

Policy

Public interest disclosures

Approved by Council: ##/##/2022

To establish an internal reporting system for councillors and staff to report wrongdoing without fear of reprisal.

Safety

Teamwork

Accountability

Respect

Background

Rous County Council ("Council") is entrusted to manage its assets, people and resources in a responsible, ethical and efficient manner. To ensure Council maintains its position of trust, it acknowledges

- the faith and trust placed in it by the community and other government entities
- the expectation that Council staff and Councillors perform their duties to the highest standard and in compliance with the law; and
- the need for clear avenue for reporting any activities which fall below the standards of ethical and proper conduct.

The *Public Interest Disclosures Act 1994* (the Act) sets in place a system in NSW to support public officials in reporting serious wrongdoing. This policy establishes Council's internal processes, in conformance with the Act, for reporting any instances of conduct by Councillors or Council staff which falls below the high standards of conduct expected.

Policy statement

Council is committed to a high standard of ethical and accountable conduct and any form of wrongdoing in the workplace will not be tolerated. Councillors and staff who come forward and report wrongdoing are helping to promote Council's Values and the overall good management of Council.

1. Application

This policy applies to:

- Councillors and committee members (including Audit, Risk and Improvement and s355 Committee members)
- Employees (whether full-time, part-time, casual, temporary, or labour hire)
- Consultants
- Contractors

2. Purpose

The aim of this policy is to support and further the objects of the Act so as to facilitate disclosure in the public interest, of corrupt conduct, maladministration, serious and substantial waste, government information contravention and local government pecuniary interest contravention by:

- a). enhancing and augmenting established procedures for making disclosures concerning such matters, and

-
- b). protecting persons from reprisals that might otherwise be inflicted on them because of those disclosures, and
 - c). providing for those disclosures to be properly investigated and dealt with.

It should be noted that this policy is not intended to affect the proper administration and management of an investigating authority or public authority (including action that may or is required to be taken in respect of the salary, wages, conditions of employment or discipline of a public official), subject to the following:

- a). detrimental action is not to be taken against a person if to do so would be in contravention of the Act, and
- b). beneficial treatment is not to be given in favour of a person if the purpose (or one of the purposes) for doing so is to influence the person to make, to refrain from making, or to withdraw a disclosure.

This policy is consistent with and complements Council's Code of Conduct and 'Fraud and Corruption Control' policy.

Council has an information sheet for staff that is based on the NSW Ombudsman's guidelines which supports this policy and Council's broad responsibilities under the Act, such as recording and reporting on reports of wrongdoing.

3. Organisational commitment

Council is committed to and expects Councillors and staff to make every effort to:

- Facilitate a climate of trust, where Councillors and staff are comfortable and confident about reporting wrongdoing.
- Encourage Councillors and staff to come forward if they have witnessed what they consider to be wrongdoing within Council.
- Keep the identity of the Councillor or staff disclosing wrongdoing confidential, wherever possible and appropriate.
- Protect a Councillor or staff who makes a disclosure from any adverse action motivated by their report.
- Deal with reports thoroughly and impartially and if some form of wrongdoing has been found, taking appropriate action to rectify it.
- Keep a Councillor or staff who makes reports informed of progress with the investigation of the report and the outcome.
- Encourage Councillors and staff to report wrongdoing within the Council, but Council but respecting any decision to disclose wrongdoing outside the Council – provided that disclosure outside the Council is made in accordance with the provisions of the PID Act.
- Ensure Managers and Supervisors at all levels in Council understand the benefits of reporting wrongdoing, are familiar with this policy, and aware of the needs of those who report wrongdoing.
- Provide adequate resources, both financial and human, to:
 - encourage reports of wrongdoing
 - protect and support those who report
 - provide training for key personnel
 - investigate allegations

-
- properly manage any workplace issues that the allegations identify or create
 - correct any problem that is identified.

