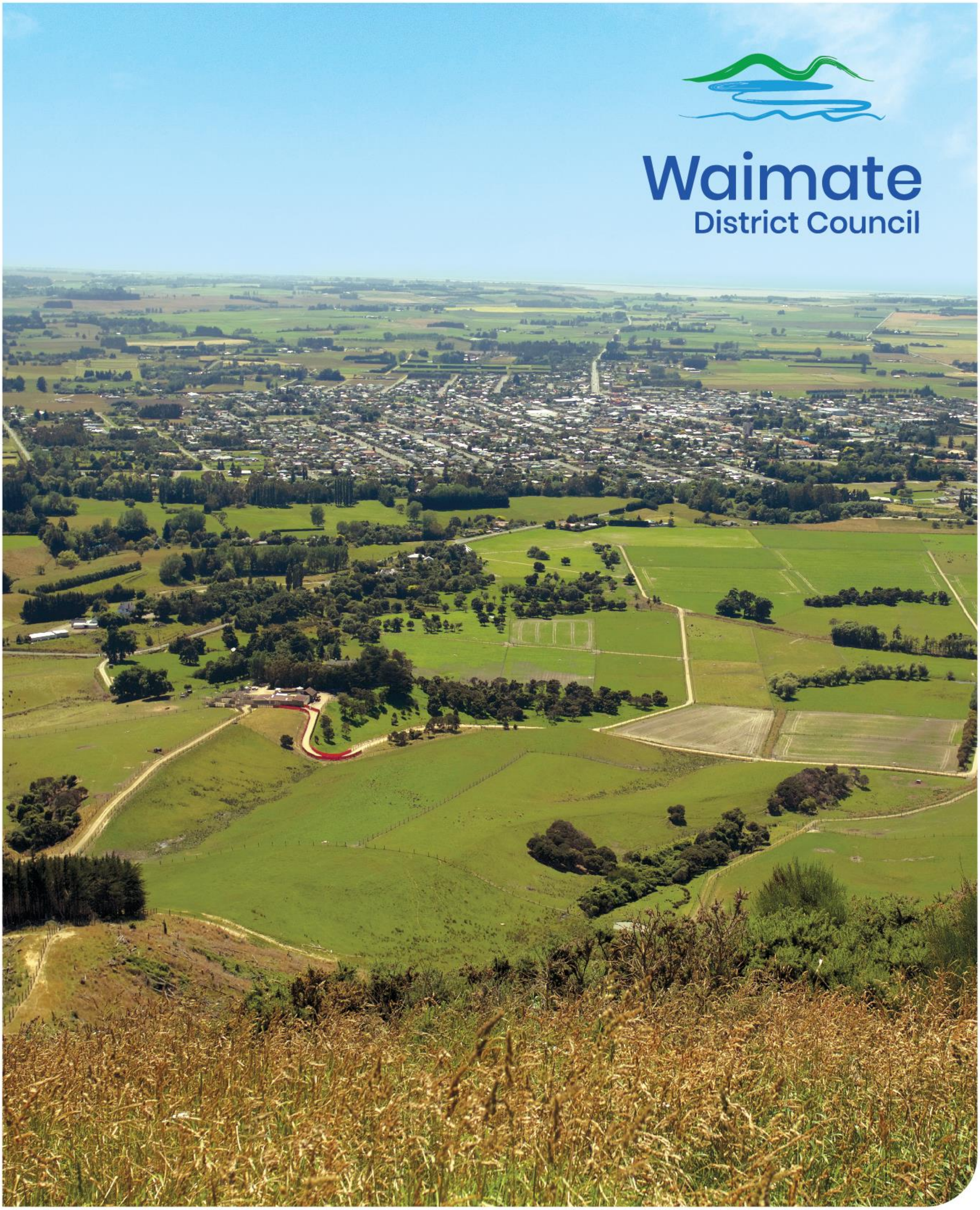

23/07/2024

326 Protected Disclosures for Employees, Contractors, and Volunteers

CONTENTS

PREFACE

This protected disclosure policy embodies Council's commitment to the fundamental principles of transparency, accountability, and integrity. It provides a clear framework that enables individuals to report serious concerns without fear of retaliation. Through this policy we aim to cultivate a culture where these guiding principles are not only encouraged but expected.

