

For further information on how to manage the welfare of disclosers, witnesses and any person who is the subject of a public interest disclosure investigation refer to the 'Welfare Management Procedures for the City of Boroondara - Public Interest Disclosures (Whistleblowers)'.

## **7.3. IBAC - referring a complaint**

IBAC may refer a public interest complaint to another investigating entity:

- Complaints about the conduct of a member of Victoria Police may be referred to the Chief Commissioner of Police.
- Other complaints may be referred to the Victorian Ombudsman, or depending on the nature of the complaint, the Chief Municipal Inspector, the Judicial Commission, the Racing Integrity Commissioner or the Information Commissioner.

If there is another public body that may be more suited to investigating a complaint (for example, a council or Victorian Government department), IBAC may refer the complaint to that body if the person who made the complaint gives their consent.

## **7.4. IBAC - no further action**

If IBAC dismisses a public interest complaint, it must do so for reasons set out in the Act, for example if the complaint:

- lacks substance or credibility
- is vexatious or trivial
- is about a the matter that neither IBAC or a body specified in the IBAC Act may investigate.

## **7.5. IBAC's obligations - providing information to the discloser at the end of an investigation**

IBAC must provide the discloser with information about the results of its investigation. This will include any action taken by IBAC and any recommendation by IBAC that action or further action be taken.

IBAC may provide written information to the relevant principal officer about the commencement, conduct or result of an investigation. This includes any actions taken and any recommendations for action or further action. However, IBAC must not provide any information that is likely to lead to a discloser being identified.

IBAC does not have to provide this information to either the discloser or the relevant principal officer if it considers the disclosure might result in any of the possible adverse outcomes specified in section 163(4) of the Act.

## **8. Protections for persons making disclosure**

The following types of disclosures are protected:

- any disclosure assessed as public interest disclosure (where the assessment has been made by an organisation that is authorised to receive disclosures). The protections apply even if the public body receiving the disclosure does not notify IBAC.
- any notification that IBAC receives and determines to be a public interest complaint.

How the discloser is protected is set out below:

- cannot be fired, disciplined or bullied for making a disclosure
- is not subject to any civil or criminal liability for making a disclosure
- is not committing an offence against the Constitution Act 1975 or any other Act that imposes obligations of confidentiality or any other restriction on the disclosure of information
- is not breaching any other obligation (made by oath, rule of law or practice) requiring him or her to maintain confidentiality or otherwise restrict confidentiality
- cannot be held liable for defamation in relation to information included in a public interest disclosure.

### **8.1. Confidentiality - content and identity of a person making a public interest disclosure**

Confidentiality is another way that disclosers and other people involved in public interest complaint investigations are protected.

There are two main restrictions on disclosing information. Breaching either of these restrictions is an offence.

<b>Content of a public interest disclosure must be confidential</b>	<b>Identity of a person making a public interest disclosure must be confidential</b>
<p>The Act prohibits the disclosure of the content, or information about the content, of any disclosure that has been assessed as a public interest disclosure.</p> <p>This restriction applies to a person or body that receives a disclosure or is provided information about the disclosure by an investigating entity assessing or investigating it. The restriction does not apply to the discloser.</p>	<p>The Act prohibits the disclosure of information that would be likely to lead to the identification of a person who has made a public interest disclosure.</p> <p>This restriction applies to any person or body, other than the discloser.</p>

These restrictions and their exceptions are set out in sections 52, 53 and 54 of the Act.

#### **8.1.1. Exceptions to confidentiality requirements**

There are certain circumstance where the confidentiality requirements do not apply. These are:

- when a body is exercising its functions under the Act
- it is disclosed by an investigating entity for the purpose of the exercise of functions under the Act that authorises that investigating entity to investigate a public interest complaint
- IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee determines the disclosure is not a public interest complaint
- when a disclosure is to Victoria Police where an investigating entity has previously disclosed information to the Chief Commissioner of Police relating to actual or potential criminal conduct and the information is relevant to an investigation by Victoria Police of the criminal conduct
- it is for the purpose of a proceeding or for a disciplinary process under a relevant Act
- the disclosure is necessary for the discloser to obtain legal advice or representation, interpretive services, the advice of a parent or guardian (for disclosers under 18 years), the advice of an independent person (for disclosers who are illiterate or have mental or physical impairments)
- the disclosure is for the purpose of assisting the discloser to seek advice or support from a registered health practitioner or trade union or employee assistance program
- the disclosure is to WorkCover for a workers compensation claim or to the Fair Work Commission for an application.

