

# Protected Disclosures Policy For Elected Members & Chief Executive 2022



<b>Policy Name:</b>	Protected Disclosures Policy for Elected Members and Chief Executive 2022
<b>Approved by:</b>	Council
<b>Group:</b>	Governance
<b>Responsibility:</b>	Director Engagement & Culture
<b>Date adopted:</b>	14 February 2023
<b>Review:</b>	Every 3 years or as required (Date of review commencement and date of review to be completed by. This Policy does not cease to have effect because it is due for review, or being reviewed
<b>Consultation:</b>	Not Required
<b>Policy Type</b>	Council Operational

## Introduction

### 1. Purpose and Objectives

1.1. The purpose of this policy is to:

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

### 2. Scope

- 2.1. This policy outlines the policy principles and processes for all elected members in relation to protected disclosures (or whistleblowing).
- 2.2. As determined by the Protected Disclosures (Protection of Whistleblowers) Act 2022, this includes past and present Elected Members (EM's), which includes Community Board Members, and the Chief Executive (CE).
- 2.3. Please note, all paid staff, contractors and volunteers are covered by the Protected Disclosures Policy - for Employees, Contractors and Volunteers.

### 3. Definitions

- 3.1. **Serious Wrongdoing** – refers to any act, omission, or course of conduct in (or by) an organisation that is:
  - 3.1.1. An unlawful, corrupt or irregular use of public money or resources;
  - 3.1.2. A serious risk to public health, public safety, the health or safety of any individual, the environment or the maintenance of the law;
  - 3.1.3. Any offence; or
  - 3.1.4. Oppressive, unlawfully discriminatory, grossly negligent or that is gross mismanagement by public officials.
- 3.2. **Discloser** – this term has a very broad definition under the Act and therefore includes:
  - 3.2.1. Councillors and Mayors;
  - 3.2.2. Community Board members and Chair; and,
  - 3.2.3. Chief Executive

## Policy Statements

### 4. Policy Principles

- 4.1. Council has a statutory and contractual obligation to develop and maintain a safe workplace for all “disclosers” as defined by this policy and the Act, and a duty to protect the public interest.
- 4.2. All “disclosers” as defined by this policy and the Act, are encouraged to report serious wrongdoing in their workplace if they are concerned that it may be occurring in order to help prevent the Council from being brought into disrepute. A discloser can be an employee: see Protected Disclosure Policy for Employees, Contractors and Volunteers.

### 5. Protected Disclosures Processes

- 5.1. Refer Appendix A: Procedure for protected disclosures.
- 5.2. Disclosures will be protected under this policy if any of the following applies:
  - 5.2.1. The information is about serious wrongdoing by any or all of the following: Council elected members (including Community Board members and chairs), Chief Executive, employees, contractors and volunteers;
  - 5.2.2. The discloser reasonably believes the information to be true or likely to be true;
  - 5.2.3. The discloser wants the serious wrongdoing to be investigated; and
  - 5.2.4. The discloser wishes to be protected making the disclosure.
- 5.3. Disclosures will not be protected under this policy if any of the following applies:
  - 5.3.1. An individual falls outside the definition of an discloser as identified by this policy and the Act;
  - 5.3.2. They know the allegations to be false;
  - 5.3.3. They act in bad faith;
  - 5.3.4. The information they are disclosing is protected by legal professional privilege.

## 6. Protections provided under this policy

- 6.1. The Act provides that no civil, criminal, or disciplinary proceedings can be taken against a person for making a protected disclosure, or for referring one to an appropriate authority.
- 6.2. If a person makes a protected disclosure, Council shall not retaliate or threaten to retaliate against the discloser, nor treat or threaten to treat the discloser less favourably.
- 6.3. The Act provides that a discloser who suffers retaliatory action by Council for making a protected disclosure can take a personal grievance under the Employment Relations Act 2000.
- 6.4. It is also unlawful under the Human Rights Act 1993 to treat whistle-blowers or potential whistle-blowers less favourably than others in the same or similar circumstances. If a whistle-blower is victimised in this way the legal remedies under the Human Rights Act 1993 may be available to them.
- 6.5. Protection does not apply where allegations are made that are known to be false or the discloser acts in bad faith.

## 7. Confidentiality

- 7.1. If a person makes a disclosure and it meets the definition and threshold of serious wrongdoing, information which identifies that individual will be kept confidential\* and in accordance with the Privacy Act 2020 and its principles.
- 7.2. However, exceptions to this anonymity include:
  - 7.2.1 Exemptions in the Act apply; or
  - 7.2.2 If consent is given to waiving the right to confidentiality; or
  - 7.2.3 If the individual's name must be released to:
  - 7.2.4 Ensure an effective investigation occurs, including an investigation by a law enforcement or regulatory agency; or
  - 7.2.5 Comply with the principles of natural justice; or
  - 7.2.6 Prevent serious risk to public health or public safety, the health or safety of any individual, or the environment.

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

## 8. Monitoring

- 8.1. The Director Engagement and Culture will work with Risk and Assurance Manager to review the Protected Disclosure process to measure the efficiency and appropriateness of the process, but not of the disclosures made.