We affirm our dedication to creating a safe and supportive environment for all workers of Council – past and present – so that their voices can be heard, and their concerns addressed with the seriousness that is warranted in public service.

We understand that navigating policies, particularly those related to protected disclosures, can sometimes be challenging. If you find any part of this policy confusing or need further clarification, we strongly encourage you to reach out for help; you can speak to any Protected Disclosure Act Coordinators, as provided for in this policy, or if you would prefer to, you can contact the Ombudsman to discuss anything related to making a protected disclosure. Your inquiries will be treated with the utmost confidentiality and respect, ensuring that you receive the support you need.

Ombudsman: Guide to making a protected disclosure

Ombudsman: Checklist for making a protected disclosure

POLICY OVERVIEW

1. Policy Objectives

To provide current or former workers at Waimate District Council with guidance on understanding the definitions, regulations, and procedures regarding protected disclosures. This includes:

- How to determine if a complaint qualifies for protected disclosure.
- How to properly submit a protected disclosure.
- What assistance and protections are provided to disclosers.
- The responsibility that council has in receiving and investigating protected disclosures.
- To express the Council's support and commitment to high standards of ethical and accountable conduct.

2. Definitions

The Act

Refers to the Protected Disclosures (Protection of Whistleblowers) Act 2022

Serious Wrongdoing

Includes any act, omission, or course of conduct in (or by) any organisation that is 1 or more of the following:

- conduct that is oppressive, unlawfully discriminatory, or grossly negligent, or that is gross mismanagement, by a public sector employee or a person performing a function or duty or exercising a power on behalf of a public sector organisation
- an unlawful, corrupt or irregular use of public funds or public resource
- a serious risk to the maintenance of the law, including the prevention, investigation and detection of offences and the right to a fair trial
- an offence; and
- a serious risk to public health, public safety, the health or safety of any individual, or the environment.

Discloser

An individual who is (or was formerly):

- employees (i.e., a salary or wage earner) of the organisation
- people seconded to the organisation
- individuals contracted to do work for the organisation
- volunteers to the organisation

Appropriate Authority

Refers to the definition outlined in the Protected Disclosures Act 2022 and includes but is not limited to:

- the head of any public sector organisation; and
- any officer of Parliament; and
- the persons or bodies listed in the second column of Appendix A; and
- does not include
  - a Minister; or
  - a member of Parliament.

3. Policy Principles

The following principles underpin the intent and implementation of the Protected Disclosure Policy:

- 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.
- 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, to help prevent the Council from being brought into disrepute.

PROCEDURES

4. Determining what qualifies as a protected disclosure

4.1 For a complaint to be considered protected the following conditions apply

Disclosures are protected if:

- The discloser believes on reasonable grounds that there is, or has been, serious wrongdoing by any or all of the following: Council elected members, Mayor, Chief Executive, staff, contractors, and volunteers;
- Information regarding the wrongdoing is disclosed in accordance with the Act;

Disclosures are NOT protected if

- The complaint comes from an individual who is not considered a discloser under the definition provided by the Act;
- The complaint is made in bad faith;
- The complaint is made knowing the information provided is false;
- The information provided is protected by legal professional privilege.

5. Making a protected disclosure

5.1 If an employee believes, on reasonable grounds, that anyone at Council, such as a staff member, elected member, volunteer, or contractor is involved in any serious wrongdoing, the employee has two courses of action they can take:

- Make the disclosure to an Appropriate Authority (see Appendix A)
- Notify a Protected Disclosures Act Coordinator.

5.2 Disclosures must be made in writing.

5.3 Disclosures must be made to a Protected Disclosures Act Coordinator

- Asset Group Manager
- Community & Strategy Manager
- Regulatory & Compliance Group Manager

5.4 Disclosures can be made to the Chief Executive if it is believed on reasonable grounds that one or any of the Protected Disclosures Act Coordinators is involved in or may be in a relationship or associated with a person who is involved in the alleged serious wrongdoing.

