

# MANNINGHAM CITY COUNCIL

## PUBLIC INTEREST DISCLOSURE PROCEDURES

### GENERAL OVERVIEW

These Procedures have been developed by Manningham City Council pursuant to Section 58 of the *Public Interest Disclosures Act 2012*.

These Procedures explain how Manningham City Council will handle complaints and disclosures made under the Public Interest Disclosures Act. Persons considering making disclosures are encouraged to contact the Council's Public Interest Disclosure Coordinator, Mr Andrew McMaster on 9840 9360 or by email at [andrew.mcmaster@manningham.vic.gov.au](mailto:andrew.mcmaster@manningham.vic.gov.au) or the State Government's Independent Broad-based Anti-corruption Commission (IBAC) prior to doing so to ensure you understand the process involved and the protections that may be available.

Last updated 20 December 2019



Interpreter service

**9840 9355**

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## DEFINITION OF KEY TERMS IN THESE PROCEDURES

The key terms referred to in these procedures are:

Act	Public Interest Disclosures Act 2012
assessable disclosure	Any disclosure either made directly to the IBAC,VI, IOC, or if received by Manningham City Council, is required under Section 21 of the Act to be notified by the Council to the IBAC for assessment
Council	Manningham City Council
discloser	A person who (purports to) make(s) a complaint, allegation or disclosure (however described) under the Act
disclosure	Any complaint, concern, matter, allegation or disclosure (however described) purported to be made in accordance with Part 2 of the Act
external disclosure	A public interest disclosure made to a person or body who is not an entity to whom a public interest disclosure can be made under Division 2, Part 2 of the Act.
Guidelines	The Guidelines published by the IBAC under Section 57 of the Act as at January 2020, copies of which may be downloaded from <a href="https://www.ibac.vic.gov.au/docs/default-source/guidelines/guidelines-for-handling-public-interest-disclosures.pdf?sfvrsn=eb8b6875_14">https://www.ibac.vic.gov.au/docs/default-source/guidelines/guidelines-for-handling-public-interest-disclosures.pdf?sfvrsn=eb8b6875_14</a>
IBAC Act	Independent Broad-based Anti-corruption Commission Act 2011
IBAC	Independent Broad-based Anti-corruption Commission
investigative entity	Any one of the bodies authorised to investigate a protected disclosure complaint, being the IBAC, the Victorian Ombudsman, Victoria Police, the VI, the Judicial Commission, the Chief Municipal Inspector, the Racing Integrity Commissioner and the Information Commissioner.
IOC	Integrity and Oversight Committee
line manager	The person to whom a worker directly reports. This can include (but not limited to) Director, Service Unit Manager, Coordinator or Supervisor.
misdirected disclosure	A public interest disclosure made to the wrong receiving entity that is redirected to another receiving entity without the discloser losing the protections under the Act.
procedures	This version of the procedures of Manningham City Council, as established under Section 58 of the Act.
public interest discloser	A person who makes a disclosure of improper conduct or detrimental action in accordance with the requirements of Part 2 of the Act.
public interest complaint	A public interest disclosure which has been determined and assessed by the IBAC, the VI or the IOC to be a public interest complaint.
public interest disclosure	A disclosure by a natural person of information that shows or tends to show, or information that a person reasonably believes shows or tends to show, improper conduct or detrimental action.
Regulations	Regulations made to support the Public Interest Disclosures Act 2012
serious professional misconduct	Conduct that constitutes a serious breach of an established professional code of conduct and/or other serious departures from the person's professional responsibilities.
VI	Victorian Inspectorate
Worker	a generic term meaning a person engaged or providing services on behalf of Council. This includes employees, volunteers (including work experience and work placement volunteers), contractors, consultants, or persons employed through a third party agency.

## 1. STATEMENT OF SUPPORT

Manningham City Council is supportive of both the spirit and principles enshrined in the *Public Interest Disclosures Act 2012*. Council does not and will not tolerate improper conduct by the organisation, its workers or its Councillors. Furthermore, it will not tolerate the taking of reprisals against anyone who discloses such conduct.

Council both encourages and supports the making of disclosures that reveal improper conduct or the taking of detrimental action in reprisal against persons who come forward to report such improper conduct. Workers and Councillors are encouraged to raise matters of concern in relation to Council, including about any worker or Councillor. In particular, workers and Councillors are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures, whether such conduct or action has taken place, is suspected will take place, or is still occurring.

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 any person or body who is the subject of the disclosure.

Workers and Councillors of Manningham City Council have an important role to play in supporting those who have made a legitimate disclosure in accordance with the Act. All persons must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

## 2. ABOUT THESE PROCEDURES

Manningham City Council is required to develop and publish procedures under Section 58 of the *Public Interest Disclosures Act 2012* and in accordance with the Guidelines of the IBAC published under Section 57 of the Act. Council is required to ensure these procedures are available for inspection to members of the public during normal office hours and are available to all Councillors and workers of the Council. These procedures are also available on the Council's website.

These procedures are designed to assist disclosers and prospective disclosers to understand the application of the Act relative to Council's operations and to explain the procedures that Council will follow in handling any disclosures it receives.

These procedures cover:

- how disclosures may be made to Council;
- how Council manages the receipt of disclosures;
- how Council assesses the disclosures it receives under the Act;
- notifications Council is required to make about disclosures;
- how Council will protect certain people, including from detrimental action being taken against them in reprisal for making a public interest disclosure, namely:
  - public interest disclosers,
  - persons who are the subject of public interest disclosures and public interest disclosure complaints, and
  - other persons connected to public interest disclosures, such as witnesses or persons cooperating with an investigation.

These procedures form an essential part of Council's commitment to the aims and objectives of the Act. Council recognises and values transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal improper conduct or the taking of detrimental action in reprisal against persons who come forward to report such improper conduct.

### **3. PURPOSE OF THE ACT**

The purpose of the *Public Interest Disclosures Act 2012* is to encourage and facilitate the making of disclosures of improper conduct and detrimental action by public officers and public bodies. It does so by providing certain protections for people who make a disclosure, or those who may suffer detrimental action in reprisal for making a disclosure. An essential element of this protection is to ensure that information connected to the public interest disclosure, including the identity of the discloser and the contents of that disclosure, are kept strictly confidential.

Disclosures can be made to a nominated agency and public sector bodies authorised to receive disclosures. Manningham City Council is a public sector body and therefore able to receive disclosures in accordance with the Act.

Protected disclosures may be made about any of the public officers or bodies as defined in Section 3 of the Act and Section 6 of the IBAC Act. They include:

- Councils established under the Local Government Act 1989;
- Workers of municipal councils; and
- Councillors.

### **4. COUNCIL'S INTERNAL REPORTING PROCEDURES**

Manningham City Council supports a workplace where the making of public interest disclosures is valued and the right of any individual to make a public interest disclosure is taken seriously. This involves:

- making these procedures, including detailed information about how disclosures may be made and to whom, accessible on Council's website and available to workers, Councillors and any other person seeking access;
- ensuring appropriate training is provided at all levels of the organisation to raise awareness of how a public interest disclosure may be made, and to take all reasonable steps to ensure workers and Councillors are familiar with public interest disclosure regime and Council's procedures;
- implementation of a centralised reporting system accessible only to appropriately authorised officers, allowing the flow of information to be tightly controlled to enhance confidentiality and minimising risks of reprisals being taken against disclosers;
- encouraging reporting of disclosures to the Chief Executive Officer or the Public Interest Disclosure Coordinator or select staff who are appointed as Public Disclosure Officers to reflect the seriousness of public interest disclosure matters and to better manage confidentiality;
- ensuring that the reporting system protects the confidentiality of information received or obtained in connection with a public interest disclosure in accordance with the Act;
- ensuring that the reporting system protects the identity of persons connected with a public interest disclosure in accordance with the Act;
- not tolerating the taking of detrimental action in reprisal against any person for making a public interest disclosure, including the taking of any reasonable steps to protect such persons from such action being taken against them;
- affording natural justice to those who are the subject of disclosures;
- taking appropriate disciplinary and other action against any workers or Councillors engaged in the taking of detrimental action;
- ensuring any staff involved in handling public interest disclosures are trained to receive and manage public interest disclosures appropriately;
- ensuring that the Council as a whole handles public interest disclosures consistently and appropriately in accordance with its obligations under the Act, the Regulations, the IBAC Guidelines and these procedures;

- identifying and promoting clear contact points for reporting public interest disclosures and for capturing all disclosures irrespective of whether they are made in person, by mail, by telephone or by email;
- where Council is the wrong receiving entity in relation to the nature of the disclosure, referring the person purporting to make the disclosure and/or the disclosure itself to the relevant receiving entity.

