



**SOUTH WAIRARAPA
DISTRICT COUNCIL**

Kia Reretahi Tātau

Protected Disclosures Policy

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1. Purpose

- To meet South Wairarapa District Council's (SWDC's) responsibilities under the Protected Disclosures (Protection of Whistleblowers) Act 2022 (the Act) to promote the public interest by facilitating the disclosure and timely investigation of matters of serious wrongdoing in, or by, SWDC.
- To protect disclosers, who in accordance with the provisions of the Act, make disclosures of information about serious wrongdoing in, or by, SWDC.
- To show our commitment to high standards of ethical and accountable conduct, to not tolerate any form of wrongdoing, and to encourage reporting as an obligation of our organisation.

2. Scope

This policy applies to all current and past SWDC employees, elected and appointed members, secondees, contractors and volunteers of SWDC, at all work sites and events, whether they are a discloser or receiver of a protected disclosure.

3. Speaking Up

SWDC is committed to fostering a transparent culture. This means providing an environment that encourages open communication, and where feedback and constructive challenge is the norm. This means individuals are encouraged to speak up and raise concerns about conduct that may be unethical or illegal. We all have a responsibility to hold our colleagues accountable by reporting any concerns, even if it is only suspected.

If someone genuinely believes they have reliable information about a serious wrongdoing and want to see it investigated, then they should speak up about it and make a protected disclosure. If the matter is not about serious wrongdoing, then it can be raised through general speak up guidance provided in the Code of Conduct for Council Employees.

4. Definitions

Appropriate Authority

An Appropriate Authority is a trusted external party who can be approached if a discloser is not confident about making the disclosure within their own organisation. See Appendix 1 for a list of relevant Appropriate Authorities.

Discloser

As defined by the Act, an individual who is (or was formerly):

- a) an employee
- b) a seconded
- c) engaged or contracted under a contract for services to do work for the organisation

- d) concerned in the management of the organisation (including, for example, a person who is or was a member of the board or governing body of the organisation)
- e) a volunteer working for the organisation without reward or expectation of reward for that work.

Note that (d) includes the Mayor, Elected Members and Committee Members.

Protected Disclosure

As defined by the Act, a disclosure of information is a protected disclosure if the discloser:

- a) believes on reasonable grounds that there is, or has been, serious wrongdoing in or by the council; and
- b) discloses information about that in accordance with the Act; and
- c) does not disclose it in bad faith.

Receiver

As defined by the Act, the receiver of a protected disclosure who is either:

- a) the organisation concerned; or
- b) an appropriate authority.

Retaliate

As defined by the Act, means

- a) doing any of the following:
 - i. dismissing the employee
 - ii. refusing or omitting to offer or afford to the employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available to other employees of the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances
 - iii. subjecting the employee to any detriment or disadvantage (including any detrimental or disadvantageous effect on the employee's employment, job performance, or job satisfaction) in circumstances in which other employees employed by the employer in work of that description are not or would not be subjected to such detriment or disadvantage
 - iv. retiring the employee, or requiring or causing the employee to retire or resign
- b) organising to do anything described in paragraph (a).

Serious Wrongdoing

As defined by the Act, includes any act, omission, or course of conduct in (or by) SWDC that is one or more of the following:

- a) an offence
- b) a serious risk to:
 - i. public health; or
 - ii. public safety; or
 - iii. the health or safety of any individual; or
 - iv. the environment
- c) a serious risk to the maintenance of law, including:
 - i. the prevention, investigation, and detection of offenses; or

- ii. the right to a fair trial
- d) an unlawful, a corrupt, or an irregular use of public funds or public resources
- e) oppressive, unlawfully discriminatory, or grossly negligent, or that is gross mismanagement, and is done (or is an omission) by:
 - i. an employee (if the organisation is a public sector organisation)
 - ii. a person performing (or purporting to perform) a function or duty or exercising (or purporting to exercise) a power on behalf of a public sector organisation or the Government.

5. Implementation

Please refer to the Protected Disclosures Procedure for detailed information.

5.1 Protections under the Act

Protections under the Act are given to the discloser, and anyone providing supporting information about a disclosure, when it is made about their organisation/workplace to their organisation in accordance with any internal procedures, or to an appropriate authority, at any time.

A discloser is protected if the discloser:

- Believes on reasonable grounds that there is, or has been, serious wrongdoing in or by the discloser's organisation; and
- Discloses information about that in accordance with the Act; and
- Does not disclose it in bad faith.

5.2 Confidentiality

The receiver is obliged to keep the discloser's identity confidential. It cannot be released under the Official Information Act 1982 or the local Government Official Information and Meetings Act 1987.

