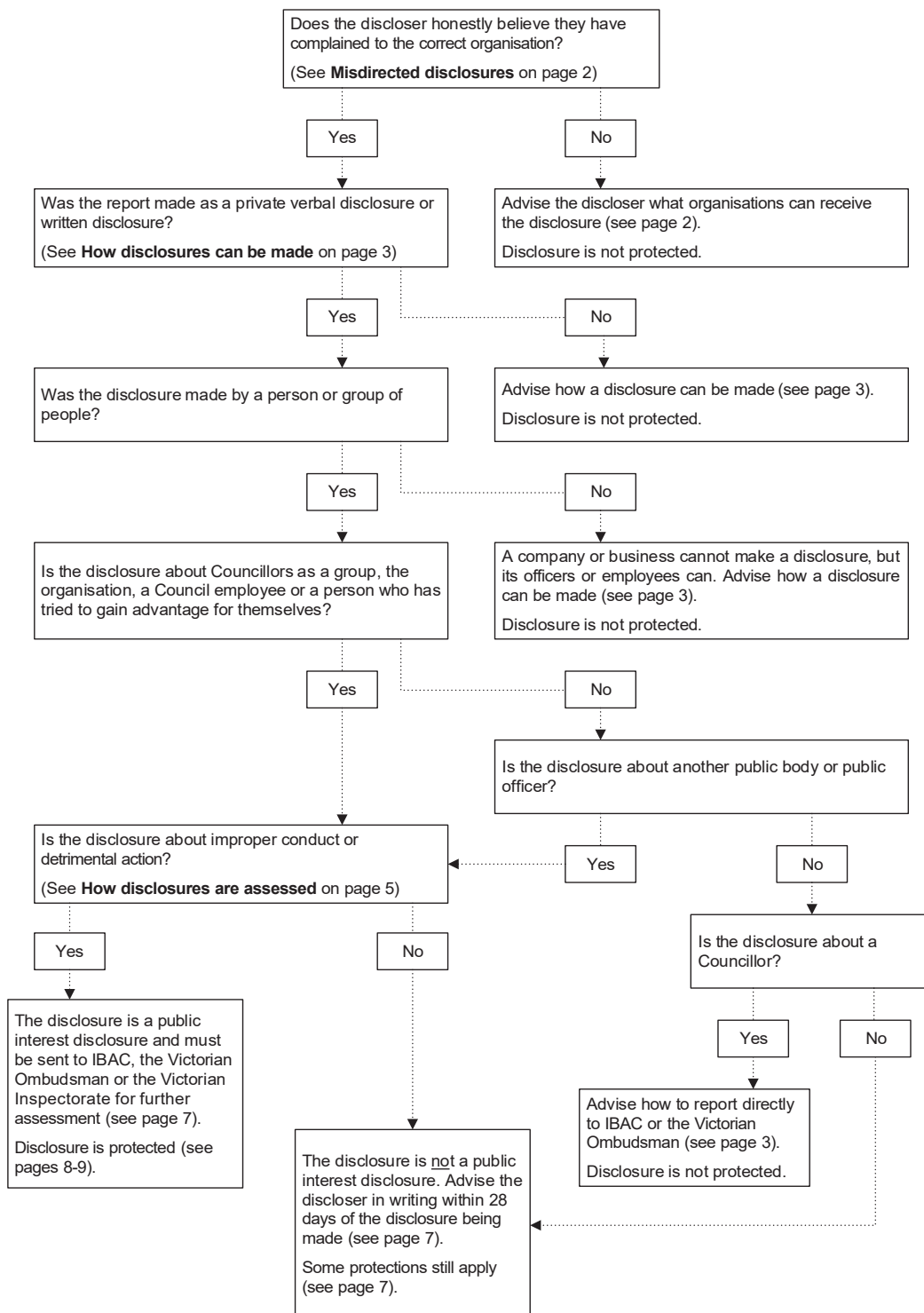


# Public Interest Disclosures Procedure

## 1. How Council processes disclosures

This flowchart outlines the steps Council will take when processing disclosures. The first stage is to work out if the report meets the requirements of a public interest disclosure or not:

- does it contain information that shows, or tends to show improper conduct
- was it made to the right organisation
- made in the right way by the right parties about the right parties?