#### **4.1 Workers and Councillors**

Workers and Councillors are encouraged to raise matters of concern regarding Manningham City Council, including about any worker or Councillor. In particular, workers and Councillors are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures, whether such conduct or action has taken place, is suspected will take place, or is still occurring.

All workers and Councillors play an important role in supporting those who have made a legitimate disclosure in accordance with the Act. All persons must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person has made a disclosure. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

Notwithstanding the various avenues available to persons wishing to make a disclosure about a worker, disclosers are encouraged to make their disclosure to a Public Interest Disclosure Officer, the Public Interest Disclosure Coordinator or the Chief Executive Officer. If the disclosure relates to the conduct of the Chief Executive Officer, the disclosure should be made to the Protected Disclosure Coordinator. If the disclosure relates to the conduct of the Protected Disclosure Coordinator, then the disclosure should be made to the Chief Executive Officer.

A public interest disclosure about the conduct of a Councillor cannot be made to Council or a worker of Council. A person who wishes to make a disclosure about a Councillor must make that disclosure to the IBAC or the Victorian Ombudsman.

#### **4.2 Line Managers and Directors**

Workers of the Council who wish to make a public interest disclosure may make the disclosure to their direct or indirect line manager or Director.

If a person wishes to make a public interest disclosure about a worker at Manningham City Council, that person may make the disclosure to that worker's direct or indirect line manager or Director.

The line manager or Director receiving the disclosure will:

- immediately bring the matter to the attention of the Public Interest Disclosure Coordinator for advice and further action in accordance with the Act;
- commit to writing down any disclosure made orally;
- take all necessary steps to ensure the information disclosed, including the identity of the discloser and any persons involved, is secured, remains private and confidential; and
- offer to remain a support person for the discloser in dealing with the Public Interest Disclosure Coordinator.

### 4.3 Public Interest Disclosure Officers

Manningham City Council has appointed Public Interest Disclosure Officers to receive disclosures and be a contact point for general advice about the operation of the Act for any person wishing to make a disclosure. Public Interest Disclosure Officers provide a confidential avenue of advice about the operation of the Act for those persons, both internal and external, who may be considering making a disclosure. They will provide a prospective discloser with appropriate support and confidence should the discloser proceed to make a disclosure.

Public Interest Disclosure Officers will:

- make arrangements for a disclosure to be made privately and discreetly and, if necessary, away from the workplace;
- receive any disclosure made orally or in writing from internal or external sources;
- where the person making the disclosure is making it on behalf of another person, explain the reach of the protections and suggest that they may wish to further consult the person on whose behalf they are making the disclosure or that they may wish to consider a joint disclosure;
- encourage the person to make the disclosure in written form;
- where the discloser does not want to or is not prepared to submit the disclosure in written form, to record in writing or on a device capable of making an audio recording any disclosures made orally (subject to the consent of the discloser);
- respect the right of the discloser to remain anonymous but explain, if the discloser is known, that their anonymity may hamper further investigation of the matter and will mean that the discloser will not be advised of the progress/outcome of the matter;
- take all necessary steps to ensure the information disclosed and any supporting documentation is secured and remains private and confidential;
- immediately bring the matter to the attention of the Public Interest Disclosure Coordinator for further action in accordance with the Act;
- forward all disclosures and supporting documentation to the Public Interest Disclosure Coordinator for further action in accordance with the Act;
- not disclose any details of the disclosure to any person except the Public Interest Disclosure Coordinator or the Chief Executive Officer and then only as necessary in relation to handling the disclosure.
- offer to be a support person for the discloser in dealing with the Public Interest Disclosure Coordinator.

The Protected Disclosure Officers appointed by Manningham City Council and their contact details are:

- Kerryn Paterson, Group Manager People and Communications, telephone 9840 9386;
- Carrie Bruce, Senior Governance Advisor, telephone 9840 9210
- Vicki Miller, Senior Risk and Assurance Advisor, telephone 9840 9204



#### **4.4 Public Interest Disclosure Coordinator**

Council's Public Interest Disclosure Coordinator has oversight and responsibility for the operation of the Public Interest Disclosure Procedures and compliance with the provisions of the Act.

The Public Interest Disclosure Coordinator is:

- contactable for those people seeking general advice on the operation of the Act in relation to the activities of Manningham City Council and for those making disclosures;
- to receive all disclosures forwarded from Council's Public Interest Disclosure Officers;
- responsible for ensuring that Manningham City Council carries out its responsibilities under the Act, any regulations made pursuant to the Act and any guidelines issued by the IBAC;
- Manningham City Council's nominated liaison officer with the IBAC in regard to the Act;
- responsible for coordinating Manningham City Council's reporting system;
- to take all necessary steps to ensure information received or obtained in connection with a disclosure, including the identities of the discloser and the person(s) to whom the disclosure relates, are kept secure, private and confidential at all times;
- required to consider each disclosure impartially to determine whether it should be notified to the IBAC for assessment under the Act;
- responsible for arranging any necessary and appropriate welfare support for the discloser, including appointing a Welfare Manager to support the discloser and to protect him or her from any reprisals;
- to advise the discloser (except where the discloser is anonymous or seeks anonymity), appropriately and in accordance with the Act, the stage at which the disclosure is at (whether it has been notified to the IBAC for assessment, etc);
- to establish and manage a confidential records keeping system;
- responsible for making sure that workers and Councillors have access to these procedures and that the procedures are on the Council's website;
- to collate statistics on disclosures made; and
- to consider and refer for alternative action any matter that is not assessed to be a disclosure (and referred to IBAC) that it is considered warrants further attention.

Manningham City Council's Public Interest Disclosure Coordinator is Mr Andrew McMaster, Corporate Counsel and Group Manager Governance and Risk. Direct telephone line – 9840 9360.

#### **4.5 Mandatory Notification to Report Suspected Corrupt Conduct**

As of 1 December 2016, Council CEO's and other relevant principal officers must notify IBAC of any matter which they suspect on reasonable grounds that corrupt conduct has occurred or is occurring in their own organisation.

## 5. MAKING A DISCLOSURE

### 5.1 What is a disclosure and who can make a disclosure?

The Act provides for disclosures to be made about:

- (i) improper conduct by public bodies or public officers; and
- (ii) detrimental action taken by public bodies or public officers in reprisal against a person for making a public interest disclosure.

The term disclosure is interpreted under the Act in the ordinary sense of the word, for example, as a “revelation” to the person receiving it. The IBAC considers that a complaint or allegation that is already in the public domain will not normally be a public interest disclosure. Such material would, for example, include matters which have already been subject to media or other public commentary.

The scope of the Act covers conduct that may have taken place, may still be occurring, or is believed to or is intended to be taken or engaged in. Disclosures may also be made about conduct that occurred prior to the commencement of the Act on 10 February 2013. A disclosure may:

- only be made by a natural person (or a group of individuals making joint disclosures), disclosures cannot be made by a company or an organisation;
- be made anonymously;
- be made even where the discloser is unable to identify precisely the individual or the organisation to which the disclosure relates; and
- also be a complaint, notification or disclosure (however described) made under another law.

In circumstances where a person makes a disclosure by ‘notifying’ the agency on behalf of another person, then it is the ‘notifier’ who is entitled to the protections and not the person on whose behalf the disclosure has been made. The person on whose behalf the disclosure has been made will only be entitled to protections against detrimental taken against them in reprisal for the disclosure made by the notifier. In order to ensure that a person receives the protections that they are entitled to or may be expecting, Council encourages the person making the disclosure on behalf of another person to be fully conversant with the application of the protections. They are then encouraged to discuss the reach of the protections with the person on whose behalf they are making the disclosure. This may lead to either the person proceeding to make the disclosure on behalf of the other person, the other person deciding to make the disclosure themselves or the making of a joint disclosure.

Prospective disclosers are encouraged to understand the limitations that anonymous disclosures may create. Anonymous disclosures will impede the Council in communicating with the discloser, and some of the notification requirements imposed on the council in relation to disclosures will not apply in relation to an anonymously made disclosure. There is also the prospect that the Council’s ability to properly assess whether the complaint or allegation is a public interest disclosure for the purposes of the Act may be compromised.

The following are not public interest disclosures under the Act:

- a disclosure that has not been made in accordance with all of the procedural requirements of Part 2 of the Act and the prescribed procedures in the Regulations;
- a disclosure made by a discloser who expressly states in writing, at the time of making the disclosure, that the disclosure is not a disclosure under the Act;
- a disclosure made by an officer or employee of an investigative entity in the course of carrying out his or her duties or functions under the relevant legislation, unless the person expressly states in writing that the disclosure is a disclosure and the disclosure is otherwise made in accordance with Part 2 of the Act.