Under the Act, the General Manager is responsible for ensuring that:

- Council has an internal reporting policy (this policy)
- Councillors and staff are aware of the contents of the policy and the protections under the Act for people who make public interest disclosures
- Council complies with the policy and its obligations under the Act, and
- The policy delegates at least one staff position as being responsible for receiving public interest disclosures (Disclosures Coordinator).

4. What should be reported?

Any serious wrongdoing you see within Council that fits one or more of the following five categories:

- 4.1 **Corrupt conduct** is the dishonest or partial exercise of official functions by a public official. For example, this could include:
- the improper use of knowledge, power or position for personal gain or the advantage of others
 - acting dishonestly or unfairly, or breaching public trust
 - a council official being influenced by a member of public to use their position in a way that is dishonest, biased or breaches public trust.
- 4.2 **Maladministration** is conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives. For example, this could include:
- making a decision and/or taking action that is unlawful
 - refusing to grant an application for reasons that are not related to the merits of their application
- 4.3 **Serious and substantial waste of public money** is the uneconomical, inefficient or ineffective use of resources that could result in losing or wasting public money e.g. this could include:
- not following a competitive tendering process for a large-scale contract
 - having bad or no processes in place for a system involving large amounts of public funds
- 4.4 **Breach of the GIPAA** is a failure to properly fulfil functions under that Act. For example, this could include:
- destroying, concealing or altering records to prevent them from being released
 - knowingly making decisions that are contrary to the legislation
 - directing another person to make a decision that is contrary to the legislation
- 4.5 **Local government pecuniary interest contravention** is a failure to comply with the requirements of the *Local Government Act 1993* (LGA) relating to the management of pecuniary interests. These include obligations to lodge disclosure of interests returns, disclose pecuniary interests at Council and Council committee meetings and leave the

meeting while the matter is being discussed. A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. For example, this could include:

- a senior council staff member recommending a family member for a council contract and not declaring the relationship
- a General Manager an undisclosed shareholding in a company competing for a council contract

When complaints are received by a nominated person set out in Section 9, the complaint will be assessed in accordance with the Act. The nominated person will ensure the requirements under the Act are met, including that the reporter is provided within 45 days after the disclosure with:

- a copy of this policy
- an acknowledgment in writing of the receipt of the disclosure

All other wrongdoing or suspected wrongdoing should be reported to a supervisor, to be dealt with in line Council's relevant policies and procedures. This might include matters such as harassment or unlawful discrimination or practices that endanger the health or safety of staff or the public.

Even if these reports are not dealt with as public interest disclosures, Council recognises such reports may raise important issues. Council will respond to all reports and make every attempt to protect the staff member making the report from reprisal.

5. When will a report be treated as public interest disclosure?

5.1 Council will treat a report as a public interest disclosure if it meets the criteria of a public interest disclosure under the Act. These requirements are:

- 5.1.1 the report must be about one of the following five categories of serious wrongdoing – corrupt conduct, maladministration, serious and substantial waste of public money, breach of the GIPAA, or local government pecuniary interest contravention
- 5.1.2 the person making the disclosure must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing
- 5.1.3 the report has to be made to either the General Manager or, for reports about the General Manager the Chair, a position nominated in this policy (see section 9), an investigating authority or in limited circumstances to an MP or journalist (see section 11).

5.2 Reports by staff are not public interest disclosures if they:

- 5.2.1 mostly question the merits of government policy
- 5.2.2 are made with the sole or substantial motive of avoiding dismissal or other disciplinary action.

6. How to make a report

A report about wrongdoing can be made in writing or verbally. Written reports are preferred as this can help to avoid any confusion or misinterpretation.

If a report is made verbally, the person receiving the report must make a comprehensive record of the disclosure and ask the person making the disclosure to sign the record. The Councillor or staff member should keep a copy of that record.

