

COUNCIL POLICY

Public Interest Disclosures

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Date	Version	Revision description
06/08/2013	1.0	Adopted by Council
05/06/2018	2.0	Adopted by Council
17/12/2019	3.0	Adopted by Council Updated to reflect legislative change.
06/09/2022	4.0	Adopted by Council Inclusion of 'disclosure handling' and 'assessing disclosures flowchart' sections, and other minor updates. No legislative change required.

1. Purpose

The Alpine Shire Council (Council) is committed to the aims and objectives of the *Public Interest Disclosures Act 2012 [Vic]* (the Act). It does not tolerate improper conduct by its representatives, nor the taking of reprisals against those who come forward to disclose such conduct.

Council recognises the value of transparency and accountability in its administrative and management practices and supports the making of disclosures that reveal improper conduct, conduct involving a substantial mismanagement of public resources, or conduct involving a substantial risk to public health and safety or the environment.

Council will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosure. It will also afford natural justice to the person who is the subject of the disclosure.

This policy forms part of a larger process that establishes a system for reporting disclosures of improper conduct or detrimental action by the Council or its representatives. The system ensures Council is compliant with all local government requirements as stipulated by the Act.

2. Scope

This policy is made under the *Public Interest Disclosures Act 2012 [Vic]* (the Act).

The Council may receive a Public Interest Disclosure (PID) under the Act and will facilitate and handle public interest disclosures according to guidelines and procedures and manage the welfare of any person making a disclosure from detrimental action.

This policy applies to all Council representatives, including Councillors, members of Council staff, and volunteers.

3. Policy details

Council encourages and facilitates the making of disclosures of improper conduct.

The handling of disclosures is carried out in accordance with the Act ensuring full discretion and confidentiality for all parties. On receipt, Council will notify potential public interest disclosures to IBAC for assessment.

Council will keep a discloser's identity and the content of a disclosure confidential.

Protection against any detrimental actions is provided to any person making a disclosure, whether they are Council representatives, or members of the public, in accordance with the Act.

3.1 DISCLOSURE HANDLING

3.1.1 What is a public interest disclosure?

Public interest disclosures are reports about:

- improper conduct of Council or Council representatives (such as corrupt conduct);
- detrimental action that Council or a Council representative has taken against a person in reprisal for them (or another person) having made a public interest disclosure or cooperated with the investigation of a public interest disclosure.

A disclosure can relate to conduct or action that:

- may have already taken place;
- may be occurring now;
- may happen in the future.

3.1.2 Who can a public interest disclosure be about?

Council or a Council representative.

3.1.3 Who can make a disclosure?

A disclosure may be made by an individual or group of individuals and can be anonymous.

A company or business cannot make a disclosure—but its officers or representatives can.

3.1.4 How can a disclosure be made?

Disclosures relating to Council or Council representatives (excluding Councillors) may be made to Council's Public Interest Disclosure Coordinator, by the means outlined below:

- Verbal disclosure (in private); or
- Written disclosure.

A person making a disclosure may make an anonymous disclosure by either of the means above.

Disclosures relating to Councillors must be made directly to the Independent Broad-Based Anti-Corruption Commission (IBAC) or to the Victorian Ombudsman.

Contact details for the Public Interest Disclosure Coordinator are available on Council's website.

3.1.5 Misdirected disclosures

If a person makes a disclosure to Council, but the disclosure is not about Council or a Council representative, and the discloser honestly believes that they have made the disclosure to the correct organisation, Council will assess the disclosure in accordance with the 'assessing disclosures flowchart' in part 9 of this policy.