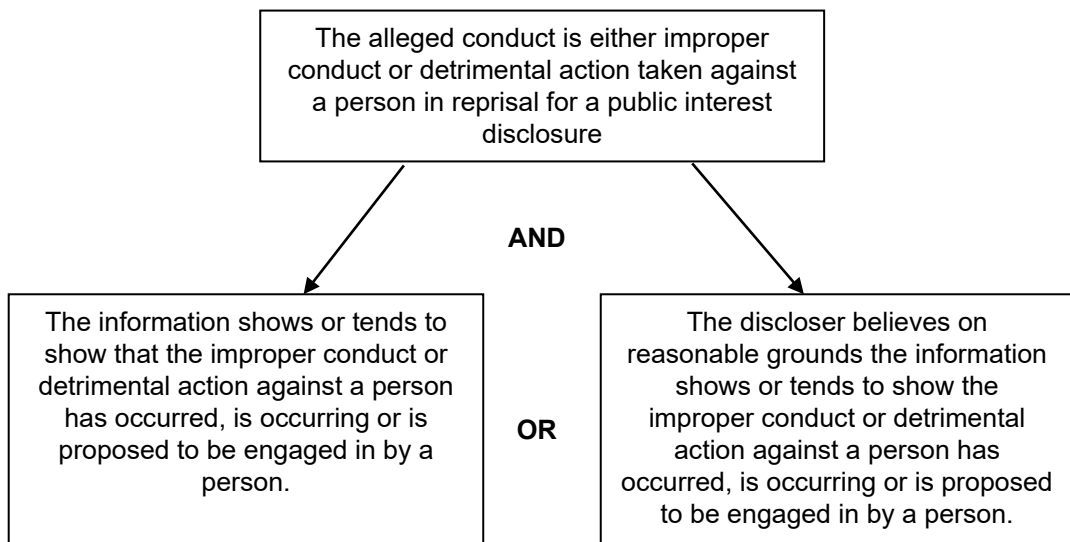
## 5.2 Treatment of matters that are not disclosures

If Council receives a disclosure which does not meet all of the requirements of Part 2 of the Act and prescribed procedures in the Regulations, it will not be treated as a public interest disclosure under the Act. Nevertheless, Council's Public Interest Disclosure Coordinator and Officers, where practical and appropriate to do so, will inform the discloser how to make the disclosure in a way that would comply with the requirements of the Act and the Regulations. This recognises Council's commitment to ensuring that a person is encouraged to make a disclosure and is not inadvertently denied the protections envisaged by the Act.

If a disclosure does not meet the requirements of the Act, Council will consider whether the disclosure should be treated a complaint, notification or referral to the Council in accordance with any other laws, internal policies or procedures. Council will make an assessment whether any follow-up could reasonably expose the person who made the disclosure to detrimental action or some other detriment or disadvantage. Where practical and reasonable to do so, the Public Interest Disclosure Coordinator will discuss this with the discloser before proceeding to take the matter any further. In the event that the Public Interest Disclosure Coordinator decides to take further action in relation to the information received, all care will be taken to protect the identity of the discloser.

## 5.3 What can a disclosure be made about?

A disclosure must be about the conduct of a person, public officer or public body in their capacity as a public body or public officer as outlined in the following diagram:



### 5.3.1 Improper conduct

A disclosure may be made about improper conduct by a public body or public official in the performance of their functions as a public body or public officer.

Central to the notion of improper conduct is the notion of "public trust". "Public trust" is a concept that provides the basis *for obligations of honesty and fidelity in public officers that exist to serve, protect and advance the interests of the public*.

A person acting in their official capacity is exercising 'public power' that is derived from their public office holding and may be controlled or influenced by legislative provisions, administrative directions, or constitutional principles or conventions.

There is an expectation that members of the community may rely on and trust their public bodies and officials to act honestly. The expectation is that public officers will not use their positions for personal advantage, or use the influence of their public office for improper purposes where there is a duty to act objectively and impartially.

Disclosers or the Council will need to identify that there is a link between the alleged improper conduct of a person or an organisation and their function as a public officer or a public body.

Improper conduct is defined in the Act to mean:

- Corrupt conduct, or
- Conduct of a public officer or public body engaged in by the public officer or public body in their capacity as a public officer or public body that constitutes
  - 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 material acquired in the course of the performance of the functions of the public officer or public body,
  - A substantial mismanagement of public resources, or
  - A substantial risk to the health or safety of one of more persons, or
  - A substantial risk to environment, or
- Conduct of any person that
  - Adversely affects the honest performance by a public officer or public body of their functions as a public officer or public body; or
  - Is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and results in the person, or an associate of the person, obtaining –
- A licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
- An appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
- A financial benefit or real or personal property; or
- Any other direct or indirect monetary or proprietary gain –

That the person or associate would not have otherwise obtained; or

- Conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to above.

Conduct that is trivial does not constitute improper conduct for the purposes of the Act.

### **5.3.2 Detrimental action**

It is an offence under the Act for a public officer or body to take detrimental action against a discloser in reprisal for the making of a public interest disclosure. There are two essential components here: whether there is in fact “detrimental action”, as defined by the Act, and whether that action is being taken in reprisal against a person for making or being connected with a public interest disclosure.

**Detrimental action** as defined by the Act includes:

- action causing injury, loss or damage; or
- intimidation or harassment; or
- discrimination, disadvantage or adverse treatment in relation to a person’s employment, career, profession, trade or business, including the taking of disciplinary action.

In addition, a person can have taken detrimental action without having taken the action itself, but just by threatening to take such action. Further, the detrimental action need not necessarily have been taken (or threatened to be taken) against a person making a public interest disclosure, but against any person connected with a public interest disclosure.

Examples of detrimental action prohibited by the Act include:

- threats to a person's personal safety or property, including intimidating, harassing a discloser or the discloser's family or friends, otherwise causing personal injury or prejudice to the safety or damaging property of a discloser or the discloser's family or friends;
- the demotion, transfer, isolation or change in duties of a discloser due to him or her having made a disclosure;
- discriminating or disadvantaging a person in their career, profession, employment, trade or business; or
- discriminating against the discloser or the discloser's family and associates in subsequent applications for promotions, jobs, permits or tenders resulting in financial loss or reputational damage.

The person (or the person incited to take detrimental action) must take or threaten the detrimental action, because, or in the belief that the:

- other person or anyone else has made, or intends to make the disclosure;
- other person or anyone else has cooperated, or intends to cooperate with an investigation of the disclosure.

The reason for the person taking detrimental action in reprisal must be a 'substantial' reason for taking that action, or it will not be considered to be detrimental action.

#### 5.4 How can a disclosure be made?

A disclosure must be made in accordance with Part 2 of the Act. Part 2 of the Act permits disclosures to be made anonymously, orally or in writing, and need not necessarily identify the person or organisation complained about. Generally:

- a verbal disclosure may be made:
  - in person;
  - by telephone, including by leaving a voicemail message on that telephone number; or
  - by any other form of non-written electronic communication.
- Written disclosures can be made directly to the IBAC and the Ombudsman on their websites:
  - <https://ibac.vic.gov.au/reporting-corruption/report/complaints-form> (last accessed 19 December 2019)
  - <https://www.ombudsman.vic.gov.au/Complaints/Make-a-Complaint> (last accessed 19 December 2019)

A disclosure made by email from an address from which the identity of the discloser cannot be ascertained will be treated as an anonymous disclosure.

A disclosure **must** be made in private. For a verbal disclosure, this means the discloser must reasonably believe that only the following people are present or able to listen to the conversation:

- the discloser him or herself (including any other individuals making a joint disclosure at the same time);
- any lawyer representing the discloser; and
- one or more people to whom a disclosure is permitted to be made under the Act or the Regulations.

#### **5.4.1 The disclosure should be made to an entity authorised to receive it**

Manningham City Council can only receive and deal with disclosures which concern Manningham City Council as an organisation and its workers.

Disclosures about improper conduct or detrimental action by Councillors of Manningham City Council must be made to the IBAC or to the Ombudsman.

Disclosures about improper conduct or detrimental action by Manningham City Council or its w may be made to the Council or one of the following external authorities:

- the IBAC;
- the Chief Municipal Inspector in relation to limited types of disclosures;
- the Integrity and Oversight Committee in relation to limited types of disclosures;
- the Ombudsman in relation to limited types of disclosures;
- the VI in relation to limited types of disclosures; or
- the Chief Commissioner of Police in relation to limited types of disclosures.

Although the Act states that disclosures may be made to one of the above external authorities, in most circumstances, disclosures about the Council or its workers should be made to Manningham City Council or to the IBAC.

If a person does not wish their allegation or complaint to be treated as a disclosure made under Part 2 of the Act, the person must, at the time of making the disclosure, expressly state in writing that the disclosure is not a disclosure for the purposes of the Act.

