

# RICHMOND VALLEY COUNCIL POLICY REGISTER

**Policy No:** 1.1.15

**Reference:** Corporate Management - Policy, Reporting

---

<b>POLICY:</b>	<b>INTERNAL REPORTING</b>
<b>FUNCTION:</b>	Governance
<b>OBJECTIVE:</b>	To provide guidance to Councillors and Council Staff who wish to make disclosures pertaining to corrupt conduct, maladministration, or serious and substantial waste of public money to ensure that they receive protection from reprisals and that the matters raised in the disclosures are properly investigated
<b>DIRECTORATE:</b>	<b>CORPORATE SERVICES</b>

---

## **POLICY**

This policy establishes an internal reporting system for the reporting of disclosures of corrupt conduct, maladministration, substantial waste of public money, government information contravention and pecuniary interest and other wrongdoings by Richmond Valley Council or its staff.

The system enables such internal disclosures to be made to the General Manager or to the Disclosure Co-ordinator (Council's Director Corporate Services).

This policy is designed to compliment normal communication channels between Councillors, Directors, Managers, Supervisors and Staff. Staff are encouraged to continue to raise appropriate matters at any time with the superiors, but as an alternative, have the option of making a public interest disclosure in accordance with this policy.

## **GUIDELINES**

### **Background**

This policy has been prepared in accordance with the provisions of the Public Interest Disclosure Act which commenced in 2010. The Act was previously named the Protected Disclosures Act. The purpose of the Act is to ensure that staff and Councillors who wish to make disclosures under the legislation receive protection from reprisals and that the matters raised in the disclosures are properly investigated.

### **Commitment to the Policy**

Richmond Valley Council is committed to the aims and objectives of the Public Interest Disclosure Act.

It recognises the value and importance of contributions of staff to enhance administrative and management practices and strongly supports disclosures being made by a member of staff or Councillors.

Richmond Valley Council will take all reasonable steps to provide protection to staff and Councillors who make disclosures from any detrimental action in reprisal for the making of the disclosure.

## **Definitions**

There are six concepts within this policy, which require defining:

### **1. *Corrupt Conduct***

Corrupt conduct is defined to include the dishonest or partial exercise of official functions by a public official and can take many forms such as taking or offering of bribes, public officials dishonestly using influence, blackmail or fraud.

### **2. *Maladministration***

Maladministration is defined as conduct that involves action or inaction of a serious nature that is:

- contrary to law, or
- unreasonable, unjust, oppressive or improperly discriminatory, or
- based wholly or partly on improper motives.

### **3. *Serious and Substantial Waste***

Serious and substantial waste refers to the uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in a loss/wastage of public funds/resources.

In addressing any complaint of serious and substantial waste, regard will be had to the nature and materiality of the waste.

### **4. *Government Information Contravention***

A government information contravention is a failure to properly fulfil functions under the Government Information (Public Access) Act 2009 (GIPA 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.

### **5. *Local Government Pecuniary Interest Contravention***

A local government pecuniary interest contravention is a failure to fulfil certain functions under the Local Government Act 1993 relating to the management of pecuniary interests. These include obligations to lodge disclosure of interests returns, lodge written declarations and disclose pecuniary interests at council and committee meetings. 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 holding an undisclosed shareholding in a company competing for a council contract.

## **6. Other Wrongdoing**

Although reports about the previous five categories of conduct can attract the specific protections of the Public Interest Disclosures Act, you should report all activities or incidents that you believe are wrong.

For example, these could include:

- harassment or unlawful discrimination
- reprisal action against a person who has reported wrongdoing
- practices that endanger the health or safety of staff or the public.

These types of issues should be reported to a supervisor, in line with the following Council policies:

- Code of Conduct - Councillors/Personnel
- Business Ethics
- Positive Working Relationships.

Even if these reports are not dealt with as public interest disclosures, the Richmond Valley Council will consider each matter and make every attempt to protect the staff member making the report from any form of reprisal.

### **What Disclosures are Protected under this Act**

Disclosures are protected in accordance with this policy if they are made:

- in accordance with this internal reporting policy
- show or tend to show corrupt conduct, maladministration, or serious and substantial waste of public money, government information contravention, other wrongdoing, by the Council or any of its staff, and
- are made voluntarily.

### **What Disclosures are Not Protected under this Act**

A disclosure is not protected under this Act if it is made by a public official in the exercise of a duty imposed by or under this Act. (Note: a public official means an individual who is an employee of or otherwise in the service of a public authority).

Protection is also not available for disclosures which:

- are made frivolously or vexatiously
- primarily questions the merits of Council Policy, including any formal policy adopted by resolutions of Council

- are made solely or substantially with the motive of avoiding dismissal or other disciplinary action.

It is an offence to wilfully make a false or misleading statement when making a disclosure.