7. Can a report be anonymous?

There may be some situations where a staff member or councillor may not want to identify themselves when making a report. Although these reports will still be dealt with by Council, it is best if the person making the report identifies them self. This allows Council to provide any necessary protection and support, as well as feedback about the outcome of any investigation into the allegations.

It is important to realise that an anonymous disclosure may not prevent you from being identified. If the identity of the person who made the report is not known, it is very difficult for Council to prevent any reprisal action against that person should others identify them. Often it is difficult to effectively assess and investigate anonymous reports.

8. Maintaining confidentiality

Council realises that Councillors and staff may want their report to remain confidential. This can help to prevent any reprisal action being taken for reporting wrongdoing.

Council is committed to keeping the identity of the reporter, and the reported wrongdoing, confidential where this is practical and appropriate. To maintain confidentiality and facilitate an investigation, it may be important to keep both the fact a report has been made and the substance of the report confidential. However, there may be situations where maintaining confidentiality is not possible or appropriate. If confidentiality is unable to be maintained, this will be discussed with the person that has made the report.

If confidentiality cannot be maintained, Council, in consultation with the person that has made the report, will develop a plan to support and as best as possible protect the person from any risks of reprisal.

When reporting wrongdoing, it should only be discussed with those dealing with it. This will include the Disclosures Coordinator and the General Manager. If the report is discussed more broadly, it may affect the outcome of any investigation.

9. Who can receive a report within Council?

Council encourages reports of general wrongdoing to be made to Supervisors. However, the Act requires that for a report to be a public interest disclosure it must be made to certain Public Officials identified by this policy.

The following positions are the only people within Council who are authorised to receive a public interest disclosure:

- General Manager
- Chair
- Disclosures Coordinators – Group Manager People and Performance, People and Culture Manager and Governance and Risk Manager.

Any supervisor who receives a report that they believe may be a public interest disclosure is obliged to assist the staff member to make the report to one of the positions listed above.

The broader responsibilities of those positions are outlined under the Roles and Responsibilities (section 10).

If your report involves a councillor, you should make it to the General Manager.

If your report relates to the General Manager, you should make it to the Chair.

10. Roles and Responsibilities

10.1 General Manager

You can report wrongdoing directly to the General Manager. The General Manager is responsible for:

- deciding if a report is a public interest disclosure
- determining what needs to be done next, including referring it to other authorities
- deciding what needs to be done to correct the problem that has been identified.

The General Manager must make sure there are systems in place in Council to support and protect Councillors and staff who report wrongdoing. They are also responsible for referring actual or suspected corrupt conduct to the Independent Commission Against Corruption. Notification about receipt of a Public Interest Disclosure may also be made to Council's external auditor.

10.2 Chair

If you are making a report about the General Manager, you should make your report to the Chair. They are responsible for:

- deciding if a report is a public interest disclosure
- determining what needs to be done next, including referring it to other authorities
- deciding what needs to be done to correct the problem that has been identified.

The Chair is also responsible for referring actual or suspected corrupt conduct to the Independent Commission Against Corruption. Notification may also be made to Council's external auditor.

10.3 Disclosures Coordinator

The Disclosures Coordinator has a central role in dealing with reports. They receive them, assess them and deal with them, or refer them to other people within Council that can deal with them. This includes notification of Council's external auditor of Public Interest Disclosures received.

The role of Disclosures Coordinator is delegated to the positions of Group Manager People and Performance, People and Culture Manager and Governance and Risk Manager.

11. Who can receive a report outside of Council?

11.1 Councillors and staff are encouraged to report wrongdoing within Council, but internal reporting is not the only option available. Reports can also be made to:

- An investigating authority (see 11.2 below and section 21 of this policy) and
- A Member of Parliament (MP) or a journalist, but only in the limited circumstances outlined below.

11.2 The relevant investigating authorities for Council are:

- the ICAC - for reports about corrupt conduct
- the Ombudsman - for reports about maladministration
- the Information Commissioner - for disclosures about a breach of the GIPAA
- the Office of Local Government - for disclosures about local councils.

