



INTERNAL OMBUDSMAN POLICY

Adopted: 28 March 2018

TRIM: 042571.2018



INTERNAL OMBUDSMAN POLICY

1. LEGISLATIVE REQUIREMENTS

Government Information (Public Access) Act 2009
Health Records and Information Privacy Act 2002
Independent Commission Against Corruption Act 1988
Local Government Act 1993
Ombudsman Act 1974
Privacy and Personal Information Protection Act 1998
Public Interest Disclosures Act 1994

2. PURPOSE/ OBJECTIVES

2.1 The Internal Ombudsman is responsible for:

- a) Administering the process for dealing with customer complaints to Council;
- b) Assessing and inquiring into complaints referred by the Mayor, Councillors and the CEO;
- c) Assessing and inquiring into complex and difficult complaints referred by Council directors and managers;
- d) Assessing and reviewing privacy complaints and providing privacy advice to Council and members of the public;
- e) Assisting the CEO as Complaints Coordinator in regard to Code of Conduct complaints;
- f) Managing public interest disclosures (whistleblowing complaints) by members of Council staff;
- g) Training members of Council staff in relation to complaint handling;
- h) Undertaking internal reviews of decisions by Council regarding access to documents in accordance with provisions of the *Government Information (Public Access) Act 2009*.
- i) Undertaking reviews of Council's complaint handling policies and processes.

3. DEFINITIONS

3.1 For the purpose of this policy:

- a) ARIC means the Audit, Risk and Improvement Committee;
- b) CEO means the Chief Executive Officer of Council;
- c) Council means the Liverpool City Council;
- d) IO means the Internal Ombudsman.

4. POLICY STATEMENT

4.1 Jurisdiction

4.1.1 The IO may, on receiving a complaint, or on the IO's own initiative, undertake an inquiry into a decision or recommendation, an act done or omitted, a procedure or process relating to a matter of administration or conduct of members of Council staff or Council (in its administrative capacity) whereby a person is or may be aggrieved.

INTERNAL OMBUDSMAN POLICY

- 4.1.2 The IO should be consulted in regard to all matters reportable to the Office of Local Government, the Independent Commission Against Corruption, the NSW Ombudsman and the NSW Police.
- 4.1.3 The IO is Council's designated;
- a) Disclosures Coordinator dealing with public interest disclosures by persons defined as public officials of Council by section 4A of the *Public Interest Disclosures Act* 1994;
 - b) Complaints Coordinator in accordance with Council's Code of Conduct Procedures;
 - c) Privacy Contact Officer in accordance with Council's Privacy Policy.
- 4.1.4 The IO may conduct internal reviews of decisions relating to access to documents in accordance with Part 5 of the *Government Information (Public Access Act)* 2009.
- 4.1.4 The IO shall seek to act in a fair and transparent manner and to apply the principles of procedural fairness to any inquiry into a complaint.
- 4.1.5 The IO has the right to undertake an inquiry into any complaint without the need for any prior consent of any person or body within Council against whom the complaint is made.
- 4.1.6 Once an inquiry has concluded, any executive decisions in relation to findings and recommendations of the IO require the approval of the CEO or the Mayor (in the case of any findings or recommendations relating to the CEO). However, if the CEO refuses to endorse or act upon any findings or recommendations of the IO without good reason, the IO may report this situation directly to the Mayor or to a relevant external agency.
- 4.1.7 Submission of a complaint to the IO does not prevent the submission of a complaint to external agencies such as the ICAC, NSW Ombudsman, the Office of Local Government or the Information and Privacy Commission. However, if a matter is being dealt with by an external agency, the IO may refuse or cease to undertake an inquiry into the matter.
- 4.1.8 This policy does not affect any right in terms of any person to seek redress from any court or tribunal of competent jurisdiction in respect of any inquiry undertaken or recommendation made by the IO.