### **Reporting under the Internal Reporting System**

The positions to whom internal disclosures can be made under the policy are:

- General Manager
- Disclosure Co-ordinator
- Mayor (if the disclosure concerns or involves the General Manager or a Councillor)

Where a person is contemplating making a disclosure, they can request a meeting in a discreet location away from the workplace.

Information in relation to Public Interest Disclosures will be recorded on the "Public Interest Disclosures Application" Form, a copy of which is attached to this policy.

Any person who makes a Public Interest Disclosure will receive a copy of Council's Internal Reporting Policy and an acknowledgement of the receipt of their disclosure within 45 days of making it.

#### **1. Investigating Authorities**

Alternative avenues available under this policy other than by means of the internal reporting system include one of the investigating authorities under the Act:

- Ombudsman (maladministration)
- Independent Commission Against Corruption (ICAC) (corrupt conduct)
- Chief Executive, Division of Local Government, (serious and substantial waste of public money).
- Police Integrity Commission (for police misconduct)
- Information Commissioner (for disclosures about a government information contravention).

Examples of public interest disclosures are:

- Council staff who wish to make a public interest disclosure which involves a councillor may do so to the Mayor, General Manager or an investigating authority (Chief Executive, Division of Local Government, ICAC or Ombudsman);
- A councillor who wishes to make a public interest disclosure which involves another councillor may do so to the Mayor, General Manager or an investigating authority (Chief Executive, Division of Local Government, ICAC or Ombudsman);
- If the Mayor wishes to make a public interest disclosure, they may do so to the General Manager or an investigating authority (Chief Executive, Division of Local Government, ICAC or Ombudsman).

## 2. Members of Parliament or Journalists

To have the protections of the Public Interest Disclosures Act, staff and Councillors 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
- an investigating authority in accordance with the Public Interest Disclosure Act.

Also, the Richmond Valley Council or investigating authority that received the 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 Public Interest Disclosures Act, if you report wrongdoing to an MP or 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.

If you report wrongdoing to a person or an organisation that is not listed above, you will not be protected under the Public Interest Disclosures Act. This may mean you will be in breach of legal obligations or Richmond Valley Council's Code of Conduct - by, for example, disclosing confidential information.

## **Roles and Responsibilities**

This Internal Reporting Policy places responsibilities upon staff at all levels within the Richmond Valley Council:

### **Staff and Councillors**

Staff and Councillors are encouraged to report known or suspected incidences of corrupt conduct, maladministration or serious and substantial waste in accordance with this policy.

They must abstain from any activity that is or could be perceived to be victimisation or harassment of a person who has made a disclosure. Further, they should protect and maintain confidentiality of any person they know or suspect to have made disclosures.

### **Disclosure Co-ordinator**

This Officer will:

- provide an alternative internal reporting channel to the General Manager;

- impartially assess each disclosure to determine:
  - whether the disclosure appears to be a protected disclosure;
  - the appropriate course of action in relation to a disclosure;
- consult with the General Manager about all disclosures received, other than where a disclosure concerns the General Manager;
- be responsible for either the carrying out or co-ordinating an internal investigation arising out of a disclosure, subject to the relevant directions of the General Manager;
- ensure that the identity of a person making a disclosure is kept confidential and protecting them from any form of reprisal;
- report actual or suspected corrupt conduct to the General Manager in a timely manner for compliance with legislative requirements.

### **General Manager**

Disclosures may be made directly to the General Manager rather than by way of the internal reporting system and this Officer will:

- impartially assess each disclosure to determine:
  - whether the disclosure appears to be a protected disclosure;
  - the appropriate course of action in relation to a disclosure;
- receive reports from the disclosure co-ordinator on the recommendations of investigation reports and determine what action should be taken;
- be responsible for implementing organisational reform emanating from an investigational report;
- have primary responsibility for ensuring that the identity of a person making a disclosure is kept confidential and protecting them from any form of reprisal;
- report actual or suspected corrupt conduct in a timely manner for compliance with legislative requirements.

### **The Mayor**

The Mayor may receive internal disclosures from any member of staff of the council or any Councillor concerning the General Manager or a Councillor.

The Mayor will:

- impartially assess each disclosure made to them about the General Manager or a Councillor to determine:
  - whether the disclosure appears to be a public interest disclosure;
  - the appropriate course of action in relation to a disclosure;
- refer disclosures to the General Manager for appropriate action if they concern the council administration, within the day to day responsibilities of the General Manager;
- take all responsibility to ensure that the identity of a person making a disclosure is kept confidential and protecting them from any form of reprisal.

## **Protections under the Act**

### **Protection Against Reprisals**

The Public Interest Disclosures Act provides protection by imposing penalties on a person who takes detrimental action against another person substantially in reprisal for a protected disclosure.

Penalties can be imposed by means of fines and imprisonment.

Any member of staff or a Councillor who believes that detrimental action is being taken against them substantially in reprisal for the making of an internal disclosure in accordance with the policy should immediately bring the allegations to the attention of the General Manager or the Mayor.