Unless such an express statement has been made, upon receiving a disclosure (whether directly or indirectly), Manningham City Council's Public Interest Disclosure Coordinator will determine whether the disclosure has been made in accordance with Part 2 of the Act. Part 2 of the Act and the Regulations set out how disclosures must be made in order to be a public interest disclosure under the Act.

#### **5.4.2 Misdirected Disclosures**

Where a disclosure is misdirected to the wrong receiving entity, the Act allows for the wrong receiving entity to redirect to another receiving entity without the discloser losing the protections under the Act.

This applies where:

- the receiving entity is an entity to which a public interest disclosure may ordinarily be made; and
- the person making the disclosure must honestly believe that the receiving entity was the appropriate entity to receive the disclosure; and
- the disclosure does not relate to a member of Parliament.

Where Council is not the appropriate receiving entity it, the discloser will be referred to the relevant receiving entity.

If the disclosure has been received by Council, the Public Interest Disclosure Coordinator will:

- consider if the disclosure may be one which shows a public officer or public body has engaged in or proposes to engage in improper conduct or detrimental action; and
- notify the disclosure to the appropriate entity within 28 days.

Beyond this notification, Council is prohibited from disclosing the content of the misdirected disclosure and from disclosing information likely to reveal the identity of the person who made it.

### 5.4.3 How to make a disclosure to Manningham City Council

#### Oral Disclosures

An **oral disclosure** to the Manningham City Council must be made in private and may be made:

- in person;
- by telephone to one of the persons authorised to receive disclosures set out below, including by leaving a voicemail message on that telephone number; or
- by some other form of non-written electronic communication.

The oral disclosure should be made to one of the following persons:

- the Chief Executive Officer of the Manningham City Council;
- the Public Interest Disclosure Coordinator (Council's preferred method);
- one of the Public Interest Disclosure Officers;
- to the line Manager or Director of the discloser, if the discloser is a worker of Manningham City Council; or
- to the line Manager or Director of the person to whom the disclosure relates, if that person is a worker of Manningham City Council.

For the telephone numbers of the Public Interest Disclosure Coordinator and Officers please refer to sections 4.3 and 4.4 of these procedures.

If the disclosure is made orally, the person receiving the disclosure will make notes at the time recording the disclosure. Recording of the conversation will only be done with the discloser's permission or by giving prior warning that the conversation will be recorded.

#### Written Disclosures

A **written disclosure** to the Manningham City Council must be:

- delivered personally to the municipal offices at 699 Doncaster Road Doncaster; or
- sent by post addressed to Manningham City Council, PO Box 1 Doncaster 3108 (addressed "Private and Confidential – Attention Andrew McMaster, Group Manager Governance and Risk; or
- sent by email to the office of the Manningham City Council to [andrew.mcmaster@manningham.vic.gov.au](mailto:andrew.mcmaster@manningham.vic.gov.au) ; or
- sent by email to the official email address of:
  - the line Manager or Director of the discloser, where the discloser is a worker of the Manningham City Council;
  - the line Manager or Director of the person to whom the disclosure relates, where that person is a worker of Manningham City Council;
  - one of the Council's Public Interest Disclosure Officers identified in these procedures;
  - the Council's Public Interest Disclosure Coordinator (Council's preferred method).

The Council recommends that the discloser ensures, where a written disclosure is being provided personally or by post to the official office location or address of the Council, that the disclosure be sealed in an envelope which is clearly marked with one or more of the following:

- "Private and Confidential – Attention Mr Andrew McMaster, Group Manager Governance and Risk"
- "Private and Confidential – Attention Mr Andrew Day, Chief Executive Officer"

It is not suggested that the envelope refer to the Public Interest Disclosure Coordinator or Public Interest Disclosure Officer. This might alert people to the matter and might inadvertently compromise the confidentiality of the matter. For the same reasons, it is suggested that emails be sent directly to the Public Interest Disclosure Coordinator and Public Interest Disclosure Officers without specific reference in the subject to protected disclosures but clearly indicating that the email is private and confidential.

#### 5.4.4 How to make a disclosure to the IBAC

##### Oral Disclosures

An **oral disclosure** to the IBAC **must** be made in private and **may** be made:

- in person;
- by telephone, to 1300 735 135;
- by leaving a voicemail message on the telephone number of one of the specified individuals below to whom an oral disclosure may be made; or
- by some other form of non-written electronic communication.

The oral disclosure must be made to one of the following persons:

- the Commissioner of the IBAC;
- the Deputy Commissioner of the IBAC;
- the CEO of the IBAC;
- an employee referred to in s 35(1) of the IBAC Act; or
- any staff referred to in s 35(2) of the IBAC Act.

A **written disclosure** to the IBAC must be:

- delivered personally to the office of the IBAC, at Level 1, North Tower, 459 Collins Street, Melbourne, VIC 3001; or
- sent by post addressed to the office of the IBAC, at GPO Box 24234, Melbourne, VIC 3000; or
- sent by email to the official email address of a person specified above to whom an oral disclosure may be made (i.e., the Commissioner, the Deputy Commissioner, the CEO, or employee or staff referred to in Section 35 of the IBAC Act); or
- submitted by an online form available from <https://ibac.vic.gov.au/reporting-corruption/report/complaints-form> (last accessed 19 December 2019) .

#### 5.4.5 How to make a disclosure to the Ombudsman

##### Oral Disclosures

An **oral disclosure** to the Ombudsman **must** be made in private and **may** be made:

- in person;
- by telephone, to 9613 6222 or toll free to 1800 806 314;
- by leaving a voicemail message on the telephone number of any Ombudsman officer; or
- by some other form of non-written electronic communication.

The oral disclosure may be made to an Ombudsman officer.



### **Written Disclosures**

A **written disclosure** to the Ombudsman must be:

- delivered personally to the office of the Ombudsman, at Level 2, 570 Bourke Street, Melbourne, VIC 3000; or
- sent by post addressed to the office of the Ombudsman, as above; or
- sent by email to the office of the Ombudsman at: [ombudvic@ombudsman.vic.gov.au](mailto:ombudvic@ombudsman.vic.gov.au); or
- sent by email to the official email address of any Ombudsman officer; or
- submitted by an online form (if any) identified in the procedures established by the Ombudsman under Section 58(1) of the Act.

#### **5.4.6 How to make a disclosure to the Victorian Inspectorate**

### **Oral Disclosures**

An **oral disclosure** to the VI **must** be made in private and **may** be made:

- in person;
- by telephone to 8614 3225;
- by leaving a voicemail message on the telephone number of one of the individuals specified below who is authorised to receive disclosures;
- by some other form of non-written electronic communication.

The oral disclosure must be made to one of the following persons:

- the Inspector appointed under s 18(1) of the Victorian Inspectorate Act 2011 (“VI Act”);
- an employee referred to in s 28(1) of the VI Act; or
- any staff member referred to in s 28(2) of the VI Act.

### **Written Disclosures**

A **written disclosure** to the VI **must** be:

- delivered personally to the office of the VI; or
- sent by post addressed to the office of the VI, at PO Box 617 Collins Street West, Melbourne Vic 8007; or
- sent by email to the office of the VI at: [info@vicinspectorate.vic.gov.au](mailto:info@vicinspectorate.vic.gov.au); or
- sent by email to the official email address of a person specified above to whom an oral disclosure may be made (i.e., the Inspector, employee or staff referred to in s 28 of the VI Act); or
- submitted by an online form (if any) identified in the procedures established by the VI under s 58(1) of the Act.

#### **5.4.7 Disclosures to the Chief Commissioner of Police**

There are no particular Regulations at this time prescribing detailed procedures for making a disclosure to the Chief Commissioner of Police. The standard procedures as set out in Part 2 of the Act and as outlined in these procedures still apply where relevant.

#### **5.4.8 Disclosures about other public bodies or public officers**

For disclosures relating to improper conduct or detrimental action involving other public bodies or officers who are not workers of Manningham City Council, the person intending to make a disclosure should contact IBAC for further information and guidance.

For further information, also see the Guidelines for Making and Handling Protected Disclosures October 2016 - [https://www.ibac.vic.gov.au/docs/default-source/guidelines/guidelines-for-handling-public-interest-disclosures.pdf?sfvrsn=eb8b6875\\_14](https://www.ibac.vic.gov.au/docs/default-source/guidelines/guidelines-for-handling-public-interest-disclosures.pdf?sfvrsn=eb8b6875_14) (last accessed 19 December 2019)

## **6. HANDLING DISCLOSURES**

### **6.1 Assessing a disclosure**

When the Council receives a complaint, report or allegation of improper conduct or detrimental action, the first step will be to ascertain whether it has been made in accordance with Part 2 of the Act.

