

Fraud and Corruption Internal Reporting Policy

Resolution of Council

7 NOVEMBER 2011

ITEM 6.7 FRAUD AND CORRUPTION INTERNAL REPORTING POLICY (S077647)

It is resolved that Council approve the draft Fraud and Corruption Internal Reporting Policy, shown at Attachment A to the subject report.

Carried unanimously.

The Fraud and Corruption Internal Reporting Policy, as adopted by Council, is as follows:

Message from the Chief Executive Officer

One of the major difficulties in combating fraud and other corrupt behaviour is the many and varied ways in which it can occur. For that reason it is critically important that all officials including Councillors, employees, members of Council committees, conduct reviewers and delegates of Council are at all times aware of the possibility that fraud could happen in one form or another.

As much as we all would like to think that it could only be initiated by external sources, evidence shows that fraud and corruption is often perpetrated from within an organisation.

Fraud and corruption are ongoing risks faced by our organisation. The intention of this Policy is to bring an organisation-wide approach to managing reporting on fraud and corruption. The Policy is modelled on the NSW Ombudsman's guidelines and model policy.

This Policy applies to all officials of the City and is to be read in conjunction with the Code of Conduct for Councillors and Council employees.

The City is demonstrating leadership and commitment to the requirements of the Public Interest Disclosures Act by establishing an effective internal reporting system to appropriately receive, assess and deal with reports of suspected wrongdoing.

To facilitate this, the City will provide an environment that enables the free and open reporting of suspected fraud and corruption by staff without reprisal.

Monica Barone

Chief Executive Officer
October 2011

POLICY CONTENT

The City of Sydney is committed to the highest standard of ethical and accountable conduct and will support and protect staff who report wrongdoing. Staff who come forward and report wrongdoing are helping to promote integrity, accountability and good management within the City.

The Fraud and Corruption Internal Reporting Policy has been established to assist in meeting our commitment and obligations to ensure utmost clarity and consistency in handling reports of wrongdoing.

PURPOSE

This Policy is designed to:

- demonstrate the City's commitment to high standards of ethical and accountable conduct and confirms that any form of wrongdoing will not be tolerated;
- conform with the City's Code of Conduct;
- ensure that, as a public authority, the City meets its responsibilities in receiving, assessing and dealing with public interest disclosures under section 6D of the Public Interest Disclosures (PID) Act 1994;
- define procedures to be applied in reporting wrongdoing.

SCOPE

This Policy complies with NSW Government legislation and guidelines for public interest disclosures and applies to:

- Councillors;
- City staff;
- individuals who are engaged as contactors working for the City; and
- other people who perform public official functions on behalf of the City such as volunteers.

DEFINITIONS

See Appendix 1 for definitions and concepts relating to this Policy.

ORGANISATIONAL COMMITMENT

The City of Sydney is committed to:

- creating a climate of trust, where staff are comfortable and confident about reporting wrongdoing;
- encouraging staff to come forward if they have witnessed what they consider to be wrongdoing within the City;
- keeping the identity of any staff member disclosing wrongdoing confidential, wherever possible and appropriate;

- protecting staff who make disclosures from any adverse action motivated by their report;
- dealing with reports thoroughly and impartially and if some form of wrongdoing has been found, take appropriate action;
- keeping staff who make reports informed of their progress and the outcome;
- encouraging staff to report wrongdoing within the City, but respecting any decision to disclose wrongdoing outside the City;
- ensuring managers, supervisors and staff understand the benefits of reporting wrongdoing and are familiar with this Policy;
- providing adequate resources to:
 - encourage reports of wrongdoing;
 - protect and support those who make them;
 - provide training on a regular basis for key personnel;
 - investigate allegations;
 - properly manage any workplace issues that the allegations identify or create;
 - correct any problem that is identified;
- regularly reassessing/reviewing the Policy to ensure it is still relevant and effective.

MAKING A REPORT OF WRONGDOING

All City staff are encouraged to report known and suspected wrongdoing within the City in accordance with this Policy.

City staff have an important role to play in supporting those who have made public interest disclosures. They must abstain from any activity that is or could be perceived to be victimisation or harassment of a person who has made a disclosure. Further, they should protect and maintain the confidentiality of any person they know or suspect to have made a disclosure.

WHAT SHOULD BE REPORTED?

You should report any wrongdoing you see within the City. A public interest disclosure can concern any of the following specific categories:

- corrupt conduct;
- maladministration;
- serious and substantial waste of public money;
- government information contravention; and
- local government pecuniary interest contravention.

