

Selwyn District Council Protected Disclosures Policy

June 2024

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POLICY PURPOSE

1. This Protected Disclosure Policy sets out the processes for disclosing serious wrongdoing by or within the Selwyn District Council (**Council**) in accordance with the Protected Disclosures (Protection of Whistleblowers) Act 2022 (the **Act**).
2. The purpose of the Act is to promote the public interest by:
 - (a) facilitating the disclosure and timely investigation of serious wrongdoing in the workplace (also known as whistleblowing); and
 - (b) providing protection to people who disclose in accordance with the Act.
3. This Policy is divided into two main sections:

Section A (making a protected disclosure):	Sets out information for people who wish to make a protected disclosure about the Council, including when disclosers will be protected, what protections disclosers are entitled to, and what the Council's internal processes are upon receiving a protected disclosure.
Section B (receiving a protected disclosure):	Sets out guidance for the Chief Executive Officer and Council employees who receive a protected disclosure, including the Council's process for investigating and dealing with protected disclosures.

4. This Policy does not cover disclosures of international relations information or intelligence and security information. These are dealt with differently under the Act.¹
5. See also the associated [Protected Disclosure Procedure].

POLICY STATEMENT

6. Individuals who come forward and report wrongdoing are helping to promote integrity, accountability, and good management within the Council. The Council is committed to:
 - (a) high standards of ethical and accountable conduct, including not tolerating any form of wrongdoing;
 - (b) encouraging and supporting our people to report wrongdoing; and
 - (c) the proper handling of such matters when they are raised.

¹ The meaning of international relations information and intelligence and security information can be found in section 4 of the Act.

SECTION A: MAKING A PROTECTED DISCLOSURE

Who does this Section A of this Policy apply to?

7. Section A of this policy applies to disclosures about Serious Wrongdoing by or within Council by individuals who are (or were formerly):
- (a) employees of the Council;
 - (b) seconded to the Council;
 - (c) engaged or contracted under a contract for services to do work for the Council;
 - (d) involved in the governance of the Council (including elected members); or
 - (e) volunteers working for the Council without reward or expectation of reward for that work.
8. The above individuals covered by Section A of this policy are referred to as “you”.

What is a protected disclosure?

9. A protected disclosure is where you disclose or report information about the Council where you:
- (a) believe on reasonable grounds that there is, or has been, “serious wrongdoing” in or by the Council;
 - (b) disclose information about that in accordance with the Act (as set out in this policy); and
 - (c) do not disclose the information in bad faith.

What is serious wrongdoing?

10. Serious wrongdoing has a particular meaning – it does not apply to all possible wrongdoing that you might see and think about reporting.
11. Serious wrongdoing includes any act, omission, or course of conduct in (or by) any organisation that is one or more of the following:
- (a) an offence; or
 - (b) a serious risk to public health, public safety, the health or safety of any individual, or the environment, or
 - (c) a serious risk to the maintenance of law, including the prevention, investigation and detection of offences or the right to a fair trial, or
 - (d) an unlawful, corrupt or irregular use of public funds or public resources, or
 - (e) oppressive, unlawfully discriminatory, grossly negligent, or that is gross mismanagement by:
 - (i) an employee of a public sector organisation; or
 - (ii) a person performing or purporting to perform a function or duty on behalf of a public sector organisation or the Government; or
 - (iii) a person exercising (or purporting to exercise) a power on behalf of a public sector organisation or the Government.
12. You will still be protected if you make a disclosure and it turns out that there is not actually any serious wrongdoing. The key point is that you reasonably believed that there was serious wrongdoing.

When are disclosures protected?

13. You are entitled to the protections provided in this Policy and in the Act even if you:
- (a) are mistaken and there is no serious wrongdoing;
 - (b) do not refer to this Policy or the Act when making the disclosure;
 - (c) have not made the disclosure in accordance with this Policy (as long as you have substantially complied); or
 - (d) have also made the disclosure to another person, as long as you did so on a confidential basis and for the purpose of seeking advice about whether/how to make a protected disclosure in accordance with the Act.
14. Specific examples of circumstances where you are not entitled to the protections provided in this Policy or the Act include:
- (a) disclosures made to the media;
 - (b) disclosures made with the knowledge that the allegation is false;
 - (c) disclosures made in bad faith; or
 - (d) disclosures of information protected by legal professional privilege (eg, correspondence between an employee and their lawyer).
15. Other people who disclose information in support of, or relating to, a protected disclosure that has been made to the Council, are also entitled to protection under the provisions of this Policy and the Act if they:
- (a) disclose in accordance with this Policy; and
 - (b) do not disclose the information in bad faith.