### **8.1.2. Additional exceptions to confidentiality of the content of a public interest disclosure**

Confidentiality doesn't apply if:

- it is in accordance with a direction or authorisation from the investigating entity that is investigating the public interest complaint
- the disclosure is necessary for taking lawful action in relation to the conduct that is the subject of the disclosure.

### **8.1.3. Additional exceptions to confidentiality of the identity of a person making a public interest disclosure**

Confidentiality doesn't apply if the discloser gives written consent.

## **8.2. Limits on protections**

A number of the protections in the Act do not apply if a discloser:

- knowingly provides false or misleading information
- claims that a matter is the subject of a public interest disclosure knowing the claim to be false.

The Act also specifically states that a person is still liable for their own conduct even if they disclose that conduct.

A person who makes a disclosure is not protected against legitimate management action being taken in relation to them.

## **9. Offences**

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

Where disciplinary or other action is being contemplated, the Chief Executive Officer or other responsible public officer must be able to clearly demonstrate that:

- the fact that a person has made a public interest disclosure is not any part of the reason for taking 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.

The CoB may obtain legal advice before taking any action against the person making a public interest disclosure.

Care will be taken to thoroughly document the process. This includes recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for making the disclosure.

The person making a public interest disclosure should be clearly advised of the proposed action to be taken and of any mitigating factors that have been taken into account.

See **Appendix B** for the civil and criminal penalties under the Act.

## **10. The reporting system**

### **10.1. Contact persons within the City of Boroondara**

Disclosures of improper conduct or detrimental action by the CoB or its employees, may be made to the Public Interest Disclosure Coordinator or the Chief Executive Officer.

All correspondence, phone calls and emails from internal or external persons making a disclosure must be referred to the Public Interest Disclosure Coordinator.

Where a person is contemplating making a disclosure and is concerned about approaching the Public Interest Disclosure Coordinator in the workplace, he or she can call the Public Interest Disclosure Coordinator and request a meeting in a discreet location away from the workplace.

Advice about reporting any improper conduct or detrimental action may be obtained from the Public Interest Disclosure Coordinator or **Stopline Pty Ltd** (See **Appendix A** for contact details).

### **10.2. Alternative contact persons**

A disclosure about improper conduct or detrimental action by the CoB or its employees may also be made directly to IBAC. See **Appendix A**.

The following sets out where disclosures about persons other than employees or councillors of the CoB should be made. Disclosures relating to councillors must be made to IBAC or the Victorian Ombudsman.

## **11. Roles and responsibilities**

### **11.1. Employees**

Employees are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures.

All employees of the CoB have an important role to play in supporting those who have made a legitimate disclosure. They 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.

### **11.2. Public Interest Disclosure Coordinator**

The Public Interest Disclosure Coordinator will be a contact point within the COB and will:

- Establish and manage a confidential filing system;
- Receive all disclosures;
- Receive phone calls, emails and letters from members of the public or the CoB employees seeking to make a disclosure;
- Be a contact point for general advice about the operation of the Act for any person wishing to make a disclosure about improper conduct or detrimental action;

- Make arrangements 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 and external person);
- Commit to writing any disclosure made orally;
- Impartially assess the allegation and determine whether it is a disclosure made in accordance with the Act (that is, a public interest disclosure);
- Take all necessary steps to ensure the identity of the person making the disclosure and the identity of the person who is the subject of the disclosure are kept confidential;
- Impartially assess each disclosure to determine whether it is a protected disclosure;
- Refer all public interest disclosures to IBAC;
- Appoint a Welfare Manager to support the person making the disclosure and to protect him or her from any reprisals; and
- Collate and provide statistics on disclosures made.

### **11.3. Receipt of disclosures by staff**

The CoB staff receiving telephone calls must not enquire into the circumstances of the disclosure and must refer the caller to the Public Interest Disclosure Coordinator. If the disclosure is received in the mail or in some other written form, the letter, email, or document must be immediately and personally delivered to the Public Interest Disclosure Coordinator without recording any details of the disclosure in the CoB electronic document management system.

The contents of disclosure telephone calls or mail are confidential and a person divulging any matter relating to a disclosure will be subject to prosecution for offences and any penalties under the Act.

### **11.4. Welfare manager**

The Welfare Manager is responsible for looking after the general welfare of the discloser. The Welfare Manager will:

- examine the immediate welfare and protection needs of the discloser and seek to foster a supportive work environment;
- advise the discloser of the legislative and administrative protections available to him or her;
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making disclosure; and
- ensure the expectations of the discloser are realistic.