## Misdirected disclosures

Council is authorised to receive disclosures of improper conduct, including disclosures of improper conduct that do not relate to Council (called 'misdirected disclosures').

If the person honestly believes they have reported a disclosure to the correct organisation, Council's Public Interest Disclosure Coordinator can continue to assess the report to decide if it is a public interest disclosure. If the person knows Council is not the correct organisation, they will be advised which organisations can receive the disclosure (see below). The disclosure is not protected.

## Organisations that can receive disclosures

If the disclosure is about an individual Councillor, the person/s making the disclosure must make their report directly to IBAC or the Victorian Ombudsman.

Organisation	Subject of disclosure
IBAC	Any public body or public officer including the Chief Commissioner of Police but excluding a Member of Parliament
IBAC or a prescribed member of Victoria Police	A member of police personnel (other than the Chief Commissioner of Police)
IBAC or the Victorian Ombudsman	Local councils (individual Councillors, Councillors as a group, the organisation or employees) The Information Commissioner Health Complaints Commissioner
IBAC or the Judicial Commission	Judicial officer or a member of VCAT who is not a judicial officer
IBAC or the Victorian Inspectorate	The Chief Examiner/Examiner appointed under relevant legislation A Victorian Ombudsman officer A Victorian Auditor-General's Office officer Judicial Commission officer (other than a judicial member of the Board of Judicial Commission)
Victorian Inspectorate	An IBAC officer A Public Interest Monitor Local councils (Councillors as a group, the organisation or employees)
Integrity and Oversight Committee, the President of the Legislative Council or the Speaker of the Legislative Assembly	A Victorian Inspectorate officer
President of the Legislative Council	Member of Parliament (Legislative Council)
Speaker of the Legislative Assembly	Member of Parliament (Legislative Assembly)
Public service body <ul style="list-style-type: none"> <li>• Victorian Government departments</li> <li>• Victorian Public Sector Commission</li> <li>• Administrative offices (e.g. Public Record Office Victoria)</li> </ul>	Their organisation, officers or employees. Can also receive disclosures made by their own members, officers or employees about another public body.
Local councils	Councillors as a group, the organisation or employees. (Disclosures about individual Councillors must be directed to IBAC or the Victorian Ombudsman). Can also receive disclosures made by their own members, officers or employees about another public body.

Adapted from tables in IBAC, 2020, *Guidelines for Handling Public Interest Disclosures*, pages 5-6

## 2. How disclosures can be made

Method	Requirements
Private verbal disclosure	<p>Disclosures can be made in person, by phone or by leaving a voice mail message.</p> <p>Verbal disclosures must be made in private. This means only the person disclosing, their lawyer (if they have one) and Council's Public Interest Disclosure Coordinator (or their delegate) can be present or able to listen to the conversation or message.</p> <p>A group of individuals can make a joint disclosure.</p> <p>The Public Interest Disclosure Coordinator will take notes. They may also record the conversation, but will give prior warning. The conversation will not be recorded if the discloser objects.</p>
Written disclosure	<p>A written disclosure should be marked CONFIDENTIAL and can be made:</p> <ul style="list-style-type: none"> <li>• in person at one of Council's offices in Gisborne, Kyneton, Romsey or Woodend (street addresses below)</li> <li>• via mail, marked to the attention of the Public Interest Disclosure Coordinator, Macedon Ranges Shire Council, PO Box 151, KYNETON VIC 3444</li> <li>• by email to <a href="mailto:governance@mrsc.vic.gov.au">governance@mrsc.vic.gov.au</a></li> <li>• by completing the online form on the IBAC and the Victorian Ombudsman websites (addresses below)</li> </ul> <p>A disclosure <u>cannot</u> be made by fax.</p>
Anonymous disclosure	<p>A person doesn't need to identify themselves to make a disclosure.</p> <p>An anonymous disclosure can be made by using an unverifiable email address, through an anonymous phone call, or in a face-to-face conversation or meeting where the person refuses to identify themselves (provided the meeting or conversation takes place in private).</p> <p>If the disclosure comes from an email address where the identity of the person making the disclosure cannot be determined, the disclosure will be treated as an anonymous disclosure.</p>