Protections for disclosers

16. A person who reports a disclosure of Serious Wrongdoing in accordance with the Act (as set out in this Policy), is entitled to the following types of protection, which are explained in more detail further below:
- (a) The right to have your identity kept confidential (some exceptions apply);
 - (b) Your rights under the Privacy Act in relation to personal information about you;
 - (c) Your right not to be subject to retaliate or treated less favourably;
 - (d) Immunity from civil, criminal and disciplinary proceedings.

Duty of confidentiality

17. The Council must use its best endeavours to keep information that might identify you confidential.

18. However, the Council is not required to keep your identity confidential if:

- (a) you consent to the release of the identifying information; or
- (b) if the Council has reasonable grounds to believe that the release of the identifying information is essential, and the Council complies with the applicable consultation requirements, as set out in the table below:

The Council has reasonable grounds to believe that the release of the identifying information is essential:	Consultation requirements
· for the effective investigation of the disclosure	The Council must first consult with you about the release
· to comply with the principles of natural justice	The Council must first consult with you about the release
· to prevent a serious risk to public health, public safety, the health or safety of any individual, or the environment	The Council must, if practicable, consult with you about the release
· to an investigation by a law enforcement or regulatory agency for the purpose of law enforcement	The Council must, if practicable, consult with you about the release

19. The Council will tell you if it releases identifying information about you for the reasons described in the table above.

20. An investigation into an allegation of serious wrongdoing may require the Council to put the allegation to the alleged wrongdoer to obtain their account of events. The Council will comply with its duty of confidentiality set out above when doing so.

Privacy Act 2020

21. If the Council releases information that identifies you as set out above, this will be an interference with your privacy under the Privacy Act. You have the right to complain to the Privacy Commissioner about any identifying information that is released about you, and the Council would have the responsibility of demonstrating that the release of the information was authorised under the Act.

Obligation to not retaliate or treat less favourably

22. The Council is prohibited from retaliating² or threatening to retaliate against you because you intend to make or have made a protected disclosure. If it does so, you will have a personal grievance under the Employment Relations Act.

23. No person (including the Council and its employees and agents) is permitted to treat or threaten to treat another person less favourably than they would treat others in similar circumstances for:

- (a) making or intending to make a protected disclosure;
- (b) encouraging another person to make a protected disclosure; or
- (c) giving information in support of, or relating to, a protected disclosure,
(unless the person knowingly made a false allegation or otherwise acted in bad faith).

24. Doing so is a breach of the Human Rights Act 1993.

² "Retaliate" is defined in [section 21\(4\)](#) of the Act.

Immunity from civil, criminal and disciplinary proceedings

25. If you make a protected disclosure under the Act, you are not liable to any civil, criminal, or disciplinary proceedings as a result of making a disclosure.
26. This protection applies even if there is a prohibition or restriction on disclosing the information (for example, in a contract, agreement, procedure or practice). The protection does not apply if the information you disclose is covered by legal professional privilege).
27. These protections only apply to making the disclosure. Action can still be taken against you if you were involved in the wrongdoing.

How to make a protected disclosure

28. You can make protected disclosures about the Council to the Council (an internal protected disclosure) or to another appropriate authority.

Internal protected disclosures

29. If you wish to make a protected disclosure within the Council, you should do so in writing or verbally to either the Chief Executive Officer, the Executive Director People, Capability and Culture, the Mayor, the Deputy Mayor, or the Independent chair of the Audit and Risk Committee ("Council Senior Officer").
30. The details for the Chief Executive Officer and other protected disclosure receivers are as follows:

Role	Email	Phone number and physical address
Chief Executive	sharon.mason@selwyn.govt.nz	Phone number: 0800 735 996 Address: PO Box 90, Rolleston 7643
Executive Director, People, Culture & Capability	steve.gibling@selwyn.govt.nz	Phone number: 0800 735 996 Address: PO Box 90, Rolleston 7643
Mayor	sam.broughton@selwyn.govt.nz mayor@selwyn.govt.nz	Phone number: 0800 735 996 Address: PO Box 90, Rolleston 7643
Deputy Mayor	crmalcolm.lyall@selwyn.govt.nz	Phone number: 0800 735 996 Address: PO Box 90, Rolleston 7643
Independent Chair of the Audit and Risk Committee	analisa.elstob@selwyndistrictcouncil.onmicrosoft.com	Phone number: 0800 735 996 Address: PO Box 90, Rolleston 7643