If the disclosure satisfies Part 2 of the Act, the discloser is entitled to receive protections under Part 6 of the Act. If the disclosure satisfies the requirements of Part 2 of the Act, the Council is required to determine whether the disclosure may be a public interest disclosure by going through the two step assessment process recommended by the IBAC.

This will be the case even if the discloser does not refer to the Act or require the protections of the Act. The initial assessment is made on the nature of the information disclosed or on the belief that the discloser has about the nature of the information, and not the discloser's intention.

#### **6.1.1 First step**

The first step is to assess whether the information disclosed shows, or tends to show, that there is improper conduct or detrimental action taken in reprisal for the making of a protected disclosure.

This requires the Council to ascertain whether the information satisfies the 'elements' of improper conduct or detrimental action, as defined in the Act and whether any of the relevant exceptions apply.

This may require the Council to:

- seek further information;
- conduct a discreet initial enquiry;
- seek (further) evidence from the discloser;
- ascertain whether there is sufficient supporting material to demonstrate that the conduct or actions covered by the Act have occurred, are occurring or are likely to occur.

In assessing whether there is improper conduct or detrimental action, the Council will examine all available information about the alleged conduct and about the person making the disclosure. Preliminary questions the Council may take into consideration include:

- What is the discloser's connection to the alleged conduct – is the discloser a victim, a witness, or a participant in the improper conduct?
- How did the discloser come to know about the conduct – was or is the discloser directly involved in it, did the discloser observe it happening to another person or did someone else tell the discloser about it, or is it based on supposition or conjecture?
- How detailed is the information provided – is there sufficient information to enable the Council to consider whether there is improper conduct or detrimental action?
- How reliable is the information given to the Council – is it supported by other information?

If it is not clear that the information disclosed does show or tend to show that there is improper conduct or detrimental action, then Council will proceed to the second step.

### **6.1.2 Second step**

This requires the Council to ask whether the discloser believes on reasonable grounds that the information shows or tends to show there is improper conduct or detrimental action. That is, does the person actually believe that the information shows, or tends to show, there is improper conduct or detrimental action? A reasonable belief requires the belief to be based on facts that would be sufficient to make a reasonable person believe there was improper conduct or detrimental action.

This reasonable belief does not have to be based on actual proof that the improper conduct or detrimental action in fact occurred, is occurring, or will occur, but there must be some information supporting this belief. The grounds for the reasonable belief can leave something to surmise or conjecture, but it must be more than just a reasonable suspicion, and the belief must be probable.

The IBAC's position is that simply stating that improper conduct or detrimental action is occurring, without providing any supporting information, would not be a sufficient basis for having a reasonable belief. In the IBAC's view, a belief cannot be based on a mere allegation or conclusion unsupported by any further facts or circumstances.

Other matters that the IBAC suggests that Councils can consider are:

- the reliability of the information provided by the discloser, even if it is second or third-hand. For example, how would the discloser have obtained the information?
- The amount of detail that has been provided in the information disclosed; and
- the credibility of the discloser, or of those people who have provided the discloser with information.

## **6.2 Where urgent action is required while an assessment is still being made**

In some circumstances, the disclosure may be about improper conduct that may pose an immediate threat to health and safety of individuals, preservation of property, or may consist of serious criminal conduct.

Examples of this provided by the IBAC include where the disclosure may be about:

- a child protection worker allegedly sexually assaulting children in care;
- a council worker allegedly lighting bush fires; or
- a person threatening to poison the water supply.

In these cases the Council can take immediate action while considering whether or not it is an assessable disclosure that must be notified to IBAC or awaiting IBAC's decision on a notified matter.

It may also be necessary to report criminal conduct to Victoria Police for immediate investigation, or take management action against an employee to prevent future conduct.

The Act allows the Council to disclose the content of the disclosure by a person or body "to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of an assessable disclosure including disciplinary process or action". This does not allow the identity of the discloser to be revealed. Reporting the alleged conduct to the Victoria Police as criminal conduct, or taking legitimate management action against the subject of the disclosure in order to prevent future conduct, may be appropriate courses of action in these circumstances.

### 6.3 Assessment decisions

At the conclusion of the assessment, the Council will decide whether it considers the disclosure to be a public interest disclosure. This decision will be made by the Chief Executive Officer in consultation with the Public Interest Disclosure Coordinator. If the Council decides that it may be a public interest disclosure, the IBAC will be notified of the disclosure. If the Council does not consider it to be a public interest disclosure, then it may be a matter that the Council otherwise deals with through any other means. (Refer to section 5.2 titled "Treatment of matters that are not disclosures")

### 6.4 Notifications

#### 6.4.1 If the Council does not consider the disclosure to be a public interest disclosure

If the Council determines the disclosure is not a public interest disclosure, and the discloser has indicated to Manningham City Council (or it otherwise appears to the Council) that the discloser wishes to receive the protections that apply to a public interest disclosure under the Act, the discloser will be notified in writing, within 28 days of the Council receiving the disclosure, that:

- Manningham City Council considers the disclosure is not a public interest disclosure;
- the disclosure has not been notified to the IBAC for assessment under the Act; and
- regardless of whether the disclosure is notified to the IBAC for assessment under the Act, the protections under Part 6 of the Act apply.

Notifications to a discloser will not be able to be provided where the disclosure has been made anonymously.

#### 6.4.2 If the Council considers the disclosure may be a public interest disclosure

If the Council considers the disclosure may be a public interest disclosure under the Act, the Council will, within 28 days of receiving the disclosure:

- notify the IBAC that:
  - the Council considers the disclosure may be a public interest disclosure; and
  - the Council is notifying the disclosure to the IBAC for assessment under Section 21 of the Act; **and**
- notify the discloser that:
  - the disclosure has been notified to the IBAC for assessment under the Act; and
  - it is an offence under Section 74 of the Act to disclose that the disclosure has been notified to the IBAC for assessment under the Act.

At the time of notifying the IBAC under Section 21 of the Act or at any later time, the Council will also provide the IBAC with any information obtained by the Council regarding the disclosure in the course of its enquiries leading up to its notification of the disclosure to the IBAC.

### 6.5 Protections for public officers

A public officer is given specific protections under the Act to provide information to other public officers or to the IBAC in dealing with a disclosure they have received. When a public officer acts in good faith and in accordance with the Act, Regulations and the IBAC's Guidelines, the public officer does not commit an offence under laws imposing a duty to maintain confidentiality or restricting the disclosure of information.

## **7. ASSESSMENT BY THE IBAC**

Once a disclosure has been notified to the IBAC, the IBAC must determine whether it is a public interest disclosure complaint. Such a determination must be made within a reasonable time after the disclosure is notified to the IBAC.

The IBAC must inform Manningham City Council of its determination as to whether or not the disclosure is a public interest disclosure complaint:

- in writing; and
- within a reasonable time after making the determination.

In making its assessment, the IBAC may seek additional information from the Council or from the discloser if the IBAC considers there is insufficient information to make a decision.

If the IBAC is of the view that the assessable disclosure is not a public interest disclosure, then it is not a 'public interest complaint'. If the IBAC is of the view that the assessable disclosure is a public interest disclosure, then it must determine that the protected disclosure is a "public interest complaint".

### **7.1 If the IBAC determines the disclosure is not a public interest complaint**

If the IBAC determines the disclosure is not a protected disclosure complaint, the IBAC must advise the discloser in writing and within a reasonable time after the determination is made, that:

- the IBAC has determined that the disclosure is not a public interest complaint; and
- as a consequence of that determination:
  - the disclosure will not be investigated as a public interest complaint; and
  - the confidentiality provisions under Part 7 of the Act no longer apply in relation to the disclosure; and
- regardless of whether the IBAC has determined that the disclosure is a public interest complaint, the protections under Part 6 apply to a public interest disclosure.

In addition, if the IBAC is of the view that the disclosure, although not a public interest complaint, may be able to be dealt with by another entity, the IBAC may advise the discloser that:

- the matter which is the subject of the disclosure may be able to be dealt with by that entity other than as a public interest complaint; and
- if the discloser wishes to pursue the matter, to make a complaint directly to that entity.

If this is the case, the IBAC will also advise the relevant notifying entity that the discloser has been given this advice.

The IBAC is also able to consider whether it wishes to treat the assessable disclosure as a notification made to the IBAC under the IBAC Act.