Adapted from table in IBAC, 2020, *Guidelines for Handling Public Interest Disclosures*, page 7

### Council's offices

Gisborne Administration Centre 40 Robertson Street Gisborne	Kyneton Administration Centre 129 Mollison Street Kyneton
Romsey Service Centre 96 Main Street Romsey	Woodend Service Centre Corner High and Forest streets Woodend

### IBAC and Victorian Ombudsman—online forms

IBAC website [ibac.vic.gov.au/reporting-corruption/how-to-make-a-complaint](http://ibac.vic.gov.au/reporting-corruption/how-to-make-a-complaint)

Victorian Ombudsman website [ombudsman.vic.gov.au/complaints/make-complaint/](http://ombudsman.vic.gov.au/complaints/make-complaint/)

### 3. Welfare support

The Public Interest Disclosure Coordinator will call on the Welfare Manager in cases where the discloser requires additional support.

Welfare support will be provided to the discloser or co-operator on an ongoing basis, even if the Welfare Manager is not called upon.

<b>Council will:</b>	
Inform (PID Coordinator)	<ul style="list-style-type: none"> <li>• Confirm the disclosure has been received.</li> <li>• Outline the legislative protections available.</li> <li>• Describe the process that will be followed.</li> <li>• Keep the person informed throughout the process.</li> </ul>
Support (PID Coordinator and Welfare Manager)	<ul style="list-style-type: none"> <li>• Acknowledge the person for having come forward.</li> <li>• Make a clear offer of support and assure them that all reasonable steps will be taken to protect them.</li> </ul>
Manage expectations (PID Coordinator)	<ul style="list-style-type: none"> <li>• Ask the person what outcome they want.</li> <li>• Advise them whether their expectations are realistic/what the organisation will be able to deliver.</li> </ul>
Maintain confidentiality (PID Coordinator, Welfare Manager and any other staff with delegated authority to receive disclosures)	<ul style="list-style-type: none"> <li>• Keep the identity of the discloser and the subject matter of their disclosure confidential.</li> <li>• Make sure other staff cannot infer the identity of the discloser or a person cooperating with the investigation from any information they receive</li> <li>• Remind the discloser not to reveal themselves or give out information that would enable others to identify them as a discloser.</li> <li>• Make sure that hard-copy and electronic files relating to the disclosure are accessible only to those involved in managing disclosures in the organisation.</li> </ul>
Monitor risk of reprisal (PID Coordinator and Welfare Manager)	<ul style="list-style-type: none"> <li>• Actively monitor the workplace, anticipate problems and deal with them before they develop.</li> <li>• Listen and respond to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions.</li> <li>• Assess whether the concerns the person may have about harassment, intimidation or victimisation might be due to causes other than those related to a public interest disclosure.</li> </ul>
Manage impact (PID Coordinator, Welfare Manager and any other staff with delegated authority to receive disclosures)	<ul style="list-style-type: none"> <li>• Prevent the spread of gossip and rumours about an investigation into the disclosure.</li> </ul>
Keep records (PID Coordinator, Welfare Manager and any other staff with delegated authority to receive disclosures)	<ul style="list-style-type: none"> <li>• Record all aspects of the case management of the person as they happen, including all contact and follow-up action.</li> </ul>

#### **4. How disclosures are assessed**

For a report to be considered a public interest disclosure, it must show, or tend to show, improper conduct or detrimental action.

##### **Improper conduct**

Improper conduct includes corrupt conduct, criminal offences and other conduct specified in the PID Act. It can include conduct by a public body or public officer while carrying out public functions that is:

- corrupt
- a criminal offence
- serious professional misconduct
- dishonest
- an intentional or reckless breach of public trust
- an intentional or reckless misuse of information or material acquired in the course of performing public functions
- a substantial mismanagement of public resources
- a substantial risk to health or safety of one or more people
- a substantial risk to the environment.

Conduct of any person that adversely affects, or is intended to adversely affect, the honest performance of a public body's or public officer's\* public functions and results in that person, or an associate of that 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 an attempt to engage in any of the conduct referred to above.

If the conduct is trivial, it does not meet the threshold of improper conduct.