Protected disclosures to another Appropriate Authority

29. If you wish to make a protected disclosure within the Council, you should do so in writing or verbally to either the Chief Executive Officer, the Executive Director People, Capability and Culture, the Mayor, the Deputy Mayor, or the Independent chair of the Audit and Risk Committee ("Council Senior Officer").
31. You are also able to make protected disclosures about the Council to another "appropriate authority".
32. An appropriate authority is a trusted external party to whom you can make a disclosure if you are not confident about making the disclosure within the Council.
33. Examples of appropriate authorities include (but are not limited to):
- (a) the head of any public sector organisation;
 - (b) any officer of Parliament (meaning an Ombudsman, the Parliamentary Commissioner for the Environment, or the Controller and Auditor-General);
 - (c) as examples, the list of entities in [Schedule 2](#) of the Act. The Ombudsman, the Controller and Auditor General and the Department of Internal Affairs are listed as examples of appropriate authorities in relation to Local Government; and
 - (d) the membership body of a particular profession, trade, or calling with the power to discipline its members.
34. Ministers and Members of Parliament are not appropriate authorities.
35. You can make a protected disclosure about the Council to an appropriate authority at any time.
36. Circumstances where it may be appropriate to make a protected disclosure to an appropriate authority instead of the Council include where you are not confident about making the disclosure to the Council, for example:
- (a) you consider that reporting to an appropriate authority directly is justified due to the urgency of the matter or other exceptional circumstances;
 - (b) you think that those nominated in paragraphs 28 & 29 above may be involved in the alleged serious wrongdoing; or
 - (c) you have made the protected disclosure to the Council, but there has been no action or recommended action on the matter to which the disclosure relates within 20 working days.

Anonymous disclosure

37. As mentioned above, the Council has a duty to use its best endeavours to keep confidential information that might identify you. However, there are some circumstances in which the Council may release information that identifies you (as set out in paragraph 17). As such, the Council cannot guarantee that your identity will be kept confidential.
38. However, in many cases your identity will not need to be known in order for the Council to make further inquiries and determine whether further action is required. It is therefore open to you to make an anonymous disclosure (including through a legal representative), and you are entitled to rights under this Policy and the Act regardless of whether you identify yourself at the time of the disclosure.
39. You should be aware, however, that in some circumstances it may not be possible to investigate an anonymous disclosure, for example where further information is required but cannot be obtained from you or your representative. If you wish to be kept informed about the Council's investigation, the Council will need to be able to contact you or your representative.
40. If you make an anonymous disclosure, and later wish to rely on one of the protections available under the Act (such as civil immunity), you will need to prove that it was you who made the disclosure.

What happens after you have made a disclosure

41. The process upon a Council Senior Officer receiving an internal protected disclosure is set out in Section B of this Policy. At a high level, the Council Senior Officer will within 20 working days:
- (a) record the disclosure details in writing (if that hasn't been done already);
 - (b) acknowledge your disclosure;
 - (c) consider the disclosure and whether it warrants investigation;
 - (d) check with you about whether you have made the disclosure anywhere else;
 - (e) deal with the matter (such as by addressing any serious wrongdoing by acting or recommending action, referring the disclosure to another appropriate authority, or deciding that no action is required); and
 - (f) inform you (with reasons) about what the Council has done or is doing to deal with the matter.
42. However, if it is impracticable for the Council Senior Officer to complete the above actions within 20 working days, then the Council Senior Officer should:
- (a) still acknowledge receipt, consider the disclosure, and check whether the disclosure has been made elsewhere within the first 20 working days; and
 - (b) otherwise deal with the matter as promptly as possible, while informing the discloser of how long the Council expects to take to deal with the matter and update the discloser about the Council's progress.
43. If you make an external protected disclosure to another appropriate authority, then that authority will have its own process for dealing with protected disclosures.

Requesting further action

44. You can escalate the process for a protected disclosure if you consider that the Council has not acted in accordance with this Policy or has not adequately dealt with the matter to address the serious wrongdoing. You may:
- (a) make the protected disclosure to a Minister; or
 - (b) seek advice from the Ombudsman, who may, with your consent:
 - (i) refer the disclosure to a Minister following consultation with the Minister;
 - (ii) investigate the disclosure themselves; or
 - (iii) with the consent of the Council, take over the investigation of a disclosure, or jointly investigate a disclosure.

Need further assistance?

Internal assistance

45. If you require any assistance in relation to this Policy or the Act, please contact the Chief Executive Officer, or any of the Council Senior Officers (their contact details are set out in paragraph 29). Any request for assistance will be treated with the strictest confidence.
46. Requests for assistance could include matters such as:
- (a) accessing a support person, employee assistance programme or other external wellbeing assistance;
 - (b) defining whether a matter of concern might constitute serious wrongdoing, or
 - (c) clarifying your rights or the Council's obligations in relation to this Policy or the Act, or
 - (d) providing clarification about the application of this Policy or the Act.



External assistance

47. You may also seek advice and assistance directly from the Ombudsman. If you notify the Ombudsman that you have made or are considering making a protected disclosure, then the Ombudsman must provide information and guidance to you about the following (as relevant):

- (a) which disclosures are protected under the Act;
- (b) the persons to whom information may be disclosed under the Act;
- (c) how to disclose information in order to be entitled to protection under this Act;
- (d) a summary of the role of each appropriate authority;
- (e) the protections available under the Act and under the Human Rights Act 1993; and
- (f) how a disclosure may be referred.