Each will be dealt with under the PID Act and according to this Policy as public interest disclosures.

PUBLIC INTEREST DISCLOSURES

The City will support staff who report wrongdoing. For a report to be considered a public interest disclosure, it has to meet the requirements of the PID Act. These are:

- the person making the disclosure must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing;
- the report has to be made to one of the following:
 - a position nominated in this Policy;
 - the Chief Executive Officer (CEO);
 - one of the investigating authorities nominated in the PID Act.

Reports by staff and councillors will not be considered to be public interest disclosures if they:

- mostly question the merits of government policy, including the policy of the governing body of the council;
- are made with the sole or substantial motive of avoiding dismissal or other disciplinary action.

HOW TO REPORT WRONGDOING

You can report wrongdoing in writing or verbally. You are encouraged to make a report in writing as this can help to avoid confusion or misinterpretation.

If a report is made verbally, the person receiving the report must make a comprehensive record of the disclosure and ask the person making the disclosure to sign this record. The staff member should keep a copy of this record.

If you are concerned about being seen making a report, ask to meet in a discreet location away from the workplace.

The City has an employee assistance program which is a free confidential counselling service available to all employees experiencing personal or work related problems. You can contact ACCESS on telephone 1800 818 728.

ANONYMOUS REPORTS

There will be some situations where you may not want to identify yourself when you make a report. Although these reports will still be dealt with by the City, it is best if you identify yourself. This allows us to provide you with any necessary protection and support, as well as feedback about the outcome of any investigation into the allegations.

It is important to realise that an anonymous disclosure may not prevent you from being identified.

MAINTAINING CONFIDENTIALITY

The City realises some staff will want their report to remain confidential.

We are committed to keeping your identity, and the fact you have reported wrongdoing, confidential. However there may be situations where this may not be possible or appropriate. We will discuss with you whether it is possible to keep your report confidential.

If confidentiality cannot be maintained, we will develop a plan to support and protect you from risks of reprisal. You will be involved in developing this plan. You will also be told if your report will be dealt with under the City's Code of Conduct, as this may mean certain information will have to be tabled at a Council meeting.

If you report wrongdoing, you should only discuss your report with those dealing with it. If you discuss your report more broadly, you may affect the outcome of any investigation.

WHO TO REPORT TO AT THE CITY

You are encouraged to report general wrongdoing to your supervisor. However the PID Act requires that for a report to be a public interest disclosure it must be made to a public official in accordance with this Policy.

Any supervisor who receives a report that they believe may be a public interest disclosure must refer the staff member making the report to one of the positions listed below.

The following positions are the only staff within the City who can receive public interest disclosures:

1. Disclosures Officers – All Directors and Manager Governance

Disclosures Officers work with the Disclosures Coordinator and are responsible for receiving, forwarding and/or dealing with reports made in accordance with this Policy.

2. Disclosures Coordinator – Director Legal and Governance

The Disclosures Coordinator has a central role in dealing with reports made by staff. They receive, assess and refer them to the people within the City who can deal with them appropriately.

3. Chief Executive Officer (CEO)

You can report wrongdoing directly to the CEO. The CEO is responsible for:

- deciding if a report is a public interest disclosure;
- determining what needs to be done next, including referring it to other authorities;
- deciding what further action needs to be taken.

4. Lord Mayor

You can report wrongdoing directly to the Lord Mayor. If you are making a report about the CEO, you should make your report to the Lord Mayor. The Lord Mayor may seek guidance from the Disclosure Coordinator, CEO (if appropriate) or an investigating authority (i.e. the Ombudsman, Independent Commission Against Corruption or the Director-General of the Division of Local Government).

If you are a member of staff and your report involves a Councillor, you should make it to the CEO or the Lord Mayor. If you are a Councillor and your report is about another Councillor, you should make it to the CEO or the Lord Mayor.

WHO TO REPORT TO EXTERNALLY

Staff are encouraged to report wrongdoing within the City, but internal reporting is not your only option. If you follow the guidance below, your report can still be a public interest disclosure.

You can choose to make your report to an investigating authority. You can do this first, or at any stage after your initial report to the City. You can also choose to make a report to a Member of Parliament or a journalist, but only in limited circumstances.

Investigating authorities

The PID Act lists a number of investigating authorities in NSW that staff can report wrongdoing to and the categories of wrongdoing each authority can deal with.