3.2 IMPLEMENTATION

In implementing this policy, the following party/parties must:

Party / Parties	Responsibilities
Council representatives	<ul style="list-style-type: none"> • Report known or suspected incidences of improper conduct or detrimental action in accordance with this policy. • Refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. • Protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.
Public Interest Disclosure Officer	<ul style="list-style-type: none"> • Be a contact point for general advice about the operation of the Act. • Take all necessary steps to ensure the identity of the person making a public interest disclosure and the identity of the person who is the subject of the disclosure are kept confidential. • Forward any disclosures and supporting evidence to the Public Interest Disclosure Coordinator.
Public Interest Disclosure Coordinator	<ul style="list-style-type: none"> • Receive all disclosures, including any forwarded from the Public Interest Disclosure Officer. • Refer all public interest disclosures to the IBAC. • Be responsible for carrying out, or appointing an investigator to carry out, an investigation referred to the Council by the IBAC. • Appoint a welfare manager to support the person making a public interest disclosure and to protect the person from any reprisals. • Take all necessary steps to ensure the identity of the person making a public interest disclosure and the identity of the person who is the subject of the disclosure are kept confidential. • Liaise with the Chief Executive Officer.
Investigator (may be internal or external)	<ul style="list-style-type: none"> • Carry out an internal investigation into a disclosure where the IBAC has referred a matter to Council.

Party / Parties	Responsibilities
Welfare Manager	<ul style="list-style-type: none"> • Look after the general welfare of the person making a protected disclosure. • Advise the person making a protected disclosure of the legislative and administrative protections available to them. • Listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making disclosure.

4. Roles and responsibilities

The following positions are responsible for

Responsibility	Role / Position
Implementation	<ul style="list-style-type: none"> • Governance Officer
Compliance	<ul style="list-style-type: none"> • Governance Officer
Development/Review	<ul style="list-style-type: none"> • Director Corporate Performance • Manager Corporate • Governance Officer
Interpretation/Advice	<ul style="list-style-type: none"> • Manager Corporate • Governance Officer

5. Breaches

Failure to comply with Council policy, supporting procedures or guidelines, will be subject to investigation which may lead to disciplinary action.

Under the terms of the *Public Interest Disclosure Act 2012 [Vic]*, the following penalties apply:

- It is an offence for a person to take detrimental action against a person in reprisal for a public interest disclosure being made. The Act provides a maximum penalty of a fine of 240 penalty units or two years imprisonment or both (s.45).
- It is an offence for a person to divulge information obtained as a result of the handling or investigation of a public interest disclosure without legislative authority. The Act provides a maximum penalty of 120 penalty units or twelve months imprisonment or both (s.52).
- It is an offence to divulge information likely to lead to the identification of a person who has made a disclosure. The Act provides a maximum penalty of 120 penalty units or twelve months imprisonment or both (s.53).

- It is an offence for a person to knowingly provide false information under the Act with the intention that it be acted on as a disclosed matter. The Act provides a maximum penalty of 120 penalty units or twelve months imprisonment or both (s.72).
- It is an offence for a person to claim that a matter is the subject of a public interest disclosure knowing that claim to be false. The Act provides a maximum penalty of 120 penalty units or twelve months imprisonment or both (s.73).
- It is an offence for a person to obstruct the IBAC in performing its responsibilities under the *Independent Broad-Based Anti-Corruption Commission Act 2011 [Vic]*, including investigations. This Act provides a maximum penalty of 120 penalty units or twelve months imprisonment or both (s.180).

6. Human Rights Charter compatibility

This policy has been assessed as being compatible with the *Charter of Human Rights and Responsibilities Act 2006 [Vic]*.

7. Supporting documents

This policy should be read in conjunction with all other relevant, Council policies and procedures, as well as relevant legislative requirements.

