



Public Interest Disclosures Act 2012

Welfare Management Procedures for the City of Boroondara - Public Interest Disclosures (Whistleblowers)

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1. Introduction

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

The City of Boroondara (the 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, for example, improper conduct, corrupt conduct, serious professional misconduct, 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. About these procedures

These procedures are a resource for:

1. any person who wants to make a disclosure about improper conduct by a public officer or public body, and this includes any member of the public
2. any person who is a witness in an investigation of a public interest complaint
3. any person who becomes aware that their conduct is the subject of a public disclosure or public interest complaint
4. any person who thinks that they may have detrimental action taken against them in reprisal for making a public interest disclosure

These procedures should be read in conjunction with the Independent Broad-based Anti-corruption Commission (IBAC) Guidelines for handling public interest disclosures which can be found on IBAC's website at www.ibac.vic.gov.au and the Public Interest Disclosures (Whistleblowers) Procedures for the City of Boroondara.

The procedures cover managing the welfare of:

1. any person who makes a public interest disclosure
2. any person who is a witness in an investigation of a public interest complaint
3. any person who is the subject of such an investigation.

These procedures cover the management of the welfare of any of the above persons in relation to public interest disclosures made to the CoB under the Act.

2. Welfare management

The protection of persons making genuine public interest disclosures about improper conduct or detrimental action is essential for the effective implementation of the Act. In addition, the Act extends the need for welfare management to those people who have cooperated or intend to cooperate with an investigation of a public interest complaint (referred to here as cooperators).

The CoB is responsible for ensuring both those who make disclosures (referred to as disclosers) and cooperators are protected from direct and indirect detrimental action. The CoB workplace culture supports people making public interest disclosures and people who cooperate with a public interest disclosure.

2.1. People who need protection - disclosers and cooperators

A person making a public interest disclosure - or cooperating with an investigation - may be employed by the CoB or a member of the public.

The CoB has an obligation to protect all disclosers and cooperators from detrimental action taken in reprisal for a public interest disclosure. This also applies to organisations that cannot receive a disclosure, but can be the subject of a disclosure made to IBAC or other specified organisations.

Ensuring confidentiality is one of the ways that disclosers and other people involved in public interest disclosure investigations are protected. The Act restricts the disclosure of information about the content of disclosures or which could identify the discloser. Where the CoB obtains this information, it must be kept confidential. This includes where an investigating entity provides the information to the CoB when making investigative enquiries or to assist a person to access welfare support.

If IBAC determines that a disclosure is a public interest complaint, the CoB must protect the identity of the discloser and the content of the person's disclosure to ensure confidentiality.

While the obligation to protect extends to both employees and members of the public, the welfare management of each may be different. For example, the CoB has legislative and administrative obligations to ensure the health and wellbeing of employees under occupational health and safety legislation, the *Charter of Human Rights and Responsibilities Act 2006*, the *Local Government Act 1989* and the Council Code of Conduct for Staff.

These may not apply to members of the public who are disclosers or cooperators, even when they are clients or users of the CoB's services.

3. Providing welfare services

Welfare support should be provided by the CoB for the discloser or cooperator on an ongoing basis, even if a welfare manager has not been appointed.

3.1. Appointing a welfare manager

The CoB will consider whether it is necessary to appoint a welfare manager to coordinate welfare support for a discloser or cooperator (someone who cooperates or intends to cooperate with an investigation of a disclosure). The following matters will be taken into consideration in deciding whether or not a welfare manager needs to be appointed:

1. are there any real risks of detrimental action against the person, taking into account their particular circumstances?
2. can the CoB ensure the person will be taken seriously and treated with respect?

3. can the person be given effective support, including keeping them informed of the status of the disclosure?
4. can the person be protected from suffering repercussions, by dealing with the matter discreetly and confidentially?
5. can the CoB respond swiftly and fairly to any allegations the person has, in fact, suffered retribution?

If the answer to the first question is 'yes' then the appointment of a dedicated welfare officer is probably appropriate.

If the answer to the first question is 'no' and the CoB can meet the needs set out in the remainder of the questions, there may be no need for a welfare manager.

3.1.1. What are the limits of this role?

A welfare manager's role is to monitor the specific needs of the discloser or cooperator and provide them with practical advice and support.

In most circumstances, a welfare manager will only be required where a public interest complaint proceeds to investigation. However, each case needs to be assessed on its own merits.