In relation to the City, these authorities are:

- the Independent Commission Against Corruption (ICAC) — for corrupt conduct;
- the Ombudsman — for maladministration;
- the Information Commissioner — for disclosures about a government information contravention.
- the Division of Local Government – for disclosures on any of the above categories

You should contact the relevant authority for advice about how to make a disclosure to them. Contact details for each investigating authority are provided in Appendix 3.

You should be aware that it is very likely the investigating authority will discuss the case with the City. We will make every effort to assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately and we will provide support and assistance to staff who report wrongdoing to an investigating authority.

Members of Parliament or journalists

To have the protections of the PID Act, staff reporting wrongdoing to a Member of Parliament (MP) or a journalist must have already made substantially the same report to one of the following:

- the CEO;
- a person nominated in this Policy;
- an investigating authority in accordance with the PID Act.

Also, the City or investigating authority that received the report must have either:

- decided not to investigate the matter;
- decided to investigate the matter, but not completed the investigation within six months of the original report;
- investigated the matter but not recommended any action as a result;

- not told the person who made the report, within six months of the report being made, whether the matter will be investigated.

Most importantly – to be protected under the PID Act – if you report wrongdoing to an MP or a journalist you will need to be able to prove that you have reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true.

If you report wrongdoing to a person or an organisation that is not listed above, you will not be protected under the PID Act. This may mean you will be in breach of legal obligations or the City's Code of Conduct – by, for example, disclosing confidential information.

FEEDBACK TO STAFF WHO REPORT WRONGDOING

Staff who report wrongdoing will be told what is happening in response to their report.

When you make a report, you will be given:

- an acknowledgement that your disclosure has been received;
- the timeframe for when you will receive further updates;
- the name and contact details of the people who can tell you what is happening.

The PID Act requires that you are provided with an acknowledgement letter and a copy of this Policy within 45 days after you have made your report.

After a decision is made about how your report will be dealt with, you will be given:

- information about the action that will be taken in response to your report;
- likely timeframes for any investigation;
- information about the resources available within the City to handle any concerns you may have;
- information about external agencies and services you can access for support.

During any investigation, you will be given:

- information on the ongoing nature of the investigation;
- information about the progress of the investigation and reasons for any delay;
- advice if your identity needs to be disclosed for the purposes of investigating the matter, and an opportunity to talk about this.

At the end of any investigation, you will be given:

- enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to your disclosure and any problem that was identified;
- advice about whether you will be involved as a witness in any further matters, such as disciplinary or criminal proceedings.

This information will be given to you within 6 months from the date you make your report.

A flowchart of the reporting process is summarised in Appendix 2.

PROTECTION AGAINST REPRISALS

The PID Act provides protection for people reporting wrongdoing by imposing penalties on anyone who takes detrimental action substantially in reprisal for them making the public interest disclosure.

The City will not tolerate any reprisal action against staff who report wrongdoing. The criminal penalties that can be imposed include imprisonment or fines. Detrimental action is also misconduct that justifies disciplinary action. People who take detrimental action against someone who has made a disclosure can also be required to pay damages for any loss suffered by that person.

Detrimental action means action causing, comprising or involving any of the following:

- injury, damage or loss;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to employment;
- dismissal from, or prejudice in, employment;
- disciplinary proceedings.

Responding to reprisals

The City will act to protect staff who report wrongdoing from reprisals.

When a report is received, we will ensure that a thorough risk assessment is conducted. This will identify any risks to the member of staff who reported the wrongdoing, as well as strategies to deal with those risks.

Any member of staff must report any suspicions they have that reprisal action against a staff member is occurring, or any reports that are made to them, to the Disclosures Coordinator or the CEO.

If the Disclosures Coordinator becomes aware of reprisal action against a person who has made a disclosure, they will:

- ensure that the suspected reprisal is investigated by staff/external investigators who were not involved in dealing with the initial disclosure;
- give the results of that investigation to the CEO for a decision;
- give the results of that investigation to the Lord Mayor for a decision if the allegation of reprisal action is about the CEO;
- take all steps possible to protect the member of staff who made the disclosure if it has been established that the reprisal action is occurring against them;
- initiate appropriate disciplinary or criminal action against anyone proven to have taken or threatened any action in reprisal for making a disclosure.

If you report reprisal action, you will be kept informed of the progress of any investigation and the outcome.