Related Legislation

- *Independent Broad-Based Anti-Corruption Act 2011 [Vic]*
- *Local Government Act 1989 [Vic]*
- *Local Government Act 2020 [Vic]*
- *Public Interest Disclosures Act 2012 [Vic]*

Related Guidelines, Operational Directives or Policies

- Complaints Policy

Related Procedures

- Public Interest Disclosures Procedures
- Complaints Procedure

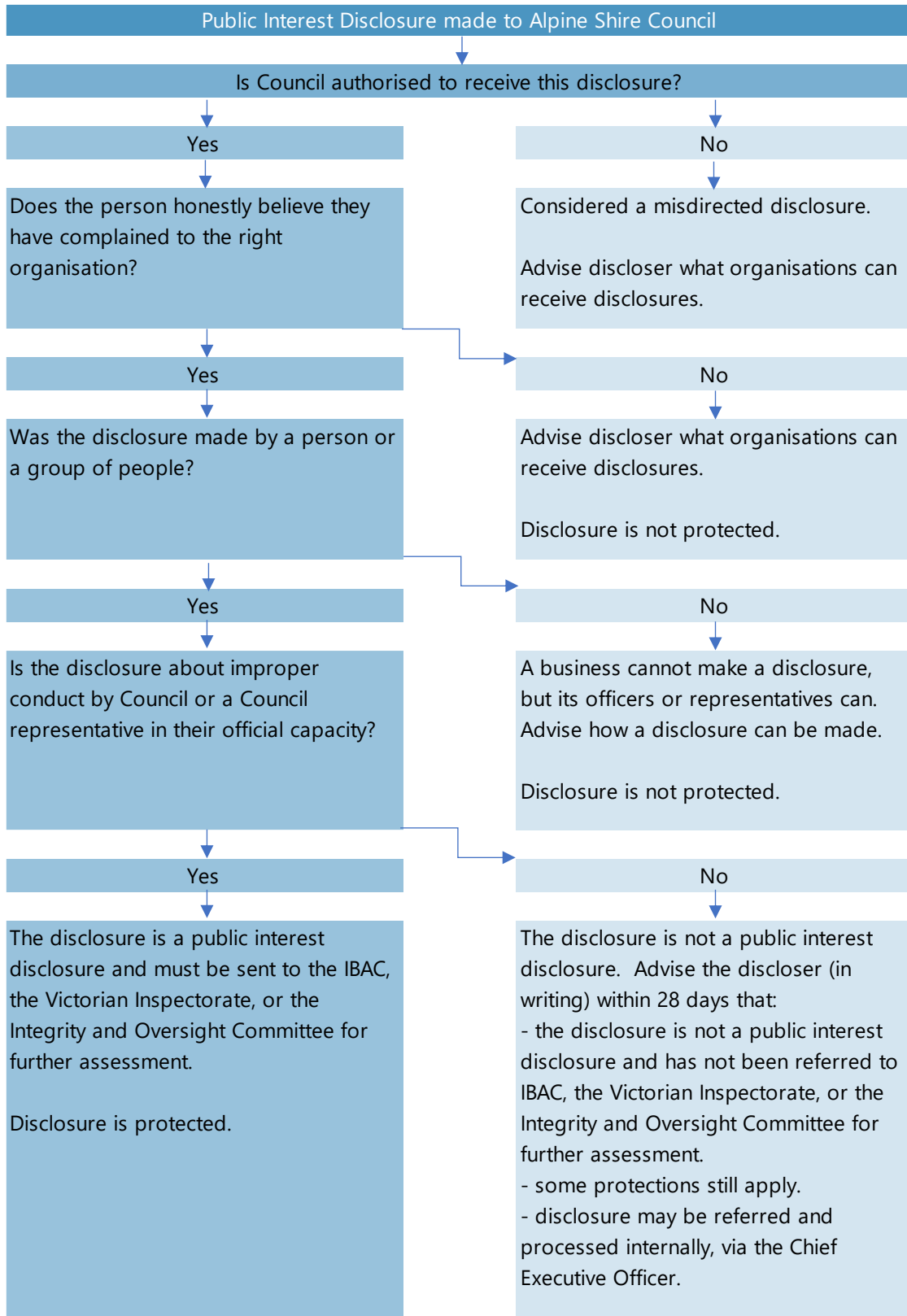
8. Definitions and abbreviations

Term	Meaning
the Act	<i>Public Interest Disclosures Act 2012 [Vic]</i>
ASC	Alpine Shire Council
CEO	Chief Executive Officer

