



June 2016

Making allegations of corrupt conduct public

Is it in the public interest?

Submission form

Lodging a submission

Send your submission to us by **5pm Thursday 30 June 2016** by any of the following methods:

Online: <www.ccc.qld.gov.au/publicisingallegations/>

Post: Publicising allegations
Crime and Corruption Commission
Policy and Research
GPO Box 3123 Brisbane Qld 4001

Email: publicisingallegations@ccc.qld.gov.au

Fax: 07 3360 6333

We may not consider late submissions.

Do you wish to maintain partial or complete confidentiality?

We will generally publish submissions on our website — including the name of the submitter but no contact details. If you would prefer to maintain partial or complete confidentiality, please indicate your preference by selecting one of the following:

- NAME WITHHELD — PARTIAL CONFIDENTIALITY**
I consent to my submission being published on the CCC website, without my name being disclosed.
- CONFIDENTIAL — COMPLETE CONFIDENTIALITY**
I do not consent to my submission being published on the CCC website.

If there is no clear selection of one of these alternatives, we will regard any submission (including an anonymous submission) as a public document, and will publish it on our website.

The CCC may quote from your submission or refer to it, either generally or individually, in publications.

Privacy statement

No submission marked as confidential will be published on our website. However, any submission may be subject to disclosure under the *Right to Information Act 2009* and the *Information Privacy Act 2009*, and applications to access submissions will be determined in accordance with those Acts.

If you provide your details, we may contact you to ask whether you consent to further consultation for the purposes of this project.

Your details

Provide as much or as little information as you wish.

Name(s):	<input type="text"/>		
Organisation:	<input type="text"/>		
Address:	<input type="text"/>		
Phone:	<input type="text"/>	Mobile:	<input type="text"/>
		Fax:	<input type="text"/>
Email:	<input type="text"/>		

Your submission

You may wish to address the following considerations in your submission.

Open, transparent and accountable government

Local Government is accountable to the community and obligated by Local Government principles to demonstrate openness and accountability in all its dealing with the public. This is at the forefront of Council's work and Council has implemented numerous policies and procedures encouraging and promoting the sharing of information to the community at large. However, it has been deemed that not all information is in the public interest and Council is careful to not disclose any information that may be in breach of confidentiality or privacy legislation.

Council maintains confidentiality in its investigations and complaints processes. Council has a separate policy and procedure for dealing with administrative action complaints whereby the complainants are provided with a detailed written response to their concerns including any findings made and actions taken. Matters concerning the potential discipline of employees or Councillors are dealt with differently and details of the investigation and any findings are not disclosed.

While the publishing of allegations concerning corrupt conduct could be seen to be a facet of transparency in the benefit of the public interest, other important competing factors are at play which should be considered as detailed below.

Freedom of speech

It is acknowledged people are entitled to form their own beliefs and opinions and Council's complaints management process encourages feedback from the community and from persons within Council. All complaints are handled through a central database system and key officers are allocated. There is an escalation process for resolving complaints and the complainant is kept informed during the complaints process. Council has an adopted investigation procedure and public interest disclosure policy which provides guidance on the way information is obtained and handled to balance the rights of the complainants and witnesses with the interests of the respondent.

There will always be a need to manage the impact of freedom of speech through legislation, policy and practice. The ability to speak freely without undue influence or fear of reprisal already exists at law. Council is not of the view that publicising allegations of corrupt conduct will go any way to furthering this implied right.

Reputation of alleged subject officers

Allegations of corrupt conduct are based on untested evidence. Allegations may change throughout an investigation process and allegations may well be found to be unsubstantiated. At times, complaints may be deemed frivolous or vexatious and the Respondent is exonerated of the alleged misconduct. Publicising allegations, particularly if the person is named, undoubtedly tarnishes the reputation and credibility of the respondent. Even if the allegations are found to be unsubstantiated, there is great risk people will form a pre-determined view that there must have been some merit to the complaint and the respondent is likely to be victimised as a result (ie mud sticks). Due to confidentiality of the process they will not be able to adequately defend themselves against attacks on their credibility.

Council opposes any proposed requirement to name Respondents to allegations of corrupt conduct.

Fair trial

Council's investigations are conducted on the basis of only those that need to know will be involved. Complainants, witnesses and respondents are specifically directed to keep the details of the investigations confidential. This is pertinent to ensure both confidentiality of the process but also to ensure the respondent is provided with a fair trial. Evidence is preserved and it reduces the likelihood of persons acting to pervert an investigation and exercising bias.

Council submits that publicising allegations of alleged corrupt conduct is likely to impact on the investigation process. Witnesses and key personnel may be influenced which may undermine the respondent's case. Natural justice and procedural fairness are critical components of investigations that should not be deviated from.

Effectiveness of the CCC

The ramifications on the CCC, or Council as an Agency, of publicising allegations of corrupt conduct at the outset of an investigation would be significant. Often the respondent is not aware that there is an investigation pending while the CCC/Agency gathers evidence and makes preliminary enquiries. There may be valid reasons for this such as the preservation of vital evidence or the protection of witnesses.

Often allegations are not formulated until after a variety of measures have taken place and there is sufficient evidence to pursue the investigation. It is likely that the requirement to publicise allegations would result in crucial steps in the process being missed and allegations being based on insufficient evidence. This would result in the use of

unnecessary resources on investigations lacking substance.

There is further concern that the publicising of allegations indicates a pre-determination by the CCC/Agency as to the merit of the complaint. The CCC/Agency as a decision maker must remain neutral throughout the process.

Council submits that publicising of allegations is likely to adversely affect the CCC in the performance of its functions.

Other

While there may be some merit to publicising data concerning CCC complaints, Council considers there is limited benefit to be gained from publicising mere allegations of corrupt conduct, which may or may not be proven. It is submitted the detriment that could potentially follow would significantly outweigh any public interest consideration.

Useful information for the sector and the community would include statistics such as the number of complaints received, complaints referred back to the Agency, complaints investigated, complaints substantiated and unsubstantiated and the type of complaint (ie theft).

If further specific details of the matters are to be disclosed then they should be done so anonymously without naming the Agency or respondent in question through general case studies. Many organisations are small or are located in rural and regional areas; and by identifying even the Agency, inferences may be easily drawn as to who the respondent might be which can be damaging to the Agency and the respondent.



Crime and Corruption Commission

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