Specific directions may be issued to help protect against reprisals. These may include:

- issuing warnings to those alleged to have taken reprisal action against the member of staff who made the disclosure;
- relocating the member of staff who made the disclosure or the subject officer within the current workplace;
- transferring the member of staff who made the disclosure or the staff member who is the subject of the allegation to another position for which they are qualified;
- granting the member of staff who made the disclosure or the subject officer leave of absence during the investigation of the disclosure.

The Disclosures Coordinator will make it clear to other staff that this action was taken in consultation with the staff member and with management support – and it is not a punishment.

If you have reported wrongdoing and feel that any reprisal action is not being dealt with effectively, contact the Ombudsman or the ICAC – depending on the type of wrongdoing you reported. Contact details for all these investigating authorities are provided in Appendix 3.

Where there is any evidence of a reprisal offence having been committed (even where an investigation has been completed or discontinued), the City must refer that evidence to ICAC or the Commissioner of Police, who then may refer it to the Director of Public Prosecutions.

Protection against legal action

If you make a public interest disclosure in accordance with the PID Act, you are entitled to certain protections under that Act. This means that you will not be subject to any liability and no action, claim or demand can be taken against you for making the disclosure. You will not have breached any confidentiality or secrecy obligations. If defamation proceedings commence in relation to the public interest disclosure to certain parties, you will be able to claim a defence of absolute privilege.

SUPPORT FOR THOSE REPORTING WRONGDOING

The City will make sure that staff who have reported wrongdoing, regardless of whether they have made a public interest disclosure, are provided with access to any professional support they may need.

Staff within Workforce Services will support those who report wrongdoing. They will initiate and coordinate support, particularly to those who are suffering any form of reprisal.

SANCTIONS FOR MAKING FALSE OR MISLEADING DISCLOSURES

It is important that all staff are aware that it is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing.

SUPPORT FOR THE SUBJECT OF A REPORT

The City is committed to ensuring staff who are the subject of a report of wrongdoing are treated fairly. If you are the subject of a report, you will be:

- treated fairly and impartially;
- informed of your rights and obligations;
- kept informed during any investigation;
- given the opportunity to respond to any allegation made against you; and
- told the result of any investigation.

REPORTS TO THE NSW OMBUDSMAN

The City must provide a report to the Ombudsman every six months for the periods ending on 30 June and 31 December each year. The report is due 30 days after the end of the six month period to which the report relates, or by such later time as the Ombudsman may approve.

The report provides statistical information on the City's compliance with its obligations under the PID Act.

MORE INFORMATION

More information around public interest disclosures is available on the City's intranet. Staff can also access advice and guidance from the City's Disclosures Coordinator and the NSW Ombudsman's website at www.ombo.nsw.gov.au.

INTENDED OUTCOMES

This Policy aims to ensure that the City of Sydney meets its responsibilities in receiving, assessing and dealing with public interest disclosures in accordance with legislation and the City's organisational values: Collaboration, Courage, Integrity, Innovation, Quality and Respect.

The specific, measurable outcomes are as follows, the City will:

- maintain an effective system of internal controls and compliance with those controls;
- establish formal procedures for the investigation of allegations of dishonest and/or fraudulent behaviour;
- react appropriately to situations where fraud or corruption allegations are proven to be true. This may be through reporting to relevant authorities and/or disciplinary action under the Code of Conduct;
- make all staff and Councillors aware of their obligations in combating fraudulent and corrupt behaviour by making available this Policy and the Code of Conduct and providing appropriate training on a regular basis; and
- cultivate and maintain an environment in which dishonest and fraudulent behaviour is actively discouraged.

EVALUATION

The owner of this Policy will:

- regularly undertake fraud and corruption risk assessments to identify opportunities for fraud and implementing prevention and minimisation procedures in day to day operations;
- monitor the Policy to ensure that it has fully achieved its intended purpose and outcomes;
- seek feedback from employees who refer and use this Policy to gauge its effect;
- regularly review the Policy to ensure that it is complete, accurate and up-to-date.

REFERENCES

- Public Interest Disclosures Act 1994
- Independent Commission Against Corruption Act 1988
- Government Information (Public Access) Act 2009

Related Policies and Procedures

- Code of Conduct
- Managing Staff Complaints Policy
- Child Protection Policy

APPROVAL AND REVIEW

Review Period

The Manager Governance will review this Policy every two years

Next Review Date

November 2013

AUTHORISATION

Approved by Council on 7 November 2011

Appendix 1 – Definitions

Wrongdoing – as outlined in the PID Act 1994 a public interest disclosure can concern any of the following specific categories of wrongdoing:

(1) Corrupt conduct

Corrupt conduct is the dishonest or partial exercise of official functions by a public official.