The relevant investigating authority is able to provide advice about how to make a disclosure to them. Contact details for each investigating authority are provided at the end of this policy.

The investigating authority may discuss any such reports with Council. Council will make every effort to assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately and there is a satisfactory outcome. Council will also provide appropriate support and assistance to councillors or staff who report wrongdoing to an investigating authority, if Council is made aware that this has occurred.

11.3 Members of Parliament or journalists

To have the protections of the Act, staff reporting wrongdoing to a Member of Parliament (MP) or a journalist must have already made substantially the same report to one of the following:

- the General Manager
- a person nominated in this policy, including the Chair for reports about the General Manager
- an investigating authority.

Also, Council or the investigating authority that received your initial report must have either:

- decided not to investigate the matter
- decided to investigate the matter, but not completed the investigation within six months of the original report
- investigated the matter but not recommended any action as a result
- not told the person who made the report, within six months of the report being made, whether the matter will be investigated.

Most importantly – to be protected under the Act – if you report wrongdoing to an MP or a journalist you will need to be able to prove that you have reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true.

11.4 Other external reporting

If you report wrongdoing to a person or authority that is not listed above or make a report to an MP or journalist without following the steps outlined above, the protections offered under the Act will not apply. This may mean a breach of legal obligations or Council's Code of Conduct – by, for example, disclosing confidential information.

For more information about reporting wrongdoing outside Council, contact the Disclosures Coordinator or the NSW Ombudsman's Public Interest Disclosures Unit. Their contact details are provided at the end of this policy.

12. **Feedback to persons who report wrongdoing**

A Councillor or staff who report wrongdoing will be told what is happening in response to their report.

When a report is made, the reporter will be given:

- an acknowledgement that the disclosure has been received
- the timeframe for when further updates will be provided
- the name and contact details of the people who will provide updates.

The Act requires that you are provided with an acknowledgement letter and a copy of this policy within 45 days after you have made your report. Council will however attempt to get this information to you within five working days from the date you make your report.

After a decision is made about how the report will be dealt with, Council will send an acknowledgment letter, providing:

- information about the action that will be taken in response to your report
- the likely timeframes for any investigation or other action
- information about the internal and external resources or services available that you can access for support.

Council will provide this information within fifteen working days from the date the report is made. Council will also advise if Council decides to treat the report as a public interest disclosure and provide you with a copy of this policy at that time, as required by the Act.

If a report is made which meets the requirements of the Act but the report was made under a statutory or legal obligation or incidental to the performance of day to day functions or duties, an acknowledgement letter or a copy of this policy will not be provided.

While a report is being dealt with, such as by investigation or making other enquiries, the following will be given:

- information about the progress of the investigation or other enquiries and reasons for any delay
- advice of any decision by Council not to proceed with the matter
- advice if the reporting person's identity needs to be disclosed for the purposes of investigating the matter or making enquiries, and an opportunity to talk about this beforehand.
- Once the matter has been finalised the reporting person will be given:

-
- enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to your disclosure and any problem that was identified
 - advice about whether you are likely to be called as a witness in any further matters, such as disciplinary or criminal proceedings.

13. Managing the risk of reprisal and workplace conflict

When a councillor or staff member reports wrongdoing, Council will undertake a thorough risk assessment to identify the risk to the person who made the report, of detrimental action in reprisal for reporting, as well as indirect but related risks of workplace conflict or difficulties. The risk assessment will also identify strategies to deal with those risks and determine the level of protection and support that is appropriate.

Depending on the circumstances, Council may:

- relocate the reporter or the staff member who is the subject of the allegation within the current workplace
- transfer the reporter or the staff member who is the subject of the allegation to another position for which they are qualified
- grant the reporter or the staff member who is the subject of the allegation leave of absence during the investigation of the disclosure

These courses of action are not punishment and will only be taken in consultation with the reporter.