48. The Ombudsman can be contacted on their free phone 0800 802 602.

SECTION B (RECEIVING A PROTECTED DISCLOSURE)

Application

49. This section applies to the receiver of an internal protected disclosure (being the Chief Executive Officer or other Council Senior Officer as described in paragraph 29 (the receiver)).
50. If a Council employee receives an internal protected disclosure, they should refer the discloser to this Policy and advise them to make the disclosure to the Chief Executive Officer, another Council Senior Officer (as described in paragraph 29), or another appropriate authority as set out in Section A.

Receiver's obligations

51. Receivers are obliged to comply with the Council's protection obligations set out in paragraphs 16 to 23 upon receiving a protected disclosure, including:
- (a) the duty of confidentiality; and
 - (b) the obligation not to retaliate or treat a discloser less favourably than they would treat others in similar circumstances.
52. Receivers may also engage other Council employees or external parties (such as specialist investigators) to assist with their review and investigation of a protected disclosure. Receivers should ensure that any person they engage to assist with the protected disclosure understands the Council's protection obligations.

Process on receiving a protected disclosure

53. Within 20 working days of receiving a protected disclosure, the receiver must:
- (a) **Acknowledge receipt:** acknowledge the date the disclosure was received (and, if the disclosure was made orally, summarise the Council's understanding of the disclosure);
 - (b) **Consider:** do a preliminary review to consider whether the disclosure warrants investigation. For example, the Council may decide not to investigate the disclosure if it considers that the disclosure does not involve serious wrongdoing;
 - (c) **Check:** check with the discloser whether the disclosure has been made elsewhere (and any outcome);
 - (d) **Deal with:** deal with the matter (see paragraph 55 below); and
 - (e) **Inform discloser (with reasons):** inform the discloser (with reasons) about what the Council has done or is doing to deal with the matter in accordance with paragraph (d) above.
54. The receiver should use its best endeavours to undertake the above actions within 20 working days. However, if this is impracticable, then the receiver should:
- (a) still acknowledge receipt, consider the disclosure, and check whether the disclosure has been made elsewhere (see paragraphs 52(a) to (c) above) within the first 20 working days;
 - (b) inform the discloser of how long the Council expects to take to deal with the matter;
 - (c) update the discloser about the Council's progress; and
 - (d) as promptly as possible deal with the matter and inform the discloser (see paragraphs 49(d) to (e) above).

Preliminary review

55. Upon receiving a protected disclosure, before considering whether the disclosure warrants investigation, the receiver may need to contact the discloser:

- (a) for additional information to progress a formal investigation;
- (b) for confirmation of the facts of the initial disclosure; or
- (c) to obtain evidence relating to the alleged wrongdoing.

Dealing with protected disclosures

56. As set out above, part of the Council's response to receiving a protected disclosure is to deal with the matter. The Council can deal with a protected disclosure by doing one of the following:

- (a) investigating the disclosure;
- (b) addressing any serious wrongdoing by acting or recommending action;
- (c) referring the disclosure to the organisation concerned or another appropriate authority (see paragraphs 56 to 58 below); or
- (d) deciding that no action is required. It may be appropriate for the Council to decide that no action is required if:
 - (i) the discloser does not meet the Act's requirements to be a discloser;
 - (ii) the disclosure does not meet the Act's requirements for a protected disclosure;
 - (iii) there has not been serious wrongdoing in or by the discloser's organisation;
 - (iv) the length of time between the alleged serious wrongdoing and the disclosure makes an investigation impracticable or undesirable; or
 - (v) the matter is better addressed by other means.

Referring a protected disclosure

57. The receiver may, on behalf of the Council, refer internal protected disclosures to an appropriate authority (for example, if an internal protected disclosure related to an offence, then it may be appropriate to refer the disclosure to the police).

58. Before making such a referral, the receiver must consult with the discloser and the intended recipient of the referral.

59. If the receiver refers a protected disclosure to another organisation or appropriate authority, the Council will have immunity from civil, criminal, and disciplinary proceedings arising as a result of it referring the disclosure.

Escalation of protected disclosures

60. The discloser or the Ombudsman can escalate the process for a protected disclosure if they consider that the Council has not acted in accordance with the guidance in the Act on what to do when receiving protected disclosures, or has not adequately dealt with the matter to address the serious wrongdoing, as follows:

- (a) a discloser may make the protected disclosure to a Minister; or
- (b) the Ombudsman may:
 - (i) with the discloser's consent:
 - (1) refer the disclosure to a Minister following consultation with the Minister; or
 - (2) investigate the disclosure themselves; or
 - (ii) with the consent of the discloser and the Council, take over the investigation of a disclosure, or jointly investigate a disclosure.