For example, this could include:

- the improper use of knowledge, power or position for personal gain or the advantage of others;
- acting dishonestly or unfairly, or breaching public trust;
- a member of the public influencing or trying to influence a public official to use their position in a way that is dishonest, biased or breaches public trust;
- theft of stationary, equipment, tools, furniture, mobile phones, intellectual property etc.;
- misuse and unauthorised use of credit cards, fuel cards, cabcharge vouchers or data for financial gain.

For more information about corrupt conduct, see the NSW Ombudsman's guideline on [what can be reported](#).

(2) Maladministration

Maladministration is conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives.

For example, this could include:

- making a decision and/or taking action that is unlawful;
- refusing to grant someone a licence for reasons that are not related to the merits of their application.

For more information about maladministration, see the NSW Ombudsman's guideline on [what can be reported](#).

(3) Serious and substantial waste in local government

Serious and substantial waste is the uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of local government money. This includes all revenue, loans and other money collected, received or held by, for or on account of the council.

For example, this could include:

- poor project management practices leading to projects running over time;
- having poor or no processes in place for a system involving large amounts of public funds;
- splitting orders to avoid tendering or obtaining quotes;
- favouring suppliers, or colluding with suppliers to obtain dummy quotes.

For more information about serious and substantial waste, see the NSW Ombudsman's guideline on [what can be reported](#).

(4) Government information contravention

A government information contravention is a failure to properly fulfil functions under the *Government Information (Public Access) Act 2009* (GIPA Act).

For example, this could include:

- destroying, concealing or altering records to prevent them from being released;
- knowingly making decisions that are contrary to the legislation;
- directing another person to make a decision that is contrary to the legislation.

For more information about government information contravention, see the NSW Ombudsman's guideline on [what can be reported](#).

(5) Local government pecuniary interest contravention

A local government pecuniary interest contravention is a failure to fulfil certain functions under the Local Government Act 1993 relating to the management of pecuniary interests. These include obligations to lodge disclosure of interests, returns, lodge written declarations and disclose pecuniary interests at council and council committee meetings. A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.

For example, this could include:

- a senior council staff member recommending a family member for a council contract and not declaring the relationship;
- a CEO holding an undisclosed shareholding in a company competing for a council contract.

For more information about local government pecuniary interest contravention, see the NSW Ombudsman's guideline on [what can be reported](#).

Other wrongdoing

Although reports about the previous categories of conduct can attract the specific protections of the PID Act, you should report all activities or incidents that you believe are wrong.