### **7.2 If the IBAC determines the disclosure is a public interest complaint**

If the IBAC determines the disclosure is a public interest complaint, the IBAC must advise the discloser in writing and within a reasonable time after the determination is made, that:

- the IBAC has determined that the disclosure is a public interest complaint;
- regardless of the determination, the protections available to a discloser of a public interest disclosure under Part 6 of the Act apply;
- the discloser has rights, protections and obligations under the Act as contained in Sections 72, 74 and Parts 6 and 7 of the Act, including an explanation of the effect of those sections and Parts of the Act; and
- it is an offence under Section 74 of the Act to disclose that the IBAC has determined that the disclose is a public interest complaint.

Whether or not IBAC determines the disclosure to be a public interest complaint, the protections under Part 6 of the PD Act apply to the discloser.

Once the IBAC has determined that a disclosure is a public interest complaint, the discloser cannot withdraw that disclosure. However, under the IBAC Act, the IBAC can decide not to investigate a public interest complaint if the discloser requests that it not be investigated.

### **7.3 Further actions the IBAC may take**

Under the IBAC Act, the IBAC may dismiss, investigate, or refer a public interest complaint. If the IBAC dismisses a public interest complaint, then it must do so on one of the grounds specifically set out in the IBAC Act. In particular, the IBAC must dismiss a public interest complaint if the matter disclosed is a matter that neither the IBAC nor an investigating entity may investigate.

The IBAC may choose to investigate the alleged conduct if it is reasonably satisfied that it is “serious corrupt conduct”.

The IBAC may also choose to refer the public interest complaint to other appropriate and relevant investigative entities.

Depending on the action decided to be taken by the IBAC, the IBAC must also provide certain other information to the discloser. That information is set out in the IBAC’s Guidelines for Handling Public Interest Disclosures which can be viewed here: [https://www.ibac.vic.gov.au/docs/default-source/guidelines/guidelines-for-handling-public-interest-disclosures.pdf?sfvrsn=eb8b6875\\_14](https://www.ibac.vic.gov.au/docs/default-source/guidelines/guidelines-for-handling-public-interest-disclosures.pdf?sfvrsn=eb8b6875_14) (last accessed 19 December 2019).

### **7.4 Other information about investigative entities’ investigations of a protected disclosure complaint**

If the IBAC or another investigative entity is conducting an investigation of a public interest complaint, it may be in contact with the Council or person about which the disclosure has been made. This will be for the purpose of conducting investigative enquiries.

The Council or person will be able to disclose information about the public interest complaint to the investigative entity without breaching the confidentiality requirements of the Act.

The relevant investigative entity may also disclose the identity of the discloser and the content of the disclosure if necessary to do so for the purposes of their investigative action. If this is the case, then the Council or person to whom the information has been disclosed, is bound by the confidentiality requirements of Part 7 of the Act.

If the Council or public officer is advised of the identity of the discloser, then they will be required to look after the welfare of the discloser and provide protection against possible detrimental action.

At the conclusion of its investigation, the relevant investigative entity must generally provide the discloser with information about the results of its investigation, including any action taken by the investigative entity and any recommendation by the investigative agency that action or further action be taken.

The investigative entity may provide written information about the commencement, conduct or result of an investigation, including any actions taken and any recommendation made that any action or further action be taken to the relevant principal officer. However, the investigative entity must not provide any information that is likely to lead to the identification of a discloser.

The investigative entity does not have to provide this information to either the discloser or the relevant principal officer in specified circumstances set out in the IBAC Act or the *Ombudsman Act 1973*.

## 8. WELFARE MANAGEMENT

Manningham City Council is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of public interest disclosures.

The protection of persons making genuine public interest disclosures about improper conduct or detrimental action is essential for the effective implementation of the Act. In addition, the Act extends the need for welfare management to people who have cooperated or intend to cooperate with an investigation of a public interest complaint (“co-operators”). Persons who are the subject of allegations will also have their welfare looked after.

The Council must ensure disclosers and co-operators are protected from direct and indirect detrimental action being taken against them in reprisal for the public interest disclosure. The Council will ensure its workplace culture supports disclosers and co-operators. Such support will extend to the relevant persons regardless of whether they are internal to the organisation (e.g., workers and Councillors) or external members of the public. However, different legislative responsibilities (including those external to the Act) apply to persons internal to the organisation, and to persons who may be clients or users of the Council’s services. Those derive from various legislative and administrative obligations to:

- ensure the health and wellbeing of employees of a public sector body under laws including those relating to Occupational Health and Safety, the *Charter of Human Rights and Responsibilities Act 2006*, the *Public Administration Act 2004*, and various Victorian Public Sector Codes of Conduct (as relevant); and
- comply with various relevant laws, policies and practices when making administrative and other decisions or taking particular actions affecting a customer, client or user of the public body’s services. The IBAC uses the example of a public housing tenant client of the Department of Human Services to illustrate this point. If the tenant makes a disclosure about an officer of the Department allocating a house to a relative of the officer, without them having to go through the normal application process, then the IBAC’s view is that the Department has legislative and administrative obligations to meet in handling the welfare of the discloser.

Generally, for internal persons, the Council will ensure a supportive work environment and respond appropriately to any reports of intimidation or harassment against these persons. For external persons, the Council will take reasonable steps to provide appropriate support. The Council will discuss reasonable expectations with all persons receiving welfare management in connection with a public interest disclosure.

### 8.1 Support available to disclosers and co-operators

The Council will support disclosers and co-operators by:

- keeping them informed, by providing:
  - confirmation that the disclosure has been received;
  - the legislative or administrative protections available to the person;
  - a description of any action proposed to be taken;
  - if action has been taken by the Council, details about results of the action known to the Council;
- providing active support by:
  - acknowledging the person for having come forward
  - assuring the discloser or co-operator that they have done the right thing, and the Council appreciates it;
  - making a clear offer of support;
  - assuring them that all reasonable steps will be taken to protect them;
  - giving them an undertaking to keep them informed as far as the Council is reasonably able to;
- managing their expectations by undertaking an early discussion with them about:
  - what outcome they seek;
  - whether their expectations are realistic;
  - what the Council will be able to deliver;

- maintaining confidentiality by:
  - ensuring as far as is possible that other people cannot infer the identity of the discloser or co-operator;
  - reminding the discloser or co-operator not to reveal themselves or to reveal any information that would enable others to identify them as a discloser or co-operator;
  - ensuring that hardcopy and electronic records relating to the disclosure are accessible only to those who are involved in managing disclosures in the Council;
- proactively assessing the risk of detrimental action being taken in reprisal (rather than reactively waiting for a problem to arise and a complaint made by the discloser or co-operator), that is, actively monitor the workplace, anticipating problems and dealing with them before they develop as far as is possible;
- protecting the discloser or co-operator by:
  - examining the immediate welfare and protection needs of the person and seeking to foster a supportive work environment;
  - listening and responding to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions;
  - assessing whether the concerns the person may have about harassment, intimidation or victimisation might be due to other causes other than those related to the public interest disclosure;
- preventing the spread of gossip and rumours about any investigation into the public interest disclosure; and
- keeping contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action.

### **8.1.1 Appointment of a Welfare Manager**

In appropriate circumstances, the Council will appoint a suitable welfare manager to protect a discloser or a co-operator. The following matters will be taken into consideration by the Council when deciding whether to appoint a welfare manager in a particular case:

- are there any real risks of detrimental action against the discloser or co-operator, taking into account their particular circumstances?
- whether the Council can will take the discloser or co-operator seriously and treat them with respect?
- whether the Council will give the discloser or co-operator effective support, including keeping the discloser informed of the status of the disclosure?
- can the Council protect the person from suffering repercussions, by dealing with the matter discreetly and confidentially, and responding swiftly and fairly to any allegations that the discloser or co-operator has in fact suffered retribution?

If the answer to the first question is 'yes' then the IBAC recommends the appointment of a dedicated welfare officer. If the answer to the first question is 'no' and the Council can meet the needs set out in the remainder of the questions, the IBAC suggests there may be no need for a dedicated welfare officer to be appointed for that particular case.

In most circumstances, a welfare officer will only be required where a public interest complaint proceeds to investigation, but each public interest disclosure received by the Council will to be assessed on its own merits.

If appointed, the Welfare Manager will, in addition to providing the general support set out above at:

- advise the discloser or co-operator of the legislative and administrative protections available to him or her, including providing practical advice;
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure;



- not divulge any details relating to the public interest disclosure to any person other than the Public Interest Disclosure Coordinator or the CEO;
- ensure all meetings between the Welfare Manager and the discloser or co-operator are conducted discreetly to protect the person from being identified as being involved in the public interest disclosure; and
- ensure the expectations of the discloser are realistic and reasonable, and that the discloser or co-operator understands the limits of the support the Council is able to reasonably provide in the particular circumstances. This is particularly pertinent in the case where a Welfare Manager has been appointed in relation to an external discloser or co-operator.