## 9. Reporting

- 9.1. Due to the sensitive nature of the information, no information relating to protected disclosures will be reported in an open meeting or publicly available report. The Director Engagement and Culture's annual report to Audit and Risk Committee in a publicly excluded meeting may include only the number of protected disclosures made and if appropriate, the outcome (i.e. if they were upheld or dismissed).
- 9.2. Director Engagement & Culture along with Manager Risk & Assurance will maintain the Disclosure Register ensuring compliance with all appropriate legislation.

## Delegations, References and Revision History

### Delegations

Identify here any delegations related to the policy for it to be operative or required as a result of the policy

Delegation	Delegations Register Reference
Director Engagement & Culture	

### References

Include here reference to any documents related to the policy (e.g. operating guidelines, procedures)

Title	Document Reference
Protected Disclosure Policy for Employees, Contractors & Volunteers	
Elected Members Code of Conduct	<a href="https://www.timaru.govt.nz/council/elected-council-members/council-code-of-conduct">https://www.timaru.govt.nz/council/elected-council-members/council-code-of-conduct</a>
Protected Disclosures (Protection of Whistleblowers) Act 2002	<a href="https://legislation.govt.nz/act/public/2022/0020/latest/whole.html#LMS320346">https://legislation.govt.nz/act/public/2022/0020/latest/whole.html#LMS320346</a>
Employment Relations Act 2000	<a href="https://www.legislation.govt.nz/act/public/2000/0024/latest/whole.html">https://www.legislation.govt.nz/act/public/2000/0024/latest/whole.html</a>
Human Rights Act 1993	<a href="https://www.legislation.govt.nz/act/public/1993/0082/latest/DLM304212.html">https://www.legislation.govt.nz/act/public/1993/0082/latest/DLM304212.html</a>

### Revision History

Summary of the development and review of the policy

Revision	Owner	Date Approved	Approval By	Next Review	Doc Ref
1	Director Engagement & Culture	14 February 2023	Council	2026 Triennium	

# Appendix A: Procedures for Protected Disclosures

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

## 1. How to make a protected disclosure

- 1.1. Disclosures need to be in writing.
- 1.2. An individual can make the disclosure to the Mayor if they believe on reasonable grounds the CE may be involved; or where they believe the CE may be in a relationship or associated with a person who is or may be involved in the alleged serious wrongdoing; or where it is justified by the urgency of the matter or other exceptional circumstances.
- 1.3. An individual can make the disclosure to the CE if they believe on reasonable grounds the Mayor or an Elected Member may be involved or where they believe the Mayor or Elected member may be in a relationship or associated with a person who is or may be involved in the alleged serious wrongdoing.
- 1.4. Alternatively, an individual can also make the disclosure directly to an Appropriate Authority at any time if they do not wish to make the disclosure to the CE or Mayor.
- 1.5. Furthermore, a person can make the disclosure to a Minister of the Crown or appropriate authority if they have made substantially the same disclosure to any of the above parties and they have either:
  - 1.5.1. Decided not to investigate, or
  - 1.5.2. Not made progress after 20 working days and have not advised of any reason for the delay in investigating, or
  - 1.5.3. Not taken any action or recommended any action after the investigation, and
  - 1.5.4. It is considered that the disclosure is still true or likely to be true.

## 2. Council's processes for responding to protected disclosures

- 2.1. Where the disclosure is made to the CE or Mayor, with support from an appropriate officer, within 20 working days of receiving the disclosure:
  - 2.1.1. The CE or Mayor may engage the Director Engagement and Culture or the Manager of Risk and Assurance to process the complaint.
  - 2.1.2. The officer processing the complaint will acknowledge receipt of the complaint, including summarising the complaint in writing if the disclosure was made orally;
  - 2.1.3. Handle the complaint in the strictest of confidence; and discuss the matter only where appropriate, such as seeking independent legal advice (including an assessment of whether or not the complaint is a protected disclosure under the Act and including adherence to the Privacy Act 2020 and the Privacy Principles) or other specialist independent advice;

- 2.1.4. Use their best endeavours not to disclose information that might identify the person who made the protected disclosure unless where there are exceptions (see the Confidentiality section);
- 2.1.5. Seek the assistance of a third party/parties to participate & or take notes of the interview;
- 2.1.6. Interview the discloser with an appropriate third party/ies;
- 2.1.7. Provide the discloser with practical assistance and advice, including having a support person assess and provide advice to the discloser on any risks to the discloser;
- 2.1.8. Investigate the allegation;
- 2.1.9. Keep a detailed file note recording the interview, the investigation and the explanation give to the discloser about procedures to be followed;
- 2.1.10. Have the file note signed by the discloser to verify the accuracy and completeness of the interview notes and to record the discloser's acceptance of the procedures to be followed;
- 2.1.11. Deal with the matter by doing one or more of the following:
  - 2.1.11.1. Investigate the disclosure;
  - 2.1.11.2. Address any serious wrongdoing by acting or recommending action;
  - 2.1.11.3. Referring the disclosure to an appropriate authority in accordance with the Act;
  - 2.1.11.4. Decide that no action is required.
- 2.1.12. Report back to the discloser within the 20 working days what the receiver has done or is doing to deal with the matter.
- 2.1.13. If the Complaint Processing Officer fails to investigate the complaint in accordance with the above process, or the discloser is not satisfied that the serious wrongdoing has been addressed, the discloser may refer the matter to a Minister of the Crown or an appropriate authority.

*Flow chart of the process on page 7.*

### **3. Appropriate Authorities**

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

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

# PROTECTED DISCLOSURE INVESTIGATION PROCESS