##### **Serious professional misconduct**

To determine if the misconduct was serious, Council will consider:

- whether the behaviour was persistent, repeated or premeditated
- whether there was a substantial risk to 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 possible 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.

\* Councillors as a group, a Council employee or Council as an organisation only. As noted above, conduct of an individual Councillor must be assessed by IBAC or the Victorian Ombudsman.

##### **Detrimental action**

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

A person doesn't need to have actually taken the detrimental action, but can have threatened to do so or incited/permitted someone else to do so.

Council will consider:

- both the nature of the detrimental action and whether it is being taken in reprisal for a public interest disclosure
- whether the person acted, or threatened to act, because they believed the other person has:
  - made, or intends to make, a disclosure
  - cooperated, or intends to cooperate, with an investigation of a disclosure
- whether the person incited/permitted a third person to act, or threaten to act, because they believed the other person has:
  - made, or intends to make, a disclosure
  - cooperated, or intends to cooperate, with an investigation of a disclosure.

Note: The PID 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.

Two standards need to be considered when making the assessment

Standard	Considerations
Shows, or tends to show, improper conduct or detrimental action	<p><b>Reliability of the information</b></p> <p>Council will look at all the information provided about the alleged conduct and about the discloser and consider:</p> <ul style="list-style-type: none"> <li>• what the discloser's connection to the alleged conduct is. Are they a victim, a witness, or a participant?</li> <li>• how they came 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?</li> <li>• how detailed the information provided is. Is there sufficient information to enable us to consider whether there is improper conduct or detrimental action?</li> <li>• how reliable the information is. Is it supported by other information?</li> </ul>
Reasonable belief that improper conduct or detrimental action has occurred	<p><b>Reasonable belief</b></p> <p>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'.</p> <p>The test is whether a reasonable person, possessed of the same information, could believe that the improper conduct had occurred.</p> <p>Council will also consider:</p> <ul style="list-style-type: none"> <li>• the reliability of the information the discloser has provided, even if it is second or third hand</li> <li>• how the person would have obtained the information and the amount of detail that has been provided</li> <li>• the credibility of the discloser or the people who provided the discloser with information.</li> </ul>



## 5. If urgent action is required

In some circumstances, the disclosure may be about conduct that poses an immediate threat to people's health and safety; the preservation of property; or serious criminal behaviour. For example, a council worker allegedly lighting bush fires, or a person threatening to poison the water supply.

In these cases, Council will take immediate action while assessing whether or not it is a disclosure by that must be notified to IBAC. It may be necessary to report criminal conduct to Victoria Police for immediate investigation, or to take management action against an employee to prevent future conduct.

Under the PID Act, Council is permitted to release information about the content of disclosures 'to the extent necessary for the purposes of taking lawful action'. However, Council is still not permitted to reveal the identity of the discloser.

### Notifying outcome of assessment

Assessment	Action—within 28 days after the disclosure was made
The report is a public interest disclosure	<p><b>Notify the assessment agency</b></p> <p>Council will notify IBAC in writing <u>within the deadline</u>, that the disclosure:</p> <ul style="list-style-type: none"> <li>• may be a public interest disclosure</li> <li>• is being sent for assessment.</li> </ul> <p>Council may also provide IBAC with any information obtained regarding the disclosure in the course of inquiries. 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 disclosures about:</p> <ul style="list-style-type: none"> <li>• IBAC or the Public Interest Monitor, which must be notified to the Victorian Inspectorate</li> <li>• the Victorian Inspectorate, which must be notified to the Integrity and Oversight Committee.</li> </ul> <p><b>Notify the discloser</b></p> <p>Council will notify the discloser in writing that the disclosure has been sent to IBAC for assessment.</p> <p>Disclosure is protected.</p>
The report is NOT a public interest disclosure	<p>Council will consider whether the disclosure could be dealt with under the Complaint Handling Policy.</p> <p><b>Notify the discloser</b></p> <p>Council will notify the discloser in writing <u>within the deadline</u> that:</p> <ul style="list-style-type: none"> <li>• the disclosure does not show, or does not tend 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 PID Act apply, for example they: <ul style="list-style-type: none"> <li>– can't be fired, disciplined or bullied for making the disclosure</li> <li>– are protected from legal actions such as defamation and civil liability</li> </ul> </li> <li>• they can seek a resolution through Council's <u>Complaints Handling Policy</u> (if it is determined to be appropriate).</li> </ul>

Upon notification, IBAC may:

- dismiss the matter if they determine it isn't a public interest complaint
- refer the matter to another investigating entity
- investigate the matter if they determine it is a public interest complaint.