4.2 Refusal to undertake an inquiry into a complaint

- 4.2.1 The IO may refuse to undertake an inquiry, or cease to undertake an inquiry into a complaint where:
- a) The complaint, in the reasonable opinion of the IO, is trivial, frivolous, vexatious or not made in good faith;
 - b) An adequate remedy or right of appeal already exists, whether or not the complainant uses the remedy or the right of appeal;
 - c) The complaint is a request for service or information (which shall then be referred to the appropriate business unit of Council);
 - d) The complaint relates to a decision, recommendation, act or omission of which the complainant had knowledge for more than three months before making the complaint to the IO;
 - e) The complaint relates to a Council decision;
 - f) The complaint relates to actions or conduct of the Mayor and/ or a Councillor, other than in an administrative capacity;

INTERNAL OMBUDSMAN POLICY

- g) The complaint relates to matters before a court or tribunal;
- h) The complaint relates to matters under investigation by the:
 - 1. Audit Office of NSW;
 - 2. Independent Commission Against Corruption;
 - 3. Information and Privacy Commission;
 - 4. NSW Ombudsman;
 - 5. NSW Police Force;
 - 6. Office of Local Government;
 - 7. Any other regulatory authority.
- i) The complaint is a complaint by a member or members of Council staff which, in the reasonable opinion of the IO, concerns performance management or a disciplinary procedure, dispute or grievance, which may be subject to the provisions of the *Local Government (State) Award 2017*. (If this is the case, the matter shall be referred to Council's People and Organisational Development unit to manage.);
- j) The complaint relates to a matter awaiting determination by Council (although conduct in dealing with the matter can be the subject of an inquiry by the IO);
- k) The complaint relates to the actions or conduct of private individuals;
- l) Senior Council staff have not had an adequate opportunity to address the complaint;
- m) There is insufficient information available;
- n) The complainant declines, or refuses to provide, further information and/ or there are threats made against Council, Councillors or members of Council staff.

4.3 Decision not to undertake an inquiry

- 4.3.1 Where the IO decides not to undertake an inquiry, or to cease to undertake an inquiry into a complaint, the IO shall inform the complainant and any other interested person, in writing, of this decision and shall state the reason(s) for this decision.

4.4 Anonymous complaints

- 4.4.1 The IO shall not undertake an inquiry into any anonymous complaint, unless the issue places public safety at risk or raises a serious matter (such as an allegation of corrupt conduct, serious misconduct, maladministration or waste) and there is sufficient information for the IO to undertake an inquiry.

4.5 Confidentiality

- 4.5.1 The IO, and any member of Council staff carrying out duties relating to any inquiry undertaken by the IO, and any member of Council staff who becomes aware of an inquiry being undertaken by the IO, shall maintain confidentiality in regard to all matters that come to their knowledge. However, there may be situations where this may not be possible or appropriate for the IO, especially in relation to procedural fairness requirements or if the IO is of the opinion that disclosure of the information is necessary to inquire into the matter effectively, in which situation(s) the IO shall confer with the person(s) affected to implement a process to ensure that they are supported and protected from any risk of reprisal, undue publicity or embarrassment.

4.6 Privacy

- 4.6.1 The personal information of any complainant shall not be disclosed without their consent.

INTERNAL OMBUDSMAN POLICY

4.6.2 The IO shall manage personal information collected by the IO in accordance with Council's Privacy Policy, the *Health Records and Information Privacy Act 2002*, the *Privacy and Personal Information Protection Act 1988* and the *Government Information (Public Access) Act 2009*.

4.6.3 Interviews by the IO shall take place in a secure, discreet area of Council's Administration Centre, where complainants can provide information confidentially and all information is secure. Interviews may also take place in other locations, as appropriate in the reasonable opinion of the IO.

4.7 How to submit a complaint to the IO

4.7.1 Complaints can be submitted to the IO, using Council's online form, by email to lcc@liverpool.nsw.gov.au, or by letter addressed to the Internal Ombudsman, Liverpool City Council, Locked Bag 7064 Liverpool BC 1871.

