

# Council Policy

Policy Title: Fraud and Protected Disclosures Policy  
Responsibility: Chief Executive  
First Adopted: July 2008  
Review Frequency: Every three years  
Last Reviewed: 8 March 2017  
Next Review Due: 8 March 2020  
Doc No 615705

File No P50-0043



## 1 Policy Objectives

- 1.1 This policy outlines Council's:
- approach to preventing fraud;
  - procedure for reporting suspected fraud or serious wrongdoing;
  - procedure for investigating the report of fraud or serious wrongdoing;
  - approach to protecting officers who make a disclosure.

## 2 Definitions

### 2.1 FRAUD

The use of deception with the intention of obtaining an advantage, avoiding an obligation or causing loss to another party. Some examples of fraud and abuse of position include:

- unlawful, corrupt or irregular use of public funds or resources,
- deliberate distortion or destruction of records or statements to conceal misappropriation of council resources,
- offering, giving or soliciting of reward for personal benefit,
- pressuring other parties by use of position or Council name for personal benefit or the benefit of another person with whom the council officer has a personal connection.

### 2.2 EMPLOYEE

In the context of this policy, the definition of *employee* is consistent with that found in the interpretation of the Protected Disclosures Act 2002 and therefore may refer to any of the following:

- a former employee,
- a person seconded to the organisation,
- an individual who is engaged or contracted under a contract for services to do work for the organisation,
- a person concerned in the management of the organisation (including a person who is a member of the board or governing body of the organisation),
- a person who works for the organisation as a volunteer without reward or expectation of reward for that work.

### 2.3 PERSONAL CONNECTION:

An employee has a *personal connection* with persons who are:

- that employee's spouse or domestic partner; or
- that employee's son, daughter, mother, father, brother or sister (whether by birth or adoption or marriage)

## **2.4 SERIOUS WRONGDOING**

Actions may include:

- (a) conduct that undermines adherence to the law or obstructs the investigation and detection of unlawful behaviour,
- (b) interference with the fair trial process,
- (c) conduct that is oppressive, improperly discriminatory or grossly negligent or that constitutes gross mismanagement.

## **2.5 SERIOUS MISCONDUCT**

Acts defined by Council's House Rules as serious misconduct. These are a form of 'serious wrongdoing' and some may constitute fraud.

## **2.6 REPORT**

In the context of this policy, "report" refers to the disclosure of information regarding the suspicion of fraud, with the intent that the report be formally investigated and acted upon.

## **2.7 REPORTER**

The person who discloses the suspicion of fraud or serious wrongdoing.

## **2.8 RECEIVER(S)**

The person(s) to whom the Reporter discloses the suspicion of fraud or serious wrongdoing.

## **2.9 PROTECTED DISCLOSURE**

Protected disclosure refers to the assurance made by Council to the Reporter that the act of reporting suspected fraud or serious wrongdoing (also known as 'whistle-blowing') will not disadvantage their employment (note the conditions in this policy under "Confidentiality and Protection of Disclosure" section).

- 2.9.1 This policy is subject to the provisions of Council's Code of Conduct and Employment Agreements however section 23 of the Protected Disclosures Act 2000 overrides any contractual agreement that requires an employee to "withdraw or abandon a disclosure of information made under [the] Act".

# **3 Principles**

- 3.1 The highest standard of behaviour is expected of individuals entrusted with public money. This is reflected in Council's Values Charter. A transparent approach and a consistent process for both preventing and dealing with fraud are important for protecting the reputation of Council and the integrity of public funds.
- 3.2 Fraudulent behaviour is unacceptable and will not be tolerated.

# **4 Background**

- 4.1 The Auditor-General's *Statement on Auditor's Responsibilities Relating to Fraud in an Annual Audit (2014)* states that:  
*"The responsibility for the prevention and detection of fraud rests with public entity management through the implementation and continued operation of adequate internal control systems."* (A5)

- 4.2 It also states that the Auditor-General expects that every public entity should: *“formulate an appropriate policy on how to minimise [fraud] and (if it occurs) how it will be dealt with.”* (A6)
- 4.3 Council has historically experienced a number of minor fraud related incidences and recognises the need for continuing vigilance in this area.

## **5 Policy Statement**

### **5.1 PROCESS FOR DISCLOSING SUSPECTED FRAUD OR SERIOUS WRONGDOING**

The Reporter is to notify the Chief Executive and the Human Resources Manager outlining the disclosure and the information on which it is based.

5.1.2 If the Reporter has reasonable grounds to believe that the Chief Executive is involved in the suspected activity, the disclosure of information may be made to the Mayor or an independent member of the Audit and Risk Committee.