The Welfare Manager may be a person from within the CoB or a third party engaged for that purpose.

## **11.5. The Freedom of Information Act**

Documents may not be subject to the *Freedom of Information Act 1982* if they disclose information that:

- relates to a public interest disclosure or police complaint disclosure
- is likely to identify a person who has made a public interest disclosure.

Public bodies should ensure that any officers handling freedom of information requests are aware of this section.

Council's Freedom of Information Officer will give consideration to contacting IBAC prior to providing any document originating from IBAC or relating to a protected disclosure, if requested under the *Freedom of Information Act*.

## **12. Confidentiality**

The CoB will take all reasonable steps to protect the identity of the discloser. Maintaining confidentiality is crucial in ensuring reprisals are not made against a discloser.

The Act requires any person who receives information due to the handling or investigation of a public interest disclosure, not to disclose the information except in limited circumstances.

### **12.1. Information management**

The CoB will ensure all files, whether paper or electronic, are kept in a secure room and can only be accessed by the Public Interest Disclosure Coordinator, or Welfare Manager (in relation to welfare matters). All printed material will be kept in files that are clearly marked as a Public Interest Disclosures Act matter, and warn of the civil and criminal penalties that apply to any unauthorised divulging information concerning a public interest disclosure.

All electronic files will be produced and stored on a stand-alone computer and be given password protection. Backup files will be kept on an encrypted memory stick. All materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the public interest disclosure file(s).

The CoB will not email documents relevant to a disclosure matter to any computer where general staff have access and will ensure all phone calls and meetings are conducted in private.

## **13. Managing the welfare of the discloser**

### **13.1. Commitment to protecting discloser**

The CoB is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of public interest disclosures. The Public Interest Disclosure Coordinator has the primary responsibility for ensuring the discloser is protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of protected disclosures being made.

The Public Interest Disclosure Coordinator will appoint a Welfare Manager to all disclosures who have made a protected disclosure.

In addition to these procedures, the Welfare Manager will in accordance with the CoB 'Welfare Management Procedures for the City of Boroondara - Public Interest Disclosures (Whistleblowers)' manage the welfare of persons associated with a public interest disclosure.

#### **14. Collating and publishing statistics**

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

The Public Interest 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.

#### **15. Review**

These procedures will be reviewed regularly to ensure they meet the objectives of the Act and Regulations and accord with the IBAC guidelines.

#### Version History:

Protected Disclosures (Whistleblowers) Procedures for the City of Boroondara	Adopted by ELT on 22 September 2015
Protected Disclosures (Whistleblowers) Guidelines for the City of Boroondara	Adopted by EMG on 23 July 2013
Whistleblowers Protection Act - Guidelines for the City of Boroondara	Adopted by EMG on 9 February 2011
Whistleblowers Protection Act - Guidelines for the City of Boroondara	Adopted by EMG on 30 October 2006

## APPENDIX A

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### ***For reporting improper conduct or detrimental action under the Public Interest Disclosures Act***

#### **Public Interest Disclosure Coordinator**

**Manager Governance, Mr David Thompson**

Address: Confidential Telephone: (03) 9278 4470  
Public Interest Disclosure  
City of Boroondara  
Private Bag 1  
CAMBERWELL VIC 3124

Email: [publicinterestdisclosure@boroondara.vic.gov.au](mailto:publicinterestdisclosure@boroondara.vic.gov.au)

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#### **Independent Broad-based Anti-corruption Commission (IBAC)**

Address: GPO Box 24234 Telephone: 1300 735 135  
MELBOURNE VIC 3001

Internet: [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

Email: [info@ibac.vic.gov.au](mailto:info@ibac.vic.gov.au)

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#### **Victorian Ombudsman**

Ms Deborah Glass OBE, Ombudsman

Address: Ombudsman Victoria Telephone: (03) 9613 6222  
Level 2, 570 Bourke Street  
MELBOURNE VIC 3000 Toll Free: 1800 806 314  
(DX 210174)

Internet: [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)

Email: [ombudvic@ombudsman.vic.gov.au](mailto:ombudvic@ombudsman.vic.gov.au)

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#### **Victorian Inspectorate**

Address: PO Box 617 Telephone: (03) 8614 3225  
Collins street West  
MELBOURNE VIC 8007

Internet: [www.vicinspectorate.vic.gov.au](http://www.vicinspectorate.vic.gov.au)

Email: [info@vicinspectorate.vic.gov.au](mailto:info@vicinspectorate.vic.gov.au)