4.7.2 The IO can be contacted for advice regarding the submission of a complaint or progress in its resolution on 1300 36 2170 (Tuesdays to Thursdays). However, the IO shall not accept complaints made during a phone call.

4.8 The complaint handling process

4.8.1 Within five working days of receiving a complaint, the IO shall acknowledge receipt of the complaint made by the complainant in writing, indicating whether the IO shall undertake an inquiry into the complaint.

4.8.2 Whenever practicable, feedback on an inquiry into a complaint shall be provided to the complainant within 10 working days of receiving the complaint.

4.8.4 An inquiry into a complaint by the IO may include a review of the related files or policies and procedures, interviews with relevant witnesses, site visits, facilitated meetings with relevant members of Council staff and the complainant, and a report to the CEO (or the Mayor in the event that the complaint relates to the CEO), setting out any finding(s) and recommendation(s).

4.8.5 Throughout the inquiry process, the IO shall inform a complainant about the progress of an inquiry.

4.8.6 At the conclusion of an inquiry by the IO, the IO shall inform the complainant in writing of the outcome of the complaint, including any finding(s) and recommendation(s) made by the IO to the CEO in regard to their complaint.

4.9 Cost

4.9.1 There is no charge for submitting a complaint to the IO or for any subsequent inquiry into a complaint.

4.10 Access to Council information and to Council premises by the IO

4.10.1 The IO may receive and obtain information, documents and other materials from any person in accordance with relevant Acts and Regulations and Council policies, in a

INTERNAL OMBUDSMAN POLICY

manner that the IO considers appropriate. However, any inquiry requiring any detailed ICT information must be undertaken by the IO in accordance with the Council's Information and Communication Technology (ICT) Policy.

4.10.2 The IO may:

- a) At a reasonable time enter, remain on and inspect premises occupied by Council;
- b) Converse in private with any member of Council staff on the premises;
- c) Require, in writing, a member of Council staff to furnish information, or produce a document, or thing in that person's possession or control, which relates to an inquiry by the IO;
- d) Make copies of a document produced under this clause;
- e) Seek independent legal advice in relation to an inquiry.

4.11 Recommendations by the IO

4.11.1 The IO may recommend that:

- a) A decision or recommendation by a member or members of Council staff be revoked or varied;
- b) A Council policy, procedure or process be altered
- c) A matter be referred to the CEO or the Mayor for further consideration;
- d) An apology be provided to complainant in writing by Council;
- e) An omission or delay be rectified;
- f) Council pay compensation to a complainant;
- g) Council provide a particular service or good, or undertake any necessary corrective work to resolve a complaint;
- h) Council undertake an appropriate correction, deletion or addition to a record;
- i) Provide an apology on Behalf of Council or recommend that an apology be provided by Council (without any admission of legal liability by Council);
- j) Reasons be given by a member or members of Council staff for a decision;
- k) Such other steps are taken that the IO considers reasonable and just.

4.12 Implementation of findings and recommendations

4.12.1 When any recommendation or finding is made under this policy, the IO may request the CEO or the appropriate director to notify the IO, within a specified period of time, about steps taken, or proposed to be taken, to give effect to any finding(s) and recommendation(s) made by the IO.

4.13 Report to a complainant

4.13.1 When an inquiry is undertaken about a complaint, the IO shall report the finding(s) and recommendation(s) to the complainant, in such manner and at such time as the IO deems suitable.

4.14 Review of findings and recommendations made by the IO

4.14.1 Findings and recommendations made by the IO can only be reviewed by the appropriate statutory agency external to Council, including the:

- a) Audit Office of NSW;

INTERNAL OMBUDSMAN POLICY

- b) Independent Commission Against Corruption;
- c) Information and Privacy Commission;
- d) NSW Ombudsman;
- e) NSW Police Force;
- f) Office of Local Government.