If a member of staff or Councillor, who has made an internal disclosure feels that such reprisals are not being effectively dealt with, they should contact the Ombudsman, the ICAC or the Chief Executive, Division of Local Government.

### **Protection Against Actions**

The Public Interest Disclosures Act provides that a person is not subject to any liability for making a public interest disclosure and no action, claim or demand may be taken or made of or against the persons making the disclosure.

A person who has made a public interest disclosure has a defence of absolute privilege in proceedings for defamation.

A person who has made a public interest disclosure is taken not to have committed any offence against an Act which imposes a duty to maintain confidentiality with respect to any information disclosed.

### **Confidentiality**

This policy requires the Mayor, General Manager, Disclosure Co-ordinator or other investigating authorities to whom public interest disclosures are made or referred, not to disclose information that might identify or tend to identify the person who makes a disclosure.

The exceptions to the confidentiality requirement are where:

- the person consents in writing to the disclosure of that information; or
- it is essential having regard to the principles of natural justice, that the identifying information be disclosed to the person who is the subject of the disclosure; or
- the Mayor, General Manager, Disclosure Co-ordinator or investigating authority are of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively or disclosure is otherwise in the public interest.

## **Government Information (Public Access) Act 2009**

Under the Government Information (Public Access) Act 2009 (GIPA), a document is exempt from release if it contains matters the disclosure of which would disclose matters relating to a public interest disclosure within the meaning of the Act.

### **Notification of Action Taken or Proposed**

Any person who makes a public interest disclosure must be notified by the Disclosure Co-ordinator or the General Manager, within six months of the disclosure being made, of the action taken or proposed to be taken in respect of the disclosure.

If the disclosure is made to the Mayor, then the Mayor is responsible for the six months notification.

The information that is given to the person who made the disclosure, should contain sufficient information to demonstrate that adequate and appropriate action was taken or proposed to be taken, including **statement of reasons for the decision made or action taken in response to the disclosure.**

### **Feedback to Staff and Councillors Who Report Wrongdoing**

Staff and Councillors who report wrongdoing will be told what is happening in response to their report.

When you make a report, you will be given:

- an acknowledgement that your disclosure has been received
- the timeframe for when you will receive further updates
- the name and contact details of the people who can tell you what is happening.

This information will be given to you within two working days from the date you make your report

After a decision is made about how your report will be dealt with, you will be given:

- information about the action that will be taken in response to your report
- likely timeframes for any investigation
- information about the resources available within Richmond Valley Council to handle any concerns you may have
- information about external agencies and services you can access for support.

This information will be given to you within 10 working days from the date you make your report.

During any investigation, you will be given:

- information on the ongoing nature of the investigation
- information about the progress of the investigation and reasons for any delay

- advice if your identity needs to be disclosed for the purposes of investigating the matter, and an opportunity to talk about this.

At the end of any investigation, you 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 will be involved as a witness in any further matters, such as disciplinary or criminal proceedings.

### **Support for those Reporting Wrongdoing**

The Richmond Valley Council will make sure that staff and Councillors who have reported wrongdoing, regardless of whether they have made a public interest disclosure are provided with access to any professional support they may need as a result of the reporting process - such as stress management, counselling services, legal or career advice.

Council also have staff who will support those who report wrongdoing. They are responsible for initiating and co-ordinating support, particularly to those who are suffering from any form of reprisal.

All supervisors must notify the Disclosures Co-ordinator if they believe a staff member is suffering any detrimental action as a result of disclosing wrongdoing.

### **Sanctions for Making False or Misleading Disclosures**

It is important that all staff and Councillors are aware that it is a criminal offence under the Public Interest Disclosures Act to wilfully make a false or misleading statement when reporting wrongdoing.

### **Support for the Subject of a Report**

The Richmond Valley Council is committed to ensuring staff and Councillors who are the subject of a report of wrongdoing are treated fairly and reasonably. If you are the subject of a report, you will be:

- treated fairly and impartially
- told your rights and obligations under our policies and procedures
- kept informed during any investigation
- given the opportunity to response to any allegation made against you
- told the result of any investigation.

### **VARIATION**

Council reserves the right to amend this Policy from time to time.

**RICHMOND VALLEY COUNCIL**  
***PUBLIC INTEREST DISCLOSURES APPLICATION***

Date: \_\_\_\_\_

Details of Disclosure:

---

---

---

---

---

---

---

Signature of Applicant: \_\_\_\_\_

Signature of Receiver: \_\_\_\_\_

Action Taken:

*(including discussions/referral of matter)* \_\_\_\_\_

---

---

---

---

---

---

---

Result of Action:

*(including advice of action to Applicant)* \_\_\_\_\_

---

---

---

---

---

---

---

Notice/Knowledge of any Detrimental Action: \_\_\_\_\_

---

---

---

---

---

---

---

Signature of Mayor/General Manager/Director Works/Director Corporate Services/  
Director Environmental Development Services:

\_\_\_\_\_ Date: \_\_\_\_\_