



Burwood Council

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INTERNAL OMBUDSMAN POLICY

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Contents

Role and Function.....	3
Scope	3
Exemptions	3
Disclaimer	3
Jurisdiction.....	3
External agencies.....	4
Refusal to investigate	4
Decision not to investigate.....	5
Anonymous complaints	5
Confidentiality.....	5
Privacy	5
How to lodge a complaint with the Internal Ombudsman.....	5
Complaint Handling Process	6
Cost	6
Access to Information.....	6
Breach and Penalty	7
Recommendations and Reporting	7
Recommendations	7
Implementation of recommendations.....	7
Further report on recommendations	7
Report to complainant	8
Review of Internal Ombudsman’s decision.....	8
Report to Council	Error! Bookmark not defined.
Media Policy.....	8
Related Information.....	8
Review	8
Contact	8

Role and Function

The Internal Ombudsman conducts impartial investigations into the administrative processes of the Council.

It provides residents, staff, Councillors and other interested parties with an 'independent ear' regarding complaints about corruption, misconduct, maladministration and unethical behaviour by Council staff or Councillors.

Other major functions performed by the Internal Ombudsman include:

- Ensuring public complaints are effectively and efficiently managed through the Complaints Management Policy
- Progressively examining the way Council operates and making recommendations to improve accountability, transparency and fairness
- Providing training to staff and management on how to prevent and react to corruption, maladministration and other unlawful behaviour

Any power to be exercised and any function to be performed by the Internal Ombudsman pursuant to this Policy will be exercised and performed subject to the rules of procedural fairness.

The Internal Ombudsman cannot act as a community advocate or influence Council's operational and planning decisions.

Scope

Applies to all Councillors and staff of Burwood Council and to anyone who refers a complaint to Council's Internal Ombudsman.

Exemptions

This Policy does not apply to:

- Public Interest Disclosures (refer to Council's *Public Interest Disclosures Act 1994 – Internal Reporting Policy 2011*)

Disclaimer

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 investigation undertaken or recommendation made by the Internal Ombudsman.

In the event of any inconsistencies between any function to be exercised and obligation to be performed under this Policy, and any function to be exercised or obligation to be performed under Council's Code of Conduct, the provisions of the Code of Conduct shall prevail to the extent of any such inconsistency.

Jurisdiction

The Internal Ombudsman may, on receiving a complaint, or on the Internal Ombudsman's own initiative, investigate:

1. a decision or recommendation
2. an act done or omitted

3. a procedure

relating to a matter of administration or conduct of Council staff or Councillors (in their administrative capacity) whereby a person is or may be aggrieved.

Those Council Officers or Councillors investigated shall be bound by the Internal Ombudsman's recommendations once the General Manager, the Mayor or the Deputy Mayor have addressed them. The complainant cannot be bound.

While it may be a usual practice that a complainant should at first exhaust the internal complaints management procedures in place within Burwood Council, the Internal Ombudsman has the right to waive these requirements on a case by case basis. The Internal Ombudsman has the right to investigate any complaint or initiate any investigation without the need for any prior consent of any person or body against whom the complaint is made.

External agencies

Lodging a complaint with Council's Internal Ombudsman does not preclude lodgement with external agencies such as the ICAC, NSW Ombudsman, Office of Local Government or Information and Privacy Commission. However, if a matter is being investigated by one of the external agencies, the Internal Ombudsman may refuse or cease to investigate the matter.

Refusal to investigate

The Internal Ombudsman may refuse to investigate, or cease to investigate a matter where:

1. the complaint, in the opinion of the Internal Ombudsman, is frivolous, vexatious or not made in good faith, or concerns a trivial matter
2. an adequate remedy or right of appeal already exists, whether or not the complainant uses the remedy or the right of appeal
3. the complaint relates to a decision, recommendation, act or omission of which the complainant had knowledge for more than one year before making the complaint to the Internal Ombudsman
4. the complaint relates to a decision of the Council
5. the complaint relates to actions or conduct of the Mayor and/or Councillors, other than in an administrative capacity
6. the complaint relates to decisions of a standing committee of the Council
7. the complaint relates to matters before a court or tribunal
8. the complaint relates to matters under investigation by:
 - a. The Office of Local Government
 - b. The Independent Commission Against Corruption
 - c. NSW Ombudsman
 - d. NSW Police Force
 - e. Information and Privacy Commission
9. the complaint relates to the appointment or dismissal of an employee or any industrial or disciplinary issue other than in relation to the administrative procedures/process of the appointment, dismissal or disciplinary issue

10. the complaint relates to a matter awaiting determination by the Council (conduct in dealing with the matter can be investigated)
11. the complaints relates to the actions or conduct of private individuals
12. senior Council staff have not had adequate opportunity to address the complaint
13. there is insufficient information available
14. the complainant declines or refuses to provide further information and/or there are threats made against Council

Decision not to investigate

Where the Internal Ombudsman decides not to investigate, or to cease to investigate a complaint, the Internal Ombudsman will inform, in writing, the complainant and any other interested person of the decision and will state the reason for the decision.

Anonymous complaints

The Internal Ombudsman will not investigate anonymous complaints, unless the issue places public safety at risk or raises a serious matter (such as allegations of corrupt conduct, serious misconduct, maladministration or waste) and there is sufficient information to carry out an investigation or make a prima facie case.

Confidentiality

The Internal Ombudsman and every person carrying out duties in connection with investigations conducted by the Internal Ombudsman and any person who becomes aware of an investigation being carried out by the office of the Internal Ombudsman, will maintain confidentiality in respect of all matters that come to their knowledge.