14. Protection against reprisals

Council will not tolerate any reprisal action against a person who reports wrongdoing.

The Act provides protection for Councillors and staff who have made a public interest disclosure by imposing penalties on anyone who takes detrimental action against another person substantially in reprisal for that person making a public interest disclosure. These penalties also apply to cases where a person takes detrimental action against another because they believe or suspect the other person has made or may have made a public interest disclosure, even if they did not.

Detrimental action means action causing, comprising or involving any of the following:

- injury, damage or loss
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to employment
- dismissal from, or prejudice in, employment
- disciplinary proceedings.

A person who is found to have committed a reprisal offence may face criminal penalties such as imprisonment and/or fines and may be required to pay the victim damages for any loss suffered as a result of the detrimental action. Taking detrimental action in reprisal is also a breach of the Council's Code of Conduct which may result in disciplinary action. In the case of councillors, such disciplinary action may be taken under the misconduct provisions of the LGA and may include suspension or disqualification from civic office.

It is important for councillors and staff to understand the nature and limitations of the protection provided by the Act. The Act protects reporters from detrimental action being taken against them because they have made, or are believed to have made, a public interest disclosure. It does not protect reporters from disciplinary or other management action where Council has reasonable grounds to take such action.

15. Responding to allegations of reprisal

If you believe that detrimental action has been or is being taken against you or someone else in reprisal for reporting wrongdoing, you should tell your supervisor, the Disclosures Coordinator or the General Manager immediately. In the case of an allegation of reprisal by the General Manager, you can alternatively report this to the Chair.

All supervisors must notify the Disclosures Coordinator or the General Manager if they suspect that reprisal against a staff member is occurring or has occurred, or if any such allegations are made to them. In the case of an allegation of reprisal by the General Manager, the Chair can alternatively be notified.

If Council becomes aware of or suspects that reprisal is being or has been taken against a person who has made a disclosure, Council will:

- assess the allegation of reprisal to decide whether the report should be treated as a public interest disclosure and whether the matter warrants investigation or if other action should be taken to resolve the issue
- if the reprisal allegation warrants investigation, ensure this is conducted by a senior and experienced member of staff
- if it is established that reprisal is occurring against someone who has made a report, take all steps possible to stop that activity and protect the reporter
- take appropriate disciplinary action against anyone proven to have taken or threatened any action in reprisal for making a disclosure
- refer any breach of Part 9 of Council's Code of Conduct (reprisal action) by a councillor or the General Manager to the Office of Local Government.
- refer any evidence of an offence under section 20 of the Act to the ICAC or NSW Police Force.

If an allegation of reprisal is substantiated, the person alleging the reprisal will be kept informed of the progress and outcome of any investigation or other action taken in response to the allegation.

If you have reported wrongdoing and are experiencing reprisal which you believe is not being dealt with effectively, contact the Office of Local Government, the Ombudsman or the ICAC (depending on the type of wrongdoing you reported). Contact details for these investigating authorities are included at the end of this policy.

16. Protection against legal action

If a public interest disclosure is made in accordance with the Act, the reporter will not be subject to any liability, and no action, claim or demand can be taken against the reporter for having made the public interest disclosure. This disclosure will not have breached any confidentiality or secrecy obligations and you will have the defence of absolute privilege in defamation.

17. Support for those reporting wrongdoing

Council will make sure that staff who have reported wrongdoing, regardless of whether their report is treated as a public interest disclosure, are provided with access to any professional support they may need as a result of the reporting process, such as counselling services.

Access to support may also be available for other staff involved in the internal reporting process where appropriate. Reporters and other staff involved in the process can discuss their support options with the Disclosures Coordinator.