## **8.2 Welfare management of persons who are the subject of public interest disclosures**

The Council will also meet the welfare needs of a person who is the subject of a public interest disclosure. It is important to remember that until a public interest complaint is resolved, the information about the person is only an allegation.

The Council will make a decision about whether or when the subject of a disclosure will be informed about a public interest disclosure involving an allegation made against him or her. It is possible that the subject of the disclosure may never be told about the disclosure if it is not determined to be a public interest complaint, or if a decision is made to dismiss the disclosure.

The Act limits the disclosure of information about the content of an assessable disclosure and the identity of the discloser to certain specified circumstances set out in Part 7 of the Act. The Council may give information about the disclosure to the subject of the disclosure if it is directed or authorised to do so by the investigative entity investigating the public interest complaint, or for the purpose of taking action with respect to the conduct alleged, including disciplinary action.

Investigative entities may also inform the subject of the public interest complaint in the course of their investigation for the purposes of conducting that investigation, or any actions that they propose to take as a result of the investigation.

A person the subject of a disclosure who is made aware of their status as such may have a welfare manager appointed by the Council, or be referred to the Council's EAP program for welfare assistance. The Council will consider each matter on a case by case basis, taking into account the particular circumstances of the person and the public interest complaint. In conforming with Council's confidentiality obligations under the Act as outlined in these procedures, the fact that a disclosure has been made, whether it has been notified to the IBAC for assessment, any information received from the IBAC or another investigative entity and the identities of persons involved will not be divulged.

The Council will take all reasonable steps to ensure the confidentiality of the subject of a disclosure during any assessment and any ensuing investigation. Where the disclosure is dismissed or investigations do not substantiate the allegations made against the person, the fact that the investigation was undertaken, its results, and the identity of the person subject of the disclosure will continue to be kept confidential.

### **8.2.1 Natural justice**

Manningham City Council will afford natural justice to the subject of a disclosure prior to any decision being made about the allegations. If the matter has been investigated by an investigative entity, then the investigative entity will be responsible for ensuring consultations with the subject include the provision of natural justice to him or her. The IBAC has noted that affording a subject of a disclosure natural justice in this context means that if a decision is to be made about their conduct this person has the right to:

- be informed about the substance of the allegations against them;
- be given the opportunity to answer the allegations before a final decision is made;
- be informed about the substance of any adverse comment that may be included in any report arising from an investigation; and
- have his or her defence set out fairly in any report.

### **8.2.2 If the allegations are wrong or unsubstantiated**

Manningham City Council will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are wrong or unsubstantiated. In those circumstances, the Council and any investigative entity involved will ensure that there are no adverse consequences for this person arising out of the disclosure or its investigation. This is particularly crucial in a situation where there has been publicly disclosed information identifying the subject, but also where such information has become well-known across the Council and the subject is a worker of Councillor of the Council.

Further, if the matter has been publicly disclosed by Manningham City Council, the CEO will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

### **8.3 If detrimental action is reported**

If any person reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action apparently taken in reprisal for a disclosure, the Welfare Manager or Public Interest Disclosure Coordinator must record details of the incident and advise the person of their rights under the Act.

A person takes detrimental action against another person in reprisal for a public interest disclosure if:

- the person takes, or threatens to take, detrimental action against the other person because, or in the belief that:
  - the other person or anyone else has made, or intends to make, the disclosure; or
  - the other person or anyone else has cooperated, or intends to cooperate, with an investigation of the disclosure; or
- for either of the reasons above, the person incites or permits someone else to take or threaten to take detrimental action against the other person.

It is a criminal offence to take detrimental action against another person in reprisal for a public interest disclosure under the Act. The penalty for committing such an offence in contravention of the Act is a maximum fine of 240 penalty units, usually increasing 1 July every year in accordance with arrangements made under the *Monetary Units Act 2004*, two years imprisonment or both.

In such circumstances, the Council will be careful about making preliminary enquiries or gathering information concerning such an allegation of detrimental action so that, to the extent it is reasonably able to, it protects the integrity of any evidence that might be later relied upon in a criminal prosecution.

The taking of detrimental action in reprisal for making a disclosure can be grounds for the recipient to make a further disclosure with respect to that conduct. The disclosure of this allegation will then be assessed by the Council as a new disclosure under Part 2 of the Act. Where the detrimental action is of a serious nature likely to amount to a criminal offence, the Council will also consider reporting the matter to the police or the IBAC (if the matter was not already the subject of a disclosure notified to the IBAC).

A discloser of a public interest disclosure may also:

- take civil action against the person who took detrimental action against them and seek damages;
- take civil action against Manningham City Council jointly and severally to seek damages if the person who took detrimental action against the discloser took that action in the course of employment with, or while acting as an agent of Manningham City Council; and
- apply for an order or an injunction from the Supreme Court.

## **8.4 Protections for persons making a protected disclosure**

### **8.4.1 Part 6 protections available to disclosers**

Part 6 of the Act sets out the protections provided to persons who make a disclosure that is a 'public interest disclosure', i.e., one that is made in accordance with Part 2 of the Act. In summary, they are as follows:

- the discloser is not subject to any civil or criminal liability for making the public interest disclosure;
- the discloser is not subject to any administrative action (including disciplinary action) for making the public interest disclosure;
- by making the public interest disclosure, the discloser is not committing an offence against the *Constitution Act 1975* or any other law that imposes obligations of confidentiality or otherwise restricts the disclosure of information;
- by making the public interest disclosure, the discloser is not breaching any other obligation (made by oath, rule of law or practice) requiring him or her to maintain confidentiality; and
- the discloser cannot be held liable for defamation in relation to information included in a public interest disclosure made by him or her.

The protections in Part 6 apply from the time at which the disclosure is made by the discloser. They apply even if the Council receiving the disclosure does not notify the disclosure to the IBAC, and even if the IBAC has determined that the public interest disclosure is not a public interest complaint.

The protections also apply to further information relating to a public interest disclosure made by the original discloser, if the further information has been provided, verbally or in writing, to:

- the entity to which the public interest disclosure was made;
- the IBAC; or
- any investigating entity investigating the public interest disclosure.

### **8.4.2 Loss of protections caused by actions of the discloser**

A discloser can lose the protections of the Act by their own actions. The Act provides that a discloser is not protected if they commit an offence under Sections 72 or 73 of Act in the following circumstances:

- provide false or misleading information, or further information that relates to a public interest disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a public interest disclosure (maximum penalty: a fine of 120 penalty units, usually increasing 1 July every year in accordance with arrangements made under the *Monetary Units Act 2004*, 12 months imprisonment, or both);
- claim that a matter is the subject of a public interest disclosure knowing the claim to be false (maximum penalty: a fine of 120 penalty units, 12 months imprisonment, or both);

- falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a public interest disclosure complaint (maximum penalty: a fine of 120 penalty units, 12 months imprisonment, or both).

#### **8.4.3 Other limitations on protections afforded to disclosers**

A discloser is not protected against legitimate management action being taken by the Council in accordance with the Act.

In addition, although the discloser of a public interest disclosure is not subject to criminal or civil liability for making the disclosure, the Act specifically provides that a person remains liable for their own conduct even though the person has made a disclosure of that conduct under the Act. Therefore, the discloser will still be held liable for their own conduct that they disclose as part of making a public interest disclosure.

Where a discloser is implicated in improper conduct, Manningham City Council will handle the disclosure and protect the discloser from reprisals in accordance with the Act, the IBAC's guidelines and these procedures. Manningham City Council acknowledges that the act of disclosing should not shield disclosers from the reasonable consequences flowing from any involvement in improper conduct. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

The management of the welfare of a discloser may become complicated when that person is implicated in misconduct, whether or not that misconduct is related to the disclosure.

Taking disciplinary or other action against a person who has made a public interest disclosure invariably creates the perception that it is being taken in reprisal for the disclosure. The CEO will make the final decision on the advice of the Public Interest Disclosure Coordinator as to whether disciplinary or other action will be taken against a discloser. Where disciplinary or other action relates to conduct that is the subject of the disclosure, the disciplinary or other action will only be taken after the disclosed matter has been appropriately dealt with.

In all cases where disciplinary or other action is being contemplated, any such action will not be taken without the Council's Chief Executive Officer ensuring that:

- the fact that a person has made a public interest disclosure is not a substantial reason for the Council taking the action against the worker;
- there are good and sufficient grounds that would fully justify action against any other person in the same circumstances;
- there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

The Council will take all reasonable steps to thoroughly document its decision-making process, including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not being taken in retribution against the discloser for making the disclosure, so that it will be able to clearly demonstrate that the disciplinary or other action was taken for the appropriate and permitted reasons under the Act.