Term	Meaning
Corrupt conduct	<p>Defined in section 3 of the Act to have the same meaning given by section 4 of the <i>Independent Broad-Based Anti-Corruption Commission Act 2011</i>. This includes (but is not limited to) conduct:</p> <ul style="list-style-type: none"> • Of any person that adversely affects the honest performance of Council or a Council representative; or • Of Council or a Council representative that constitutes or involves: <ul style="list-style-type: none"> – the dishonest performance as Council or a Council representative; or – knowingly or recklessly breaching public trust; or – the misuse of information or material acquired in the course of the performance of their function as Council or a Council representative; or • Of a person intended to adversely affect the performance or exercise by Council or a Council representative, that results in them obtaining a benefit that they would not have otherwise received; or • That could constitute a conspiracy or an attempt to engage in any conduct referred to above.
Council	Alpine Shire Council
Council representative	Includes but is not limited to Councillors, members of Council staff, and volunteers.
Detrimental action	<p>Defined in section 3 of the Act, which includes:</p> <ul style="list-style-type: none"> • An action causing injury, loss or damage; • Intimidation or harassment; • Discrimination, disadvantage, or adverse treatment in relation to a person’s employment, career, profession, trade or business, including the taking of disciplinary action.
Disclosure	Public Interest Disclosure
IBAC	Independent Broad-based Anti-Corruption Commission
Misdirected disclosure	Defined in section 18 of the Act, which includes a public interest disclosure made to an organisation, which the person honestly believed that was the appropriate organisation but is not the correct place for the disclosure to be made.

Term	Meaning
Persons permitted to receive public interest disclosure on behalf of Council	<p>The Act provides for disclosures to be made to the following persons:</p> <ul style="list-style-type: none"> • Chief Executive Officer; or • Public Interest Disclosure Coordinator
Public Interest Disclosure (PID)	<p>Disclosure by a natural person of information that shows/tends to show or information that the person reasonable believes shows/tends to show improper conduct or detrimental action.</p>
Public Interest Complaint (PIC)	<p>A public interest disclosure that has been determined by IBAC to be a Public Interest Complaint.</p>
Improper conduct	<p>Defined in section 4 of the Act which includes:</p> <ul style="list-style-type: none"> • Corrupt conduct; or • Conduct of Council or a Council representative that constitutes: <ul style="list-style-type: none"> – A criminal offence; or – Serious professional misconduct; or – Dishonest performance of public functions; or – Intentional or reckless breach of public trust; or – Intentional or reckless misuse of information; or – Substantial mismanaged of public resources; or – Substantial risk to health or safety of a person; or – Substantial risk to the environment; or • Conduct of any person that: <ul style="list-style-type: none"> – adversely affects the honest performance by a Council representative of their functions; or – is intended to adversely affects the effective performance by a Council representative of their functions for the benefit of the other person • Less serious or trivial conduct is excluded from the definition.
Public Interest Disclosure Coordinator	<p>Council officer appointed by the CEO to manage the disclosure process.</p>
Public Interest Disclosure Officer	<p>Council officer appointed by the CEO who assists the Public Interest Disclosure Coordinator in the administration of disclosures.</p>
Welfare Manager	<p>Council officer appointed by the Public Interest Disclosure Coordinator to manage the general welfare of the person making a Public Interest Disclosure.</p>

9. Assessing disclosures flowchart



10. Approval

THE COMMON SEAL OF THE ALPINE SHIRE COUNCIL was hereunto affixed this 6th day of September 2022 in the presence of:



Ronald Tanas
COUNCILLOR

[Signature]
SIGNATURE

Tony Keel
COUNCILLOR

[Signature]
SIGNATURE

Will Jeremy
CHIEF EXECUTIVE OFFICER

[Signature]
SIGNATURE