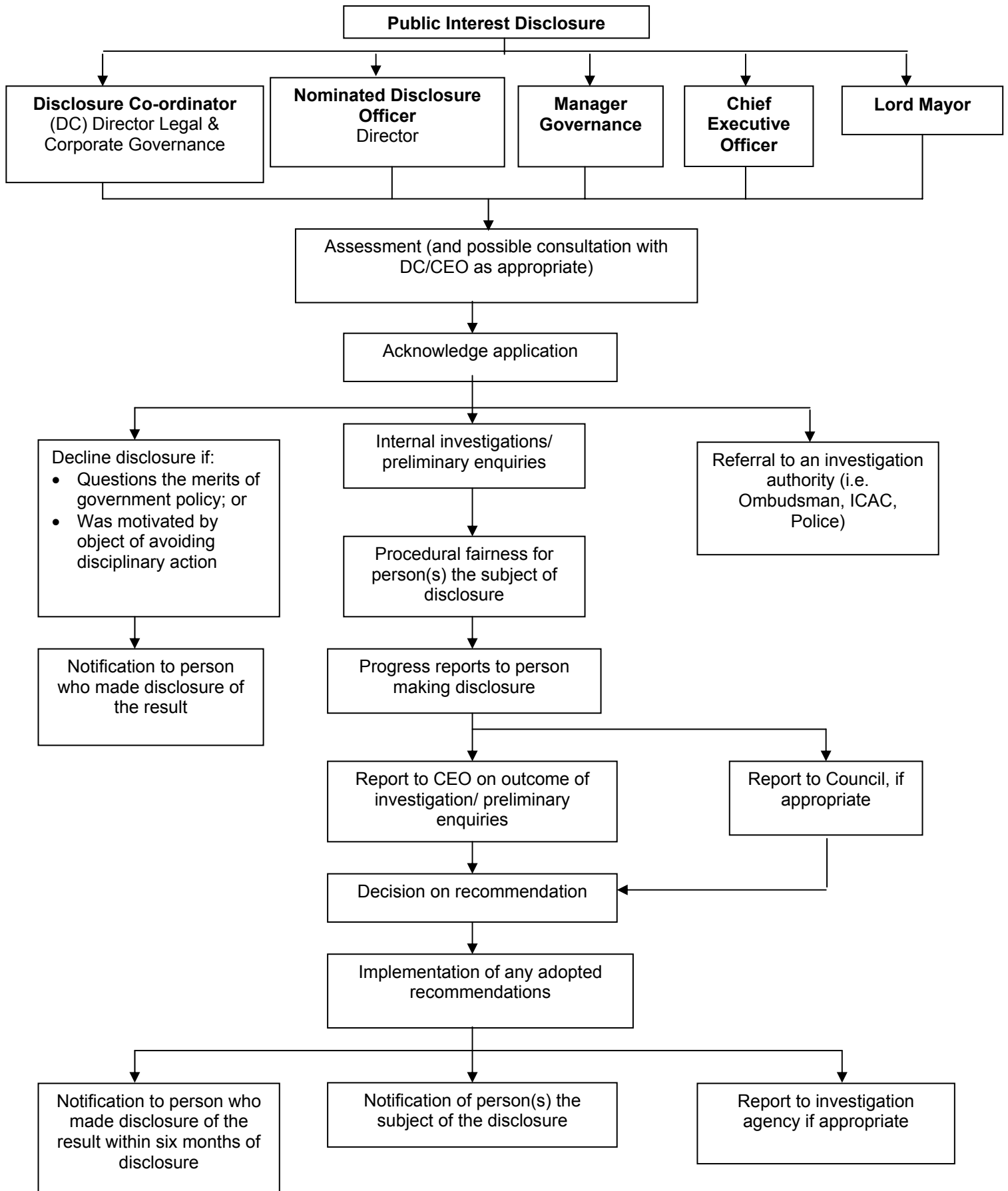
For example, these could include:

- harassment or unlawful discrimination;
- reprisal action against a person who has reported wrongdoing;
- practices that endanger the health or safety of staff or the public.

These types of issues should be reported to a supervisor, in line with the City's policies and Code of Conduct, Managing Staff Complaints Policy and Child Protection Policy.

Even if these reports are not dealt with as public interest disclosures, the City will consider each matter and make every attempt to protect the staff member making the report from any form of reprisal.

Appendix 2 – Process Flowchart



Appendix 3 – Resources

The contact details for external investigating authorities that staff can make a public interest disclosure to or seek advice from are listed below.

For disclosures about corrupt conduct:

Independent Commission Against Corruption (ICAC)
Phone: 02 8281 5999
Toll free: 1800 463 909
Tel. typewriter (TTY): 02 8281 5773
Facsimile: 02 9264 5364
Email: icac@icac.nsw.gov.au
Web: www.icac.nsw.gov.au
Address: Level 21, 133 Castlereagh Street, Sydney NSW 2000

For disclosures about maladministration:

NSW Ombudsman
Phone: 02 9286 1000
Toll free (outside Sydney metro): 1800 451 524
Tel. typewriter (TTY): 02 9264 8050
Facsimile: 02 9283 2911
Email: nswombo@ombo.nsw.gov.au
Web: www.ombo.nsw.gov.au
Address: Level 24, 580 George Street, Sydney NSW 2000

For disclosures about local government agencies:

Division of Local Government in the Department of Premier and Cabinet
Phone: 02 4428 4100
Tel. typewriter (TTY): 02 4428 4209
Facsimile: 02 4428 4199
Email: dlg@dlg.nsw.gov.au
Web: www.dlg.nsw.gov.au
Address: 5 O'Keefe Avenue, Nowra, NSW 2541

For disclosures about breaches of the GIPA Act:

Information Commissioner
Toll free: 1800 463 626
Facsimile: 02 8114 3756
Email: ocinfo@oic.nsw.gov.au
Web: www.oic.nsw.gov.au
Address: Level 11, 1 Castlereagh Street, Sydney NSW 2000