

Policy

PROTECTED DISCLOSURE POLICY

For Elected Members & Chief Executive

COUNCIL COMMITTEE:	COUNCIL
TEAM:	People & Capability
RESPONSIBILITY:	Manager – People & Capability
ADOPTED:	29 June 2022
REVIEW:	Every three years, or as required
CONSULTATION:	N/A
RELATED DOCUMENTS:	ADC Protected Disclosure Policy –for Employees, Contractors and Volunteers Elected Members Code of Conduct Protected Disclosures (Protection of Whistleblowers) Act 2022 Employment Relations Act 2000 Human Rights Act 1993

Policy Objectives

1. To provide guidance to past and present Mayors, Elected Members (EM's), which includes Reserve and Hall Board Members and Community Board Members, and the Chief Executive (CE) about what type of serious wrongdoing disclosures are covered by the Protected Disclosures (Protection of Whistleblowers) Act 2022 (the "Act").
2. To provide guidance on how to make a protected disclosure.
3. To protect past and present Mayor's, EM's and CE's who want to report serious wrongdoing.
4. To safeguard against damage to the reputation of the Council and all involved.
5. To give guidance for the Mayor, EM's, and the CE, to ensure compliance with the Act.

Definitions

Serious wrongdoing: refers to any act, omission, or course of conduct in (or by) an organisation that is:

- an unlawful, corrupt or irregular use of public money or resources;
- a serious risk to public health, public safety, the health or safety of any individual, the environment or the maintenance of the law;
- any offence; or
- oppressive, unlawfully discriminatory, grossly negligent or that is gross mismanagement by public officials.

Discloser: this term has a very broad definition under the Act and thus includes:

- Councillors and Mayors
- Reserve and Hall Board members and Chair
- Community Board members and Chair
- Chief Executive

Please note, all paid staff, contractors and volunteers are covered by the Protected Disclosure Policy - for Employees, Contractors and Volunteers.

Policy Principles

The following principles underpin the intent and implementation of the Protected Disclosures Policy:

- Council has a statutory and contractual obligation to develop and maintain a safe workplace for all “disclosers” as defined by this policy and the Act, and a duty to protect the public interest.
- All “disclosers” as defined by this policy and the Act, are encouraged to report serious wrongdoing in their workplace if they are concerned that it may be occurring in order to help prevent the Council from being brought into disrepute.

Procedures for protected disclosures

There are certain procedures involved for the making, receiving, and responding to a complaint made as a protected disclosure; this is provided for both in the Act and under this policy. The following guideline is for, all ‘disclosers’ as defined by this policy and the Act, who may wish to make a complaint as a protected disclosure, and for those in Council who may receive and need to deal with such a complaint.

1. What disclosures will/will not be protected

Your disclosure will be protected if the following apply:

- The information is about serious wrongdoing by any or all of the following: Council elected members (including Community, Reserve and Hall Board members and chairs), Mayor, Chief Executive, staff, contractors and volunteers;
- You reasonably believe the information to be true or likely to be true;
- You want the serious wrongdoing to be investigated;
- You wish to be protected making the disclosure.

Your disclosure will not be protected if any of the following applies:

- You fall outside the definition of an discloser as identified by this policy and the Act;
- You know the allegations to be false;
- You act in bad faith;
- The information you are disclosing is protected by legal professional privilege.

2. How to make a protected disclosure

- 2.1 Disclosures need to be in writing.
- 2.2 You can make the disclosure to the CE if you believe on reasonable grounds that Council staff, contractors or volunteers may be involved.
- 2.3 You can make the disclosure to the Mayor if you believe on reasonable grounds the CE may be involved; or where you believe they may be in a relationship or associated with a person who is or may be involved in the alleged serious wrongdoing; or where it is justified by the urgency of the matter or other exceptional circumstances.
- 2.4 You can make the disclosure to the CE if you believe on reasonable grounds the Mayor or an Elected Member may be involved or where you believe they may be in a relationship or associated with a person who is or may be involved in the alleged serious wrongdoing.
- 2.5 Alternatively, you can also make the disclosure directly to an Appropriate Authority (section 4) at any time if you do not wish to make the disclosure to the CE or Mayor.
- 2.6 You can make the disclosure to a Minister of the Crown or appropriate authority if you have made substantially the same disclosure to any of the above parties and they have:
 - Either:
 - Decided not to investigate, or
 - Not made progress after 20 working days and have not advised you of any reason for the delay in investigating, or
 - Not taken any action or recommended any action after the investigation, and
 - You consider that the disclosure is still true or likely to be true.