A welfare manager (if appointed) cannot be expected to go beyond what is reasonable for a public body in providing support to the discloser or cooperator. The welfare manager should discuss the issue of reasonable expectations with the discloser or cooperator.

For internal disclosers, the CoB may make use of the Employee Assistance Program (EAP) to provide welfare support.

A welfare manager must not divulge any details relating to the disclosed matter to any person other than the Public Interest Disclosure Coordinator, or the Chief Executive Officer. All meetings between the welfare manager and the person must be conducted discreetly to protect the person from being identified as being involved in the disclosure.

3.2. Welfare support

The welfare support available includes but is not limited to the support as identified in the table on the next page.

Inform	<p>At a minimum:</p> <ul style="list-style-type: none"> • confirmation that the disclosure has been received • outline the legislative or administrative protections available • describe the action proposed to be taken • if action has been taken, provide details about the results
Provide active support	<p>Acknowledge the person for having come forward:</p> <ul style="list-style-type: none"> • provide the person with assurance that they have done the right thing, and the CoB appreciates it • make a clear offer of support • assure them that all reasonable steps will be taken to protect them • give them an undertaking to keep them informed
Manage expectations	<p>Have an early discussion with them:</p> <ul style="list-style-type: none"> • what outcome do they want? • are their expectations realistic? • what will the CoB be able to deliver?
Maintain confidentiality	<p>The identity of the discloser and the subject matter of their disclosure need to be kept confidential:</p> <ul style="list-style-type: none"> • make sure other staff cannot infer the identity of the discloser or a person cooperating with the investigation from any information they receive • remind the discloser not to reveal themselves or give out information that would enable others to identify them as a discloser • make sure that hardcopy and electronic files relating to the disclosure are accessible only to those who are involved in managing disclosures in the CoB
Assess the risks of detrimental action being taken in reprisal	<p>Be proactive and do not wait for a complaint of victimisation.</p> <ul style="list-style-type: none"> • actively monitor the workplace, anticipate problems and deal with them before they develop
Protect the discloser/cooperator	<p>Examine the immediate welfare and protection needs of the person and seek to foster a supportive work environment</p> <ul style="list-style-type: none"> • listen and respond to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions • assess whether the concerns the person may have about harassment, intimidation or victimisation might be due to other causes other than those related to a public interest disclosure
Manage the impact of any investigation	<p>Prevent the spread of gossip and rumours about an investigation into the disclosure</p>
Keep records	<p>Keep contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action</p>

Source: IBAC Guidelines for public interest disclosure welfare management - January 2020

4. Protection against detrimental action

Under the Act, it is an offence for a person to take detrimental action against another person in reprisal for a public interest disclosure.

4.1. What is detrimental action?

Some examples of detrimental action could be intimidation or harassment, causing personal injury, threatening or prejudicing someone's safety, or damaging a person's property.

It can also be detrimental action if the CoB discriminates or disadvantages a person in their career, profession, employment, trade or business.

A manager may take management action in relation to an employee who has made a public interest disclosure, provided the making of the disclosure is not a reason for the management action.

4.2. Detrimental action taken in reprisal for a protected disclosure

The CoB will consider both the nature of the detrimental action and whether it is being taken in reprisal for a public interest disclosure.

The person (or the person they have incited) must 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
- other person or anyone else has cooperated, or intends to cooperate with an investigation of the disclosure.

4.3. Recording details and advising of rights

If any person reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action, the welfare manager or Public Interest Disclosure Coordinator must record details of the incident and advise the person of their rights under the Act.

Where such a report is made about a disclosure the CoB cannot receive under the Act, the Public Interest Disclosure Coordinator should record details of the incident and advise the person of their rights under the Act to make a disclosure (this will normally be to IBAC).

A person can make a public interest disclosure about detrimental action taken against them in reprisal for making an earlier disclosure. If this occurs, it must be treated as a new disclosure under Part 2 of the Act.

4.4. Referring serious instances of detrimental action

Where the detrimental action is of a serious nature likely to amount to a criminal offence, the CoB will consider reporting the matter to Victoria Police or IBAC.

If the COB reports the matter to Victoria Police or IBAC, the COB will be careful about making preliminary enquiries or gathering information about the allegation.

The CoB is conscious doing so may compromise the integrity of any evidence that might be later relied on in a criminal prosecution.