18. Sanctions for making false or misleading statements

It is important all councillors and staff are aware that it is a criminal offence under the Act to wilfully make a false or misleading statement when reporting wrongdoing. Council will not support councillors or staff who wilfully make false or misleading reports. Such conduct may also be a breach of Council's Code of Conduct resulting in disciplinary action.

In the case of councillors, disciplinary action may be taken under the misconduct provisions of the Local Government Act and may include suspension or disqualification from civic office.

19. The rights of persons the subject of a report

Council is committed to ensuring councillors or staff who are the subject of a report of wrongdoing are treated fairly and reasonably. This includes keeping the identity of any person the subject of a report confidential, where this is practical and appropriate.

If you are the subject of the report, you will be advised of the allegations made at an appropriate time and before any adverse findings. At this time, you will be:

- advised of the details of the allegation
- advised of your rights and obligations under the Act and the relevant related policies
- kept informed about the progress of any investigation
- given a reasonable opportunity to respond to any allegation made against you
- told the outcome of any investigation, including any decision made about whether further action will be taken against you.

Where the reported allegations against the subject officer are clearly wrong, or have been investigated and unsubstantiated, the subject officer will be supported by Council. The fact of the allegations and any investigation will be kept confidential unless otherwise agreed to by the subject officer.

20. More information

More information around public interest disclosures is available on our intranet. Staff can also seek advice and guidance from the Disclosures Coordinator and the NSW Ombudsman's website at www.ombo.nsw.gov.au.

21. Resources

The contact details for external investigating authorities that staff can make a public interest disclosure to or seek advice from are listed below (correct at publication).

For disclosures about corrupt conduct:

Independent Commission Against Corruption (ICAC)
Phone: 02 8281 5999
Toll free: 1800 463 909
Facsimile: 02 9264 5364
Email: icac@icac.nsw.gov.au
Web: www.icac.nsw.gov.au
Address: L21, 133 Castlereagh Street, Sydney

For disclosures about maladministration:

NSW Ombudsman
Phone: 02 9286 1000
Toll free (outside Sydney metro): 1800 451 524
Facsimile: 02 9283 2911
Email: nswombo@ombo.nsw.gov.au
Web: www.ombo.nsw.gov.au
Address: L24, 580 George Street, Sydney 2000

For disclosures about serious and substantial waste:

Auditor-General of the NSW Audit Office
Phone: 02 9275 7100
Facsimile: 02 9275 7200
Email: mail@audit.nsw.gov.au
Web: www.audit.nsw.gov.au
Address: L15, 1 Margaret Street, Sydney 2000

For disclosures about local councils:

Office of Local Government
Phone: 02 4428 4100
Facsimile: 02 4428 4199
Email: dlg@dlg.nsw.gov.au
Web: www.dlg.nsw.gov.au
Address: 5 O'Keefe Avenue, Nowra, NSW 2541

For disclosures about breaches of the GIPAA:

Information Commissioner
Toll free: 1800 472 679
Facsimile: 02 8114 3756
Email: ipcinfo@ipc.nsw.gov.au
Web: www.ipc.nsw.gov.au
Address: L11, 1 Castlereagh Street, Sydney

Contact officer
Group Manager People and Performance

Related documents

Policies

Code of Conduct
Feedback and complaints handling
Fraud control
Work Health and Safety

Procedures

HR Procedures Handbook
Public Interest Disclosures

Legislation

Local Government Act 1993
Public Interest Disclosures Act 1994

Other

Public Interest Disclosures Information Sheet (internal document)

<i>Office use only</i>	File no.: 172/13	Next review date: Annually	
Version	Purpose and description	Date adopted by Council	Resolution no.
1.0	New policy	21/12/2011	106/11
2.0	Review and update policy.	15/04/2020	17/20
3.0	Review and update nominated Disclosures Coordinator to include Governance Advisor.	17/06/2020	30/20
4.0	Review and update nominated Disclosures Coordinator to reflect changes made during 2021 organisation structure and resourcing review.	17/08/2022	TBD