Under the PID Act, a new mechanism has been introduced to allow relief for disclosers whose public interest complaint has not been addressed adequately by IBAC with specified timeframes. They may disclose the details of their public interest complaint to an external person or organisation not authorised to receive public interest disclosures (some conditions apply). For example, a discloser who reports the nature of a public interest complaint to a journalist because IBAC did not provide an outcome letter within six months of the disclosure being made, and did not respond within 30 days to a further request from the discloser for advice.

IBAC's [Guidelines for handling public interest disclosures](#) available at [ibac.vic.gov.au](http://ibac.vic.gov.au) details their process and obligations.

## 6. Welfare of a person who is the subject of a complaint

Until a public interest complaint is resolved by IBAC, the information about the person who is the subject of the disclosure is only an allegation. In some cases, the person may never know they have been the subject of an allegation, for example if IBAC determines the disclosure is not a public interest complaint and dismisses the matter.

The PID Act restricts the release of information that would be likely to identify the discloser. This means Council cannot reveal information about the content of the disclosure to the person who is the subject of a disclosure.

IBAC will afford natural justice to the subject of an allegation before making a decision about their conduct. The subject will be given the opportunity to answer the allegations and have their defence set out fairly in any report.

Council will consider the welfare needs of the subject of a disclosure once they become aware an allegation has been made against them. For example, a referral to the Employee Assistance Program may be appropriate.

## 7. Protections

### Protections provided by the PID Act for disclosers

Any report that is a public interest disclosure is protected under the PID Act. This means the discloser is protected. They:

- cannot be fired, disciplined or bullied for making a disclosure
- are not subject to any civil or criminal liability for making a disclosure
- are 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
- are not breaching any other obligation (made by oath, rule of law or practice) requiring them to maintain confidentiality or otherwise restrict confidentiality
- cannot be held liable for defamation in relation to information included in a public interest disclosure.

### Confidentiality

Confidentiality is another way disclosers are protected.

The content of the public interest disclosure must be confidential. The PID Act prohibits release of the content or even information about the content, of any public interest disclosure. This restriction applies to the Public Interest Disclosure Coordinator (and their delegate/s) as well as to anyone involved in IBAC's assessment and/or investigation. This restriction does not apply to the discloser.

The identity of the person making a public interest disclosure must be confidential. The PID Act prohibits release of any information that could lead to the identification of a discloser. This generally



means Council cannot reveal this information to the person who is the subject of a disclosure. This restriction applies to any person or organisation, other than the discloser.

Breaching these restrictions is an offence.

The person making a public interest disclosure can talk about it when they are seeking advice, representation or support from:

- a legal representative, interpretative services, parent or guardian (for disclosers under 18) or an independent person (for disclosers who are illiterate or have mental or physical impairments)
- a registered medical practitioner, trade union or employee assistance program
- WorkCover (for a worker's compensation claim) or Fair Work Commission (for an application).

Situations where the confidentiality restrictions do not apply include:

- when IBAC or other authorised organisation has decided the public interest disclosure is not a public interest complaint
- during the investigation of a public interest complaint by IBAC or other authorised organisation
- when information is provided to Victoria Police as part of an ongoing criminal investigation.

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

### **Protections provided by the PID Act for public officers**

When a public officer acts in good faith and in accordance with the PID 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.

### **Limits on protections**

A number of the protections in the PID 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 PID 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.

## **8. Monitoring and evaluation**

### **Initial review**

After the first public interest disclosure has been processed, Council will review this procedure and associated policy to ensure it is effective, easy to follow for all parties and sensitive to the welfare needs of discloser.

### **Ongoing review**

Following the initial review, Council will review the effectiveness of this procedure and associated policy every four years.

Review questions are included on page 8 of the Public Interest Disclosures Policy.

***This procedure is to be read in conjunction with Council's Public Interest Disclosures Policy***