4.14.2 No proceedings can be brought against the IO for anything done in the course of the exercise or performance, or intended exercise or performance, of functions and duties of the IO under this policy, unless it is done in bad faith.

4.15 Reporting to the ARIC, Council and the local community

4.15.1 The IO shall provide a six-monthly report to the ARIC covering (subject to confidentiality) matters dealt with and findings as well as an annual report to Council on the performance of the functions and duties of the IO under this policy. The report to Council shall include a summary of matters dealt with by the IO in the previous 12 months.

4.15.2 The IO shall report to the local community on the work and activities of the IO through Council's Delivery Program and Operational Plan reporting process.

4.16 Media matters

4.16.1 All media inquiries regarding the work of the IO should be referred to the IO for comment.

4.16.2 Subject to approval by the Mayor, and after consultation with the CEO and Council's Manager Communications, the IO may issue media statements and public comments on matters relating to the IO.

4.17 Breaches of this policy

4.17.1 A member of Council staff who wilfully and without justification:

- a) Obstructs, hinders or resists the IO in the performance of the functions and duties of the IO under this policy;
- b) Fails to comply with a reasonable request of the IO;
- c) Makes a false statement to, or misleads or attempts to mislead, the IO or any other person in the exercise or performance of the functions and duties of the IO under this policy,

may be in breach of this policy and may be liable to disciplinary action.

4.17.2 A breach of this policy by members of Council staff shall be dealt with in accordance with any relevant staff agreements, awards, industrial agreements, contracts and Council policies, including the Code of Conduct and Code of Conduct Procedures.

4.17.3 If a matter being inquired into by the IO tends to show or shows maladministration, corrupt conduct, serious and substantial waste, government information contravention or criminal activity, the IO shall refer the matter to the CEO or the Mayor (as applicable) for reporting to the appropriate investigative agency.

INTERNAL OMBUDSMAN POLICY

4.18 Appointment and removal

4.18.1 To ensure that the IO can act and be perceived to act transparently, fairly and impartially:

- a) Whenever practicable, at least one Independent Member of the ARIC shall be a member of any selection panel for the appointment of the IO. The Mayor should also be consulted by the CEO prior to approval of the appointment of the IO by the CEO
- b) The IO should only be removed from the position by the CEO after prior consultation with the Mayor and the Chair of the ARIC.

INTERNAL OMBUDSMAN POLICY

AUTHORISED BY

Council Resolution

EFFECTIVE FROM

28 March 2018

DIRECTORATE RESPONSIBLE

Office of the Chief Executive Officer (Internal Ombudsman)

REVIEW DATE

28 March 2020

VERSION

Version	Amended by	Date	Changes Made	TRIM Number
1	Council Resolution	22 November 2017	New policy	241542.2017
2	Council Resolution	28 March 2018	Minor changes	042571.2018

CONSULTATION

This policy has been developed after consultation with:

Audit, Risk and Improvement Committee 20 October 2017
City Corporate (Governance, Legal and Procurement)
City Corporate (People and Organisational Development)

REFERENCES

Burwood Council: Ombudsman Policy
Liverpool City Council: Code of Conduct
Liverpool City Council: Code of Conduct Procedures
Liverpool City Council: Information and Communication Technology (ICT) Policy
Liverpool City Council: Privacy Policy
Liverpool City Council: Ethical Governance: Internal Reporting (Public Interest Disclosures) Policy
NSW Ombudsman: Effective Complaint Handling Guidelines, 3rd edition 2017
NSW Ombudsman: Good Conduct and Administrative Practice: Guidelines for State and Local Government, 3rd edition 2017
NSW Ombudsman: Managing Unreasonable Complainant Conduct Manual, 2nd edition 2012
NSW Ombudsman: Model Guidelines - Managing and Responding to Threats, Aggressive Behaviour and Violence from Members of the Public 2014
(Former) Warringah Council: Internal Ombudsman Guidelines