4.5. If the person making the disclosure is implicated in the improper conduct or detrimental action

The discloser is not subject to criminal or civil liability for making the disclosure under section 39 of the Act. However section 42 of the Act specifically provides that a person's liability for their own conduct is not affected by having disclosed that conduct under the Act. In other words, a discloser is not protected from the reasonable consequences flowing from their involvement in any improper conduct.

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. The general obligations of receiving and handling a disclosure and protecting the discloser still apply.

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

The discloser should be clearly advised of the proposed action to be taken and of any mitigating factors that have been taken into account.

5. Welfare management of persons who are the subject of a public interest disclosure

Until a public interest complaint is resolved (either by dismissing or investigating it) the information about the person who is the subject of the disclosure is only an allegation.

The CoB therefore needs to meet the welfare needs of the subject of the disclosure as they may need support once they become aware an allegation has been made against them.

The CoB will consider each matter on a case-by-case basis, taking into account the particular circumstances of the person. A referral to the CoB's Employee Assistance Program (EAP) may be appropriate.

5.1. Informing the subject of a disclosure

Whether the person who is the subject of a disclosure is informed about the allegation made against them depends on the circumstances. It is possible the subject may never be told about the disclosure if it is not determined to be a public interest complaint, or a decision is made to dismiss the matter.

The Act restricts the release of information about the content of disclosures or which would be likely to identify a discloser. This generally means the CoB cannot reveal this information to the person who is the subject of a disclosure.

However, the CoB may give information to the subject of the disclosure about the allegation made against them in some circumstances, such as:

- if it is directed or authorised to do so by the entity investigating the disclosure
- for the purpose of taking action with respect to the alleged conduct, including disciplinary action.

These exceptions do not allow the CoB to reveal information that would be likely to identify the discloser.

Investigating entities may also inform the subject of the disclosure for the purposes of conducting their investigation or taking action as a result of the investigation.

5.2. Confidentiality

All reasonable steps to ensure the confidentiality of the person about whom the public interest disclosure has been made should be taken during the assessment and any ensuing investigation.

Where the disclosure is dismissed or investigations do not substantiate the allegations made against the person, the fact of the investigation, its results, and the identity of the person subject of the disclosure should still be kept confidential.

5.3. Natural justice

The person must be afforded natural justice prior to a decision being made about their conduct. Natural justice means the person has the right to:

- be informed about the substance of the allegations against them
- be given the opportunity to answer the allegations before a final decision is made
- be informed about the substance of any adverse comment that may be included in any report arising from an investigation
- have his/her defence set out fairly in any report.

If the matter has been investigated, the investigating entity (e.g. IBAC) is responsible for carrying out this consultation.

5.4. If allegations are wrong or unsubstantiated

If a person has been the subject of allegations that are wrong or unsubstantiated, then it is necessary to ensure that there are no adverse consequences for this person arising out of the disclosure or its investigation.

This is particularly crucial where information has been publicly disclosed that has identified the person, but also where such information has become well-known across the CoB should the person work at the CoB.

6. 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:

Welfare Management Protected Disclosures
(Whistleblowers) - Procedures

Adopted by ELT on 22 September 2015

Welfare Management Protected Disclosures
(Whistleblowers) - Guidelines

Adopted by ELT on 27 August 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 - 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.

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

Specific offences	Penalties
Detrimental action	
<p>Liability of an individual It is an offence for a person to take or threaten action in reprisal when:</p> <ul style="list-style-type: none"> • another person has made or intends to make a public interest disclosure • the person believes another person has made or intends to make a public interest disclosure • another person has cooperated or intends to cooperate with the investigation of a public interest disclosure • the person believes another person has cooperated or intends to cooperate with the investigation of a public interest disclosure 	<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>Vicarious liability of their employer 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>Disclosure of content of a public interest disclosure or police complaint disclosure A person/body must not disclose content of a disclosure or information about its content</p>	<ul style="list-style-type: none"> • 120 penalty units or 12 months imprisonment or both (person) • 600 penalty units (body corporate)
<p>Disclosure of identity of person making a public interest disclosure or police complaint disclosure 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"> • 120 penalty units or 12 months imprisonment or both (person) • 600 penalty units (body corporate)
<p>Making false disclosure or providing false further information 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>Falsely claiming a disclosure is a public interest disclosure 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>