

Policy Section:	1. Corporate Governance
Policy Name:	Ombudsman Enquiry and Investigation Management
Classification:	Public – Council Policy
Adopted:	14 July 2020
Frequency of Review:	Every four years
Last Review:	April 2020
Next Review Due:	April 2024
Responsible Officer(s):	Chief Executive Officer & Governance
Policy and Code of Practice Manual File Ref:	CC10/2601
Council File Reference:	CR19/68075
Legislation Authority:	Local Government Act 1999 S74(5a), S94, S94(4), S187A Ombudsman Act 1972 Royal Commission Act 1917 ICAC Act 2012 Freedom of Information Act 1991 Public Interest Disclosure Act 2018
Related Policies and Codes:	Code of Conduct for Council Members (Regulated) Code of Practice for Access to Council and Committee Meeting and Council Documents Fraud Corruption Misconduct and Maladministration Policy
Related Procedures:	N/A

1. BACKGROUND

- 1.1 Under the *Ombudsman Act 1972*, the Ombudsman may investigate matters raised by complainants or referred from other sources. Complaints can be made to the office via:
 - 1.1.1 Personal visit.
 - 1.1.2 Letter.

- 1.1.3 Email contact via the SA Ombudsman's website
<http://www.ombudsman.sa.gov.au>.
- 1.1.4 Telephone.
- 1.2 In many cases, an Assessment Officer from the Ombudsman's office undertakes preliminary enquiries to seek further information from the complainant and/or the Council to determine whether there are grounds to commence a full investigation. A preliminary enquiry may include an enquiry by telephone or email to any officer in the Council. These preliminary enquiries are usually directed to the officer directly involved in the matter about which the complaint is made.
- 1.3 If, in the first instance, the Assessment Officer considers there is sufficient information and the complaint warrants a full investigation, this may commence without any further preliminary enquiries.
- 1.4 If a complainant has not complained first to the Council, it is Ombudsman policy to refer the matter back to the Council in the first instance, to enable the Council to address the complaint. However, depending on the circumstances, this may not be appropriate (for example, a complaint made under the *Public Interest Disclosure Act 2018*).
- 1.5 The Ombudsman will always consider whether there are any underlying systemic issues in complaints which warrant investigation and this can lead to the widening of an investigation beyond the particular issue raised by a complainant. There are also issues that arise independently of complaints and investigations of these issues may be conducted on the Ombudsman's own initiative (s.13 (2) of the *Ombudsman Act*).
- 1.6 Protocols
 - 1.6.1 Subject to the requirements of the *Ombudsman Act*, the Ombudsman can determine the procedure for an investigation. The procedure may therefore vary from case to case. The Ombudsman may also, at any time, decide to attempt to deal with the complaint through conciliation.
- 1.7 Legislation
 - 1.7.1 There is no legislative requirement for Council to have a policy relating to Ombudsman Enquiry and Investigation Management.

2. PURPOSE

The purpose of this policy is to clearly state the Council's reporting requirements upon receipt of any Ombudsman's report to Council.

3. DEFINITIONS

For the purpose of this policy the following definitions apply:

- 3.1 *Act* – refers to the Ombudsman Act 1972.

- 3.2 *Administrative act* – under the Ombudsman Act 1972 this means an act relating to a matter of administration on the part of an agency to which this Act applies or a person engaged in the work of such an agency or an act done in the performance of functions conferred under a contract for services with the Crown or an agency to which this Act applies, but does not include an act done in the discharge of a judicial authority or an act done by a person in the capacity of legal adviser to the Crown.
- 3.3 *CEO* – refers to the Chief Executive Officer (including their delegate) of the Town of Gawler, or an Acting Chief Executive Officer of the Town of Gawler (including their delegate)
- 3.4 *Ombudsman's own initiative investigation* – under one of the reasons below:
 - 3.4.1 Own Initiative (i.e. investigation of the Ombudsman's own initiative)
 - 3.4.2 Audit (i.e. a review of the administrative practices of an agency)
 - 3.4.3 Parliamentary Referral for investigation

4. POLICY

4.1 Preliminary Inquiries/Enquiries

- 4.1.1 The State Ombudsman is appointed under the *Ombudsman Act 1972*, to investigate “administrative acts” of all State Government departments including Councils. The Ombudsman may conduct such investigations on his/her own initiative or upon receipt of a complaint from an individual or organisation. Ombudsman correspondence and associated matters must be treated urgently by the officer(s) responsible for managing the enquiry or investigation.
- 4.1.2 An example of an administrative act in relation to which the Ombudsman may investigate the Council could be a decision to issue a permit under a by-law or a decision not to grant a discretionary rate rebate.
- 4.1.3 When an initial enquiry (an Approach) is received by the Ombudsman's Office, it is registered within their system and the Approach is assessed depending on the type of enquiry submitted. In many cases, the Council will not be aware of this enquiry, unless it is classified as a complaint or as the Ombudsman's own initiative investigation.
- 4.1.4 It is the standard process for the Ombudsman to mitigate an investigation by telephoning Council, emailing a relevant officer or writing to Council and asking for preliminary information. Where the complaint involves a Council Member the Council Member will be informed of the nature of the complaint.
- 4.1.5 Upon the completion of a preliminary investigation it is not the practice of the Ombudsman to inform Council that the matter is discarded but Council should be informed if the Ombudsman decides to carry out a full investigation.
- 4.1.6 The Ombudsman has no obligation to inform a Council that a preliminary enquiry is being carried out.