3. Council's processes for responding to protected disclosures

Where the disclosure is made to the CE or Mayor, they will, within 20 working days of receiving the disclosure:

- Acknowledge receipt of the complaint, including summarising the complaint in writing if the disclosure was made orally;
- Handle the complaint in the strictest of confidence; and discuss the matter only where appropriate, such as seeking independent legal advice (including an assessment of whether or not the complaint is a protected disclosure under the Act) or other specialist independent advice;
- Use their best endeavours not to disclose information that might identify the person who made the protected disclosure unless where there are exceptions (see the Confidentiality section);
- Seek the assistance of a third party/parties to participate & or take notes of the interview;
- Interview the discloser with an appropriate third party/ies;
- Provide the discloser with practical assistance and advice, including having a support person assess and provide advice to the discloser on any risks to the discloser;
- Investigate the allegation;
- Keep a detailed file note recording the interview, the investigation and the explanation given to the discloser about procedures to be followed;
- Have the file note signed by the discloser to verify the accuracy and completeness of the interview notes and to record the discloser's acceptance of the procedures to be followed;
- Deal with the matter by doing one or more of the following:

- Investigate the disclosure;
- Address any serious wrongdoing by acting or recommending action;
- Referring the disclosure to an appropriate authority in accordance with the Act;
- Decide that no action is required.
- Report back to the discloser within 20 working days on how the matter has been dealt with (with reasons).
- If the Mayor or CE fails to investigate the complaint in accordance with the above process, or the discloser is not satisfied that the serious wrongdoing has been addressed, the discloser may refer the matter to a Minister of the Crown or an appropriate authority.

Flow chart of the process on page 6.

4. Appropriate Authorities

‘Appropriate authorities’ that a discloser may refer their protected disclosure to include the following:

- The Ombudsman
- The Commissioner of Police
- The Controller and Auditor-General
- The Director of the Serious Fraud Office
- The Health and Disability Commissioner
- The Parliamentary Commissioner for the Environment
- The Solicitor-General
- The Public Services Commissioner
- WorkSafe New Zealand
- Department of Internal Affairs
- The head of every public sector agency
- Any officer of Parliament
- Privacy Commissioner

See Schedule 2 of the Act for a full list of appropriate authorities.

5. Protections provided under this policy

The Act provides that no civil, criminal, or disciplinary proceedings can be taken against a person for making a protected disclosure, or for referring one to an appropriate authority.

If a person makes a protected disclosure, Council shall not retaliate or threaten to retaliate against the discloser, nor treat or threaten to treat the discloser less favourably.

The Act provides that a discloser who suffers retaliatory action by Council for making a protected disclosure can take a personal grievance under the Employment Relations Act 2000.

It is also unlawful under the Human Rights Act 1993 to treat whistle-blowers or potential whistle-blowers less favourably than others in the same or similar circumstances. If a whistle-blower is victimised in this way the legal remedies under the Human Rights Act 1993 may be available to them.

Protection does not apply where allegations are made that you know are false or you act in bad faith.

6. Confidentiality

If you make a disclosure and it meets the definition and threshold of serious wrongdoing, information which identifies you will be kept confidential*.

However, exceptions to this anonymity include:

- exemptions in the Act apply; or
- if you consent to waiving your right to confidentiality; or
- if your name must be released to:
 - ensure an effective investigation occurs, including an investigation by a law enforcement or regulatory agency; or
 - comply with the principles of natural justice; or
 - prevent serious risk to public health or public safety, the health or safety of any individual, or the environment.

*Information requested under the Local Government Official Information and Meetings Act 1987 that identifies a person who made a protected disclosure, will be refused.

If you have any questions about this policy, please speak to People & Capability.

PROTECTED DISCLOSURE INVESTIGATION PROCESS