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***For reporting all improper conduct not within the specified criteria of the Public Interest Disclosures Act or for advice on reporting any improper conduct or detrimental action***

**Stopline Pty Ltd**

Address: "City of Boroondara" Telephone: (03) 9882 4550  
c/o Stopline  
345 Riversdale Road  
HAWTHORN EAST VIC  
3123

Internet: [www.Stopline.com.au](http://www.Stopline.com.au)  
Email: [andrewmcleish@Stopline.com.au](mailto:andrewmcleish@Stopline.com.au)

**APPENDIX B - CIVIL AND CRIMINAL PENALTIES UNDER THE  
PUBLIC INTERESTS DISCLOSURE ACT 2012**

<b>Specific offences</b>	<b>Penalties</b>
<b>Detrimental action</b>	
<p><b>Liability of an individual</b> It is an offence for a person to take or threaten action in reprisal when:</p> <ul style="list-style-type: none"> <li>• another person has made or intends to make a public interest disclosure</li> <li>• the person believes another person has made or intends to make a public interest disclosure</li> <li>• another person has cooperated or intends to cooperate with the investigation of a public interest disclosure</li> <li>• the person believes another person has cooperated or intends to cooperate with the investigation of a public interest disclosure</li> </ul>	<p>Criminal penalty: 240 penalty units or two years imprisonment or both</p> <p>AND (if person is convicted or found guilty of an offence) possible order of court for reinstatement or reemployment of person subjected to detrimental action.</p> <p>Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage.</p>
<p><b>Vicarious liability of their employer</b> An employer may also be held to be liable for the detrimental action of their employee or agent</p>	<p>Criminal penalty: 240 penalty units or two years imprisonment or both</p> <p>AND (if person is convicted or found guilty of an offence) possible order of court for reinstatement or reemployment of person subjected to detrimental action.</p> <p>Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage.</p>
<p><b>Disclosure of content of a public interest disclosure or police complaint disclosure</b> A person/body must not disclose content of a disclosure or information about its content</p>	<ul style="list-style-type: none"> <li>• 120 penalty units or 12 months imprisonment or both (person)</li> <li>• 600 penalty units (body corporate)</li> </ul>
<p><b>Disclosure of identity of person making a public interest disclosure or police complaint disclosure</b> A person/body must not disclose information likely to lead to the identification of a person who has made a disclosure</p>	<ul style="list-style-type: none"> <li>• 120 penalty units or 12 months imprisonment or both (person)</li> <li>• 600 penalty units (body corporate)</li> </ul>
<p><b>Making false disclosure or providing false further information</b> A person must not provide information intending it be acted on as a public interest disclosure, or further information that relates to a public interest disclosure, knowing it to be false or misleading</p>	<p>120 penalty units or 12 months imprisonment or both</p>
<p><b>Falsely claiming a disclosure is a public interest disclosure</b> A person must not falsely claim a matter is the subject of a public interest disclosure or the subject of a disclosure determined to be a public interest disclosure</p>	<p>120 penalty units or 12 months imprisonment or both</p>

## APPENDIX C - GLOSSARY OF KEY TERMS

Key term	Definition
Public interest disclosure (PID)	A disclosure by a natural person of information that shows or tends to show, or information that the person reasonably believes shows or tends to show, improper conduct or detrimental action (where the particular disclosure relates to an earlier PID). PIDs were previously known as protected disclosures.
Public interest complaint (PIC)	A PID that has been determined by IBAC, the Victorian Inspectorate, or the Integrity and Oversight Committee to be a PIC. PICs were previously known as protected disclosure complaints.
Natural person	A human being, not a legal entity like a corporate body.
Public officer	As defined in section 6 of the <i>Public Interest Disclosures Act 2012</i> .
Public body	As defined in section 6 of the <i>Public Interest Disclosures Act 2012</i> .
Serious professional misconduct	Conduct that constitutes a serious breach of an established professional code of conduct and/or other serious departures from the person's professional responsibilities.
Detrimental action	As defined in s 3 of the <i>Public Interest Disclosures Act 2012</i> .
Confidentiality obligations	The obligations on those receiving information relating to a public interest disclosure to not disclose that information, unless authorised by law. The primary obligations in relation to PIDs and PICs are contained in section 52, 53 and 54 of the <i>Public Interest Disclosures Act 2012</i> , and section 184 of the IBAC Act. Note also that confidentiality notices may also be issued in an investigation of a PIC. Breaches of these confidentiality obligation include criminal sanctions.