Privacy

Complainants' details will not be disclosed without their consent, unless it is in the public interest to do so (Internal Reporting – Public Interest Disclosures Policy applies)

Burwood Council manages personal and private information collected by Council in accordance with Council's Privacy Management Plan 2011, the *Privacy and Personal Information Protection Act 1988* and the *Government Information (Public Access) Act 2009*.

The Office of the Internal Ombudsman is located in a secure, discreet area, where complainants can provide information confidentially and all information is secure.

How to lodge a complaint with the Internal Ombudsman

Complaints can be lodged with the Internal Ombudsman:

By Telephone:

Internal Ombudsman Line: 9911 9993 (9.00am to 5.00pm Monday to Friday)

In Writing:

- Email: ombudsman@burwood.nsw.gov.au
- Post: PO Box 240, BURWOOD NSW 1805 (please mark your letter "Confidential")
- Fax: 97151485 (please mark your fax "Confidential")

When lodging a complaint with the Internal Ombudsman, complainants should provide details such as:

- Name and surname
- Postal and email address
- Telephone number
- Full details of the matter of the complaint including:
 - what happened, when and where events took place
 - who was involved
 - whether any witnesses were involved. If so, are their contact details available?
 - Any evidence, including photos or documents
 - Whether the complainants has already taken action in relation to their complaint
 - What outcome they would like to see as a result of their complaint

Complaint Handling Process

Within five working days of receiving a complaint, an acknowledgement letter will be sent to the complainant, with an indication of whether preliminary inquiries will be undertaken.

Feedback on preliminary inquiries will be provided to the complainant within 10 working days of receiving the complaint.

If preliminary enquiries reveal evidence supporting the complaint, the matter may then progress to an investigation by the Internal Ombudsman.

This could include a review of the related files or policies and procedures, interviews with relevant witnesses, site visits, facilitated meetings between staff and complainant and a report to the General Manager with outcomes and recommendations.

Throughout the investigation process, the complainant will be kept abreast of the progress of the investigation.

At the conclusion of the investigation the complainant will be advised in writing of the outcome of the complaint, including any findings and recommendations made.

Cost

There is no charge for lodging a complaint with the Internal Ombudsman or for any subsequent investigation.

Access to Information

The Internal Ombudsman may receive and obtain information, documentation and other materials from any person in accordance with relevant Acts and Regulations and Council policies and in a manner that the Internal Ombudsman considers appropriate. Any investigation of computer system usage must be undertaken in accordance with the Council's Use and Monitoring of Network, Email and Internet Corporate Practice.

In addition, the Internal Ombudsman may:

1. at a reasonable time enter, remain on and inspect premises occupied by Council
2. converse in private with any person on the premises
3. require a person to furnish information, or produce a document, or thing in the person's possession or control that relates to an investigation

4. make copies of a document produced under this section

Breach and Penalty

A person who wilfully and without justification:

1. obstructs, hinders or resists the Internal Ombudsman in the performance of the functions and duties of the Internal Ombudsman under this Policy
2. fails to comply with a request of the Internal Ombudsman
3. makes a false statement to, or misleads or attempts to mislead, the Internal Ombudsman or any other person in the exercise or performance of the functions and duties of the Internal Ombudsman under this Policy
4. will be guilty of a breach of this Policy and may be liable to disciplinary action.

Recommendations and Reporting

Recommendations

The Internal Ombudsman may recommend that:

1. a matter be referred to the General Manager for further consideration
2. an omission or delay be rectified
3. a decision or recommendation by an officer or officers of the Council be revoked or varied
4. reasons be given by an officer or officers of the Council for a decision
5. a Council policy, corporate practice or procedure be altered
6. the Council pay compensation to a complainant
7. the Council provide a particular service or good, or undertake any necessary corrective work to resolve a complaint
8. the Council make an appropriate correction, deletion or addition to a record
9. such other steps are taken that the Internal Ombudsman considers reasonable and just

Implementation of recommendations

Where a recommendation is made under this Policy, the Internal Ombudsman may request Council management to provide a notification within a specified time of steps taken, or that are proposed, to give effect to the recommendations.

Further report on recommendations

If, within a reasonable time after a request is made, no action is taken that in the opinion of the Internal Ombudsman is adequate and appropriate, the Internal Ombudsman may report the matter to the Council.

Report to complainant

Where an investigation is undertaken on a complaint, the Internal Ombudsman will report the result of the investigation to the complainant, in such manner and at such time as the Internal Ombudsman considers proper.

Review of Internal Ombudsman's decision

Recommendations made by the Internal Ombudsman can only be reviewed by an appropriate statutory agency external to Burwood Council (Independent Commission Against Corruption, Office of Local Government, NSW Ombudsman, NSW Police Force and the Information and Privacy Information Commissioner).

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

Media Policy

All media inquiries regarding the office of the Internal Ombudsman are to be referred to the Internal Ombudsman for comment.

The Internal Ombudsman may issue media statements and make public comment on matters relating to the Office of the Internal Ombudsman.

Related Information

- Privacy Management Plan
- *Privacy and Personal Information Protection Act 1998*
- *Government Information (Public Access) Act 2009*
- Complaints Management Policy
- *Public Interest Disclosures Act 1994*

Review

The Internal Ombudsman Policy will be reviewed every four years.

Contact

Internal Ombudsman – 9911 9993