There are specific circumstances, listed in the Act, that allow the release of the discloser's identity. These are where it is essential in order to conduct an investigation. This decision is not made lightly and the discloser will be told.

5.3 No Retaliation

A person must not treat another less favourably because of a protected disclosure. And employers must not retaliate or threaten to retaliate against a discloser who is an employee.

5.4 No Victimisation

No person shall be victimised by anyone because they (or a relative or associate)

- have made, or intend to make, a protected disclosure;
- have encouraged another person to make a protected disclosure; or
- has given information in support of, or relating to, a protected disclosure; or
- intends to do any of the above.

5.5 No Contracting Out

The Act applies despite any agreement, contract, or internal procedure.

5.6 Supporting Information

Another discloser who discloses information in support of, or relating to, a protected disclosure is also entitled to protection under the Act if the discloser:

- Discloses in good faith
- Discloses as described in the guidelines for this policy.

5.7 Advising Employees

Council will publish widely and regularly information about this policy and the procedures for protected disclosures.

5.8 Anonymous Disclosure

An Ombudsman may provide information and guidance to organisations and disclosers about the circumstances in which anonymous protected disclosures may be made.

5.9 Right of Access

Any investigator who has been delegated this responsibility by the CE will be accorded free and unrestricted access to all SWDC records and premises, and the authority to examine, copy and/or remove all or any portion of the contents of files, desks, cabinets and other storage facilities on the premises without prior knowledge or consent of any individual who may use or have custody of any such items or facilities, when it is within the scope of the investigation.

6. Roles and Responsibilities

6.1 Discloser

It is important that you follow the guidelines detailed in the Protected Disclosures Procedure.

You may seek advice from the [Ombudsman](mailto:info@ombudsman.parliament.nz) (info@ombudsman.parliament.nz, P O Box 10152, Wellington 6143, 0800 802 602).

When you are sure:

- that a serious wrongdoing has happened, and
- you are wanting to report it in good faith, and
- you want the protection of the Act

you may write to or speak with your Group Manager or the CE. If the disclosure is about the CE or the Mayor, you may write to or speak with the Chair of the Assurance, Risk and Finance Committee.

If you believe, on reasonable grounds,

- that the person you would have reported to inside Council is involved in the wrongdoing, or
- that it's not appropriate to report to the above role because of your relationship or association with the alleged wrongdoer,

you may make your report to an appropriate authority. See **Definitions**, p. 3.

6.2 Receiver

It is important that you follow the guidelines detailed in the Protected Disclosures Procedure.

Advise the discloser:

- the procedure that will now be undertaken.
- what SWDC will do to maintain the discloser's confidentiality.
- what will happen if potentially identifying information is to be released.
- of the EAP or other service they may access for support.
- to whom the discloser may escalate any concerns.

Receiver may decide no action is required

In this case the discloser should be advised, with reasons, why no action will be taken.

Receiver may refer disclosure

SWDC may refer the matter to an appropriate authority.

6.3 Ombudsman

The Ombudsman may give advice to a discloser, investigate a disclosure either independently or alongside a public sector organisation, may review an investigation by a public sector organisation, and may provide advice to a discloser upon request.

7. Related Internal Policies and Procedures

- Protected Disclosures Procedure
- Code of Conduct for Council Employees
- Code of Conduct for Elected Members
- Standing Orders

8. References

Protected Disclosures (Protection of Whistleblowers) Act 2022

[Protected Disclosures \(Protection of Whistleblowers\) Act 2022 No 20, Public Act Contents – New Zealand Legislation](#)

Employment Relations Act 2000

[Employment Relations Act 2000 No 24 \(as at 01 July 2022\), Public Act Contents – New Zealand Legislation](#)

Human Rights Act 1993

[Human Rights Act 1993 No 82 \(as at 10 May 2022\), Public Act Contents – New Zealand Legislation](#)

Schedule 1: List of Appropriate Authorities

An Appropriate Authority as defined by the Act, without limiting the meaning of the term, includes:

- the head of any public sector organisation
- any officer of Parliament
- the membership body of a particular profession, trade, or calling with the power to discipline its members
- persons or bodies listed in Schedule 2 of the Act, including:
 - the Commissioner of Police
 - the Controller and Auditor-General
 - the Department of Internal Affairs
 - the Director of the Serious Fraud Office
 - the Health and Disability Commissioner
 - the Human Rights Commission
 - the Independent Police Conduct Authority
 - the Inspector-General of Intelligence and Security
 - an Ombudsman
 - the Parliamentary Commissioner for the Environment
 - the Public Service Commission
 - the Solicitor-General
 - WorkSafe New Zealand.

An Appropriate Authority does not include a Minister or member of Parliament.

Schedule 2: Flow chart of how this policy applies to a discloser