5.5 Alternatively, a disclosure can be made to an appropriate authority, found in this policy's Appendix A, at any time. If a disclosure is made to someone on the list who is not the subject matter expert for the disclosure, they will refer it to the correct appropriate authority.

5.6 If there are reasonable concerns that a protected disclosure made to an internal party is not being addressed, the same disclosure may be made to a Minister of the Crown or relevant appropriate authority. This action may be taken if:

6. Responding to protected disclosures

6.1 When a disclosure has been submitted, the receiving Protected Disclosure Act Coordinator and subsequent parties to the procedure must, within 20 working days of receiving the disclosure:

Protected Disclosure Act Coordinator

- Must not refer to or disclose information that may identify the person who has made the disclosure. (Refer to Section 7.1 for exceptions)
- Where applicable, ensure that the investigation is conducted in accordance with the Waimate District Council Fraud Policy.
- Acknowledge receipt of the complaint in writing.
- Record the date the disclosure was received.
- Consider the need for assistance from qualified third parties such as legal advice or other specialist independent advice.
- Provide the discloser with information and guidance on
    - What constitutes a protected disclosure in accordance with the Act and this policy; and

    - The protections and remedies available under the Act, the Employment Relations Act 2000, and the Human Rights Act 1993; and
    - Appropriate external authorities the employee may refer the disclosure to, should they see necessary in accordance with the Act and this policy (Appendix A); and
    - A likely timeframe for the investigation and, when the time comes, the outcome.

- Interview the discloser, keeping detailed notes of the discussion. This should include the signature of the disclosure to verify the accuracy and completeness of the notes as well as acceptance of the procedures to be followed.
- Keep all relevant documentation of the disclosure and proceedings strictly confidential. Notes and documentation should never be kept on shared or networked drives that can be accessed by others.
- Advise the Chief Executive (or in their absence, the acting Chief Executive) of the disclosure and provide the interview notes and any other relevant information. If the Chief Executive is involved, or suspected/alleged to be involved, in any serious wrongdoing, the Protected Disclosures Act Coordinator will inform the Chair of the Audit and Risk Committee or an appropriate authority, as defined in this policy. The Chair of the Audit and Risk Committee or appropriate authority will oversee any such investigation.

Chief Executive

6.2 The Chief Executive is responsible for commissioning whatever investigation, or restorative, or disciplinary actions necessary to deal with the alleged wrongdoing. The Chief Executive may appoint an Investigating Officer (IO) to oversee any ensuing investigation on their behalf.

If the Chief Executive is involved or implicated in serious wrongdoing, then the Chair of the Audit and Risk Committee will fulfil these responsibilities.

The Chief Executive (or, on his behalf, the IO, or the Chair of the Audit and Risk Committee) will:

- Investigate the allegation.
- Keep a detailed file note recording the interview notes received from the Protected Disclosures Act Coordinator, the investigation, and the explanation given to the complainant about procedures to be followed.
- Ensure that the Protected Disclosures Act Coordinator is advised how the matter is being dealt with or how it has been resolved, so that the complainant may be advised within 20 working days from the date that the disclosure was made.
- Where applicable, ensure that the investigation is conducted in accordance with the Waimate District Council Fraud Policy.
- Inform Council’s Audit & Risk Committee of the outcome of any investigation.
- Deal with the matter by doing one or more of the following:
    - Address the serious wrongdoing by acting or recommending action.
    - Referring the disclosure to an appropriate authority in accordance with the Act.

  - Decide that no action is required.

6.3 The Chief Executive (or the Chair of the Audit and Risk Committee), with assistance from the Human Resources Manager (if applicable), is responsible for ensuring that any employee who makes a protected disclosure is immune from disciplinary proceedings and is protected from retaliatory action and victimisation.

7. Protections provided under the Act

If a complaint qualifies for protection, disclosers are afforded the following protections:

- A discloser's identity will be confidential unless certain exceptions apply (see Confidentiality below)
- Disclosers will be protected from civil, criminal, and disciplinary proceeding that might otherwise arise 'because of making the disclosure'.
- Disclosers will be protected from retaliatory action or unfavourable treatment by Council
- Disclosers will be protected by the anti-victimisation provisions of the Human Rights Act 1993.