4.2 Full Investigation

- 4.2.1 The Ombudsman must by law inform the Mayor that an investigation will proceed, which is usually conducted by a letter to the Mayor with a copy to the CEO. The Ombudsman may specify that the matter not be disclosed to the Council if confidentiality is required. If the information is not confidential, the Mayor must seek to obtain the Ombudsman's agreement before informing the full Council. Depending on the circumstances, sections 90(3)(a), 90(3)(g) and 90(3)(j) of the Local Government Act 1999 concerning respectively 'personal affairs', 'duty of confidence' and 'disclosure of information provided by a public official' may provide a basis for Council going into confidence.
- 4.2.2 The Ombudsman may use the following measures to prevent the disclosure of information to others and to protect the confidentiality of documentary information:
 - 4.2.2.1 *Ombudsman Act 1972*, section 18(2), to conduct business in private; section 18(6).
 - 4.2.2.2 the procedure adopted in relation to an investigation will be as determined by the Ombudsman; section 22, secrecy of information provided to the Ombudsman must not be disclosed with the exception of a report or recommendation to be made under the Act or for the purposes of proceedings under the *Royal Commissions Act 1917* or under this Act.
 - 4.2.2.3 *Royal Commissions Act 1917*, the Ombudsman may make an order pursuant to section 16A to prevent undue prejudice and/or hardship to any person.
- 4.2.3 The investigation must be conducted in private and may involve multiple requests for further information.
- 4.2.4 Where a complaint involves Council employees or an Council Member and potentially provides grounds for disciplinary action, the Ombudsman must, by law, advise the Mayor of any evidence of breach of duty or misconduct in writing.
- 4.2.5 Under procedural fairness, the Ombudsman will allow the employee or Council Member concerned to comment on the allegations before advising the Mayor.
- 4.2.6 The Mayor will be provided with the provisional report before it is finalised, to provide an opportunity to comment on the subject matter if there are any factual errors or to provide further information.
- 4.2.7 The Mayor will then be provided a copy of the final report.

4.3 Reporting to Council

- 4.3.1 Preliminary Investigations – reporting to Council
 - 4.3.1.1 The CEO will use judgement as to whether the preliminary enquiry is likely to identify issues that should be reported to the Council. *Preliminary inquiries provide an opportunity to clarify the issues and to resolve the matter in the initial stages.*

4.3.2 Full Investigations – reporting to Council

- 4.3.2.1 The outcome of all Ombudsman full investigations (*whether Council or individual Council Members*) will be reported to Council via a report as soon as practicable after the completion of the investigation and receipt of the final report. Where the investigation involves a member of the public, the Council will as far as possible, endeavour to keep all personal details confidential unless the person consents to their identity being disclosed.
- 4.3.2.2 When the Ombudsman full investigation relates to an individual Council Member/s, the Council may be presented with a confidential report, in the first instance. In accordance with Sections 83(5) and 84(6) of the *Local Government Act 1999*, the Council Chief Executive Officer can recommend that Council consider an item in confidence. Any consideration on whether or not the report should be discussed in confidence will be assessed on the specific circumstances of each matter.
- 4.3.2.3 Where the Ombudsman's final report contains recommendations (i.e. the Ombudsman usually expects the Council to respond in a specified timeframe outlining the actions it has taken and any reasons why a recommendation may not have been implemented), Council will consider a report and implementing the Ombudsman's recommendations in a timely manner unless it considers that it has good reasons not to do so.
- 4.3.2.4 It is considered governance best practice to report such matters to Council.

4.4 Communication

- 4.4.1 The Ombudsman will address correspondence to either the Mayor or the CEO and Council staff will assist in investigations and communications with the Ombudsman's Office.
- 4.4.2 The Ombudsman Liaison Office will be the CEO and/or Governance Officers.

4.5 Other References

- 4.5.1 Ombudsman SA Operational Policies on the Ombudsman's website www.ombudsman.sa.gov.au

5. REVIEW AND EVALUATION

The effectiveness of this Policy will be reviewed every four years or as required.

The Chief Executive Officer will report to Council on the outcome of the evaluation and if relevant make recommendations for amendments, alteration or substitution of a new Policy.

The Policy will not be altered or substituted so as to affect a process already commenced.

6. FURTHER INFORMATION

Further information about this Policy can be obtained by:-

Telephone: 8522 9211
Email: council@gawler.sa.gov.au
Appointment: Town of Gawler Administration Centre, 43 High Street, Gawler East.
Letter: PO Box 130, Gawler SA 5118

7. AVAILABILITY OF POLICY

The Policy is available for inspection during ordinary business hours at the Council principal office, Town of Gawler Administration Centre, 43 High Street, Gawler East or is available on the Council website at www.gawler.sa.gov.au.

A copy of this Policy will be provided to interested parties upon request, for a fee as contained in the Register of Fees and Charges.