5.1.3 If the Reporter has reasonable grounds to believe that the Human Resources Manager is involved the disclosure of information may be made to the Chief Executive or an independent member of the Audit and Risk Committee.

5.1.4 A disclosure of information may be made to an appropriate external authority if:

- (a) the Reporter has reasonable grounds to believe that the Chief Executive, the Mayor, the independent member of the Audit and Risk Committee and the Human Resources Manager are involved.
- (b) the Reporter has reasonable grounds to believe that the Chief Executive, the Mayor, the independent member of the Audit and Risk Committee and the Human Resources Manager will not maintain the anonymity of the Reporter; or
- (c) that the urgency of the matter to which the report relates, or some other exceptional circumstance, justifies the immediate reference to an external authority; or
- (d) there has been no action or recommended action on the matter to which the disclosure relates within 20 working days after the date on which the disclosure was made.

5.1.5 In the case of such circumstances outlined in 5.1.4 alternative appropriate authorities may include:

- (a) Auditor General
- (b) NZ Police

5.1.6 A verbal disclosure must be accompanied by a written account of the information disclosed.

5.1.7 An anonymous disclosure (or “tip off”) from a member of the community may be made by following the same steps outlined in 5.1. Such disclosures must be in writing and addressed to the person to whom the disclosure is being made.

### **5.2 PROCESS FOR RECEIPT OF DISCLOSURE AND INVESTIGATION OF FRAUD OR SERIOUS WRONGDOING**

#### **5.2.1 Initial Receipt and Acknowledgement of Report**

(a) The Receiver must assure the Reporter that every report of suspected fraud is dealt with according to the Fraud and Disclosure Policy.

- (b) Internal procedures comply with the principles of natural justice These principles are:
  - (i) freedom from bias on the part of the person making the decision/judgment; and
  - (ii) transparency and fairness of the procedure
- (c) A written or emailed acknowledgement of the receipt of the report will be sent to the Reporter by the Receiver within three days.
- (d) To understand the nature of the report properly and to establish authenticity, the Reporter will be asked to verify the report received and elaborate with any further information or evidence requested at this stage. If notes are taken of the reporter's words, then an accurate written record is to be verified with the reporter of those notes.
- (e) The target timeframe for resolution of the matter is 20 working days.

### **5.2.2 Identification and Investigation of Fraud,**

- (a) If the Receiver is an authority external to Council, they will follow their own organisation's fraud policy.
- (b) If the Receiver is internal to Council, they will conduct a preliminary inquiry of the prima facie evidence.
- (c) On the basis of the findings of the preliminary inquiry, the Receiver will determine whether the report is worthy of further investigation of fraud or serious wrongdoing.
  - (i) If further investigation is not deemed necessary, the Receiver will provide to the Reporter a written summary of the preliminary inquiry undertaken and an explanation of why they determined that the matter requires no further action.
  - (ii) If it is deemed necessary, the Receiver will consider the most appropriate method of investigation. Some possibilities include (but are not limited to)
    - Internal investigation undertaken by the Reporter and /or Chief Executive
    - An external investigator
    - Audit NZ
- (d) Any further investigation undertaken will include (but not be limited to) the following elements;
  - (i) The Receiver will inform the implicated person and the implicated person's Group Manager, about the issue, and a meeting or several meetings will be organised with the implicated person and their Group Manager in order to understand the issue in more depth from the perspective of the implicated person.
  - (ii) In order to prevent the accidental spread of information no documentation is to be brought to any meeting.
  - (iii) The Receiver will record and collate information from both parties.
  - (iv) The Receiver will make every effort to ensure that sufficient reliable evidence is collected to support a prosecution.
- (e) Every case of fraud will be referred to the appropriate law enforcement agency.

### **5.2.3 Recovery of Losses**

Recovering losses of money or property is a major objective of the Council following any fraud investigation. The amount of any loss will be quantified as far as possible and repayment or reparation will be sought.

### **5.2.4 Specifications for Documentation of Alleged Fraud**

- (a) The Receiver will be responsible for collecting and documenting all relevant information in respect of the fraud allegation.
- (b) The Receiver may consult with, or engage the services of, other persons (such as technical experts with IT or forensic accounting skills) as well as external agencies (e.g. the Police and Audit).
- (c) The Receiver will have free and unrestricted access to all Council records and equipment, and have the authority to examine, copy, and/or remove all, or any portion

of the contents of files, desks, cabinets, and other storage facilities on Council premises without prior knowledge or consent of any individual who may use or have custody or any such items or facilities, within the scope of the investigation.