7.1 Confidentiality

The Protected Disclosures Act 2022 sets a high threshold for when information that identifies or risks identifying the employee who made the disclosure may be disclosed—it must be essential to disclose the particular information, including any of the following reasons:

- disclosers consenting to the release of their identifying information;
- there are reasonable grounds that the identifying information is crucial to the effective investigation of the disclosure;
- to comply with the principles of natural justice;
- to prevent a serious risk to public health, public safety, the health or safety of any individual, or the environment; or
- to cooperate with an investigation by a law enforcement or regulatory agency for the purpose of law enforcement.

7.2 Immunity for civil, criminal, and disciplinary proceedings

Individuals making a protected disclosure are not liable for any civil, criminal, or disciplinary proceeding resulting from the submission of the complaint. This includes protections from internal procedures that limit or prohibit the disclosure of information.

This protection does NOT extend to information protected by legal professional privileges.

7.3 Protection from retaliatory action or unfavourable treatment

Waimate District Council must not retaliate or threaten to retaliate against disclosers because they have made or intend to make a protected disclosure.

Employees, as defined by the Employment Relations Act 2000, are protected from threatening or retaliatory behaviour. Disclosers may file a personal grievance if they believe that:

- they have been unjustly dismissed; or
- their employment or working environment have been affected or they have been disadvantaged as a result of their disclosure; or
- they have been required to retire or resign.

7.4 Volunteering supporting information

The protections offered under the Act also apply to a person who volunteers supporting information as if the information were a protected disclosure of information.

A person volunteers supporting information if the person:

- provides information, in support of a protected disclosure of information made by another person, to:
- a person investigating the disclosure; or
- the person who made the disclosure; and
- is an employee of the organisation in respect of which the disclosure was made; and
- wishes to provide the supporting information so that the serious wrongdoing can be investigated.

However, a person does not volunteer supporting information if the person provides the supporting information only after being:

- required to do so under any enactment, rule of law, or contract for the purposes of the investigation; or
- approached during the investigation by, or on behalf of, the person investigating the matter.

8. Document Control

Document owner:	Human Resources Group Manager
Effective:	23/07/2024
Previous review date(s):	8 October 2019 13 September 2016
Next review date:	May 2028
Policy can only be amended by:	Resolution of Council
Council resolution number:	2024/113

Appendix A: Examples of concerns and appropriate authorities

Nature of concerns	Appropriate authority
Anticompetitive conduct	Commerce Commission
Bullying or harassment, including sexual harassment	WorkSafe New Zealand (where work-related) Human Rights Commission
Charities	Department of Internal Affairs Solicitor-General
Child welfare and child protection	Oranga Tamariki—Ministry for Children
Consumer protection	Commerce Commission
Crime	Commissioner of Police Director of the Serious Fraud Office
Discrimination	Human Rights Commission
Education service	Ministry of Education Education Review Office
Energy safety	WorkSafe New Zealand (where work-related)
Environment	Ministry for the Environment Department of Conservation
Financial reporting (private sector)	Financial Markets Authority
Financial reporting (public sector)	Controller and Auditor-General
Financial service providers' conduct	Financial Markets Authority
Health	Ministry of Health Health and Disability Commissioner
Health and safety (work-related)	Ministry of Business, Innovation, and Employment WorkSafe New Zealand
Housing	Ministry of Housing and Urban Development
Insurers (licensed insurers)	Reserve Bank of New Zealand
Intelligence and security or classified information	Inspector-General of Intelligence and Security only
International relations	Ombudsman only
Local Government	Ombudsman Controller and Auditor-General Department of Internal Affairs
Police	Commissioner of Police Independent Police Conduct Authority
Privacy of individuals or security of personal information	Privacy Commissioner
Professional or trade conduct	Ministry of Business, Innovation, and Employment
Public sector	Ombudsman Controller and Auditor-General
Public service	Public Service Commission
Racism	Human Rights Commission
Sector regulation	Commerce Commission
Social support or benefits	Ombudsman
State services	Public Service Commission The Treasury
Transport and transport safety issues	Ministry of Transport
Whistleblowing and protected disclosures	Ombudsman