The discloser will be clearly informed of any action proposed to be taken, be afforded natural justice, and be informed of any mitigating factors that have been taken into account. Such communications with the discloser will be made in plain English and reasonable steps to provide support will be offered where appropriate.

## **9. CONFIDENTIALITY**

### **9.1 General obligation of confidentiality on Manningham City Council and all individuals**

Manningham City Council will take all reasonable steps to protect the identity of the discloser and the matters disclosed by a discloser. Maintaining confidentiality in relation to public interest disclosure matters is crucial, among other things, in ensuring reprisals are not made against a discloser.

The obligation of confidentiality extends to any person receiving a disclosure or making a disclosure. It is in the interest of the discloser to ensure he or she does not discuss any related matters other than with authorised persons within Manningham City Council, officers of the IBAC, or other persons authorised by law.

### **9.2 Information management**

Manningham City Council will ensure all documents related to a disclosure, whether paper or electronic, are kept securely. Records will only be accessible to those people involved in processing the particular disclosure. Except where the Chief Executive Officer or the Public Interest Disclosure Coordinator is the subject of the disclosure, they may view, access and discuss, in strict privacy, the details of any disclosure. Otherwise all disclosure records will be accessible only by the Public Interest Disclosure Coordinator or a Public Interest Disclosure Officer involved in a particular matter. Where necessary, a Welfare Manager (also a Public Interest Disclosure Officer) may be able to gain access (where appropriate) to related welfare matters.

The Welfare Manager will not divulge any details relating to the disclosed matter to any person other than the Public Interest Disclosure Coordinator or an investigator appropriately authorised under the Act or the IBAC Act. All meetings between any relevant persons, including Public Interest Disclosure Officers, the Welfare Manager and disclosers will be conducted discreetly to protect the confidentiality of the person making a public interest disclosure.

All hard-copy printed material will be stored in files that are clearly marked as Confidential - Public Interest Disclosure Act matters, and display a warning that criminal penalties apply to any unauthorised access, use or divulging of information concerning a public interest disclosure.

All electronic files will be secured with restricted access and password protection. Backup files will be kept on appropriately secured portable media. All other materials in connection with a public interest disclosure will also be stored securely with the public interest disclosure file.

Manningham City Council will not transmit documents in connection with a disclosure by email. All telephone calls and meetings relating to disclosures will be conducted privately and in strict confidence. Hard copy documents will be delivered by hand or by secure courier services.

### **9.3 Exemption from the Freedom of Information Act 1982 (“FOI Act”)**

The FOI Act provides a general right of access for any person to seek documents in the possession of Manningham City Council. However, the Act provides that certain information related to public interest disclosures as contained in documents in the possession of Manningham City Council will be exempt from the application of the FOI Act. Such information excluded from the operation of the FOI Act includes:

- any information relating to a disclosure made in accordance with the Act;
- any information relating to a disclosure notified to the IBAC by Manningham City Council under Section 21 of the Act for assessment; and
- any information that is likely to lead to the identification of a discloser.

The Council is required to contact the IBAC prior to providing any document originating from the IBAC or relating to a public interest disclosure, if that document is sought under the FOI Act.

#### **9.4 Limited exceptions permitted by the Act**

The Act makes it a crime to disclose information connected with a disclosure made in accordance with the Act. Limited exceptions to the prohibition on disclosure are specified by the Act, include circumstances such as:

- where disclosure is required by Manningham City Council (or one of its officers) in the exercise of functions of Manningham City Council under the Act;
- where necessary for the purpose of the exercise of functions under the Act;
- by an investigating entity for the purpose of exercising that entity's functions under the IBAC Act;
- in accordance with a direction or authorisation given by the investigating entity that is investigating the disclosure;
- to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of an assessable disclosure including a disciplinary process or action;
- where the IBAC or the VI has determined that the assessable disclosure is not a public interest disclosure and the discloser or Manningham City Council subsequently discloses the information;
- when an investigative entity had published a report to Parliament, in accordance with its confidentiality obligations;
- for the purpose of obtaining legal advice in relation to matters specified in the Act;
- recipients of confidentiality notices are entitled to disclose restricted matters to certain categories of persons, unless the issuing agency makes a direction to the contrary;
- external disclosures made in accordance with the Act;
- in order to enable compliance with the Act:
  - where a person does not have a sufficient knowledge of the English language, to obtain a translation from an interpreter;
  - where a person is under 18 years of age, to a parent or guardian of a;
  - where a person is suffering a disability and is not able to understand, to an independent person;
- in disciplinary actions or legal proceedings for certain offences in the Act or other specified Acts.

The discloser of a public interest complaint may always seek advice and support from specified categories of persons without seeking permission. This enables information and content about an assessable disclosure to be provided to a registered health practitioner, trade union, employee assistance program, the Victorian WorkCover Authority or, for the purposes of an application, to the Fair Work Commission.

It is important to note that the Act prohibits the inclusion of any details, in any report or recommendation, which is likely to lead to the identification of a discloser. The Act also prohibits the identification of the person who is the subject of the disclosure in any particulars included in an annual report or any reports to Parliament.

#### **9.5 External disclosures**

If a person who has made a public interest complaint is not satisfied with the way it is being handled by the investigative entity, the person may in certain circumstances, where the disclosure has not been adequately addressed, make a further disclosure of substantially the same subject matter to external parties (ie; those who are not authorised to receive public interest disclosures).

An external disclosure may be made if:

- the original disclosure was not made anonymously
- the original disclosure was determined to be a public interest complaint and the discloser was notified of that determination; and

one of the following situations applies:

- the discloser has not been notified of any action taken in relation to the disclosure within six months of determination as a public interest complaint and has not received a response 30 days after requesting an update on progress
- an investigation has not been completed 12 months after determination as a public interest complaint and has not received a response 30 days after requesting an update on progress
- an investigation has not been completed 12 months after determination as a public interest complaint and, although the discloser received a response within the 30 days after the requesting of an update on progress, the discloser received no further update advising the investigation has been completed six months after that response.

The protections provided to public interest disclosures under Part 6 of the Act will also apply to these external disclosures.

An external disclosure must not contain information that may prejudice a criminal investigation, criminal proceeding or other legal proceeding of which the person making the external disclosure is aware and must not contain information that is likely to disclose investigative methods used by the IBAC or Victoria Police.

It is essential that the discloser seek advice from the relevant investigative entity before disclosing the subject of the disclosure to external parties to ensure they do not breach the confidentiality provisions of the Act.

## **9.6 Penalties for breach of confidentiality**

The Act contains a number of offence provisions relating to unauthorised disclosure of information by either disclosers or persons who have received disclosures. The penalties for breaching the confidentiality required by the Act include imprisonment, financial payments or both.

The criminal offences set out in the Act relating to confidentiality include:

- divulging information obtained in connection or as a result of the handling or investigation of a protected disclosure without legislative authority. Maximum penalty: 60 penalty units, six months imprisonment, or both.
- disclosing that a disclosure has been notified to the IBAC for assessment under the Act. Maximum penalty: 60 penalty units, six months imprisonment, or both.
- disclosing that a disclosure has been assessed by the IBAC or the VI to be a public interest disclosure complaint under the Act. Maximum penalty: 60 penalty units, six months imprisonment, or both.

## **10. TRAINING AND INFORMATION DISSEMINATION**

Manningham City Council will:

- ensure that Councillors and workers have access to a copy of these procedures in hard or soft copy;
- incorporate into its staff induction advice about accessing these procedures, the Council's general obligations under the Act and the rights and obligations of all workers;
- provide periodic reminders to all Councillors and workers about their rights and obligations under the Act;
- provide:
  - training and advice to workers with specific responsibilities and functions relating to public interest disclosures;
  - any officers with functions and duties under the FOI Act or with responsibilities for information management, to ensure that no prohibited information is disclosed under the Act and to ensure there is appropriate liaising with the staff of the IBAC or other investigative agencies where required in response to a request for access under the FOI Act;
  - information to Council's front-line Customer Service Officers and Records Officers to enable them to identify disclosures from external sources and the procedures to be followed in the event that they receive such a disclosure; and
  - advice to the Manager Information Technology in relation to the treatment, access and storage of disclosures made by electronic means.

## **11. COLLATING AND PUBLISHING STATISTICS**

Manningham City Council is required to publish certain statistics about the Act in its annual reports. That information relates mainly to how these procedures may be accessed and the number of disclosures notified to the IBAC for assessment under s 21 of the Act during the financial year.

The Public Interest Disclosure Coordinator will establish a secure register to record such information, and to generally keep account of the status of disclosures made under the Act.

## **12. PERIODIC REVIEW**

These procedures will be reviewed upon significant change to the Act, the Regulations or the IBAC's guidelines to ensure they comply with the requirements of the Act, the Regulations and the IBAC's guidelines.