- (d) If the Receiver concludes that there is sufficient evidence to support the allegation, they will prepare a confidential report which will include a recommended course of action and any recommended improvements to internal controls that are identified as a result of the investigation. A summary of this report will be provided to Council's external auditor but not include any of the substance or findings of the investigation.
- (e) The Receiver will advise the Reporter in writing of all investigative actions taken. At this point however, the Reporter has become a third party to the matter and confidentiality requirements of the case must be taken into account by the Receiver in the written communication to the Reporter.
- (f) A copy of all records and communication will be kept on a dedicated Human Resources file for each protected disclosure with any other documentation pertaining to the case.

#### **5.2.5 Dealing with External Media and Communication Forums**

- (a) If knowledge of the investigation of fraud becomes known to the public, the Receiver shall assume responsibility for all communication with the Media.
- (b) All requests to Council employees for information, both formal and informal, shall be directed to the Receiver.
- (c) Under no circumstances shall any Council employee enter into any public discussion whatsoever whether formal or informal, in verbal, written, broadcast media or social networking forums.

### **5.3 CONFIDENTIALITY AND PROTECTION OF DISCLOSURE**

The Reporter and the Receiver are not to disclose details of the matter to others. The Receiver is to advise the Reporter of the process for dealing with the matter but is not to offer opinions or solutions to the Reporter.

- 5.3.1 The Reporter will not be disadvantaged in their employment by the act of disclosure, nor will they be liable to any disciplinary proceeding by reason of having made disclosure of information. Only where allegations are made that the Reporter knows to be false, and therefore acts in bad faith, could the Reporter be subject to disciplinary action.
- 5.3.2 The receiver will maintain the anonymity of the Reporter unless the Reporter agrees otherwise or disclosure of the identity of the Reporter is essential to the investigation. Disclosure of the identity of the Reporter will only be made after first consulting the Reporter.
- 5.3.3 If the Receiver does not maintain confidentiality in respect of this matter including the Reporter's identity, the Receiver shall be considered to have engaged in serious misconduct.
- 5.3.4 If at any time the Reporter is not satisfied with the investigative efforts of the Receiver, then the Reporter may raise the matter without prejudice basis with other authorities as outlined in 5.1.5.

### **5.4 AREAS POTENTIALLY SUSCEPTIBLE TO FRAUD**

#### **5.4.1 Persons who might commit fraud include:**

- (a) Elected Members (Council, Community Boards and Committees)
- (b) Non-elected Representatives on Committees
- (c) Commissioners
- (d) Staff

- (e) Contractors

**5.4.2 Examples of frauds that are possible are (but are not limited to):**

- (a) Theft of cash
- (b) Theft or misappropriation of plant or equipment
- (c) Unauthorised unpaid personal use of plant, equipment, expertise or time of any contractor that is engaged by Council or seeking to be engaged by Council
- (d) Theft of inventory
- (e) Expense claim fraud
- (f) Credit or fuel card fraud
- (g) Payroll fraud
- (h) False invoicing
- (i) Misuse of a document
- (j) Accepting gifts in return for influence/favours e.g. awarding procurements
- (k) Undeclared gifts

**5.5 PREVENTION OF FRAUD**

Council's Audit and Risk Committee shall produce, and annually review, a documented list of fraud risk factors, including conflicts of interest.

5.5.1 The Audit and Risk Committee shall ensure that all cost effective efforts are made to mitigate the identified risk factors.

5.5.2 In the event of a proven case of fraud or serious misconduct, the Audit and Risk Committee will:

- (a) review the areas in which the vulnerability of the organisation was exploited;
- (b) approve measures to minimise the possibility of recurrence;
- (c) advise Council insurers as appropriate;
- (d) keep all other relevant personnel suitably informed about the incident and the Council's response;
- (e) maintain confidentiality leading up to any court hearing.

**5.6 PROCESS FOR REVIEW OF POLICY AND DISTRIBUTION TO EMPLOYEES**

The policy will be reviewed three yearly. This review will take into account any incidences of fraud and how the policy was utilised and followed through the process.

5.6.1 The Policy will be part of the induction process for all employees and will be available on the Council intranet.

5.6.2 Familiarisation with the rights and obligations of this policy will be included in:

- (a) one weekly staff newsletter per annum and
- (b) one CE staff briefing per annum.

<b>6 Delegations</b>
----------------------

6.1 Delegations as per Delegations Manual. This policy may only be amended by resolution of Council.

## 7 Annotations

Date	Description
10 September 2010	Approved by Council. Clauses numbered for ease of reading.
14 June 2011	Approved by Council Updated sections and reviewed
14 February 2017	Reviewed by Audit and Risk Committee and recommended to Council for adoption.
8 March 2017	