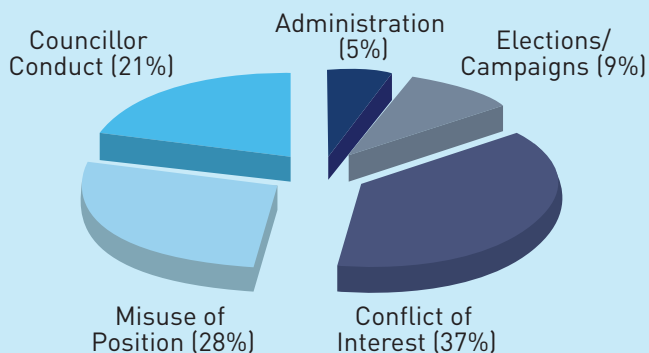


WELCOME to the second edition of the **Local Government Investigations and Compliance Inspectorate (Inspectorate) newsletter**. In this issue we show you a breakdown of complaints, look at the complexity of confidentiality in a case study and highlight your rights if called for an interview. We hope you find this informative and engaging, and we welcome your feedback and ideas for future topics via inspectorate@dpcd.vic.gov.au.

What sort of complaints do we receive at the Inspectorate?

The Inspectorate receives complaints from councillors, council employees and members of the community. Complaints that identify a breach of the *Local Government Act 1989* (Act) are investigated by the Inspectorate.



From September 2009 to July 2010, more than 85 per cent of complaints fell into three categories: Conflict of Interest, Misuse of Position and Councillor Conduct.

The chart shows a breakdown of complaints received since the Inspectorate's inception in September 2009.

Fast Facts – Complaints Received

- The majority of conflict of interest complaints are found to be unsubstantiated and do not lead to further action.
- Complaints about election and campaign activity peak around election periods.
- Administration complaints are usually to do with council processes and often result in recommendations being made to rectify issues.
- Councillor conduct complaints range from minor breaches of the Act that can be dealt with internally to gross misconduct, which can result in a VCAT hearing for the accused.
- Misuse of position can include disclosure of information, improper influence or improper use of public funds, each a serious offence which can result in disqualification if an accused person is found guilty.

Case Study: “Leaker” off the Hook... Be Careful with Confidentiality!

The Inspectorate received multiple complaints recently when it was suspected that a councillor leaked what was believed to be confidential council information to the media. This caused great concern within council and had the potential to affect its reputation with the community.

The Inspectorate commenced an investigation into the matter. It discovered that councillors had received sensitive documents and signed confidentiality agreements in relation to the information. They believed this step was enough to classify it as confidential.

However, the investigation found that the council did not receive the information in accordance with the strict confidentiality provisions in section 77 of the Act, so it could not be considered confidential. This technicality meant the release of the information did not breach the Act and the Inspectorate could not take further action against the alleged “leaker”.

Designating information as confidential under the Act is not as straightforward as is often believed. This case highlights the consequences of this common misconception. In order to be considered “confidential” according to the Act, the administrative procedures surrounding the information must include at least one of the three specific steps detailed in section 77(2).

Defining Confidentiality

Section 77(2) of the Act states the specific circumstances where information is considered confidential. Information is considered confidential if:

- (a) the information was provided to the Council or special committee in relation to a matter considered by the Council or special committee closed to members of the public and the Council or special committee has not passed a resolution that the information is not confidential; or
- (b) the information has been designated as confidential information by a resolution of the Council or a special committee which specifies the relevant ground or grounds applying under section 89(2) and the Council or special committee has not passed a resolution that the information is not confidential; or
- (c) subject to subsection (3), the information has been designated in writing as confidential information by the Chief Executive Officer specifying the relevant ground or grounds applying under section 89(2) and the Council has not passed a resolution that the information is not confidential.

The above conditions are dependant on other subsections of the Act. The Inspectorate encourages councillors and officials to carefully review section 77 so they understand the specific requirements concerning confidential information.

Profile: Patti Thyssen Senior Compliance Officer



Patti has over 10 years experience in compliance and investigations. She joined the team in January 2010 and is looking forward to working with councils during the rolling audit plan.

What was your role prior to joining the Inspectorate compliance unit?

I was an Investigator and Document Manager for the Victorian Commission for Gambling Regulation (VCGR). Prior to that I worked for the Victoria Police Criminal Records and Fingerprints branches, where I gained insight into the principles and operation of investigation.

How did you decide on a career in investigations and compliance?

I was always interested in the law and particularly the police, so I studied a Diploma in Justice Studies followed by a Bachelor of Arts in Criminal Justice.

What do you like most about your role with the Inspectorate?

There is so much experience and knowledge among the staff, which is great to be a part of. I also love getting out and meeting people.

How do you think the compliance team has had an effect on local councils so far?

We've identified some common areas of non-compliance with the Act and provided recommendations on how to avoid future breaches. I've seen how much the councils are expected to achieve with limited resources, so our help can have a great impact.

Tell us your favourite movie, book, food, TV show and holiday destination so that council staff know something about you when you turn up for the audit!

I love the Pirates of the Caribbean movies, Harry Potter books, a full English roast to eat and for TV you can't beat the Vicar of Dibley! My favourite holiday destination is Queensland but I would love to go to England some day.

Rights and Responsibilities – Information for Councillors and Council Staff

The following information outlines your rights and responsibilities should you be involved in an investigation. The Inspectorate can only investigate matters related to council operations and possible breaches of the Act. These breaches are limited to councillors and senior officers, including the CEO. Any issues related to council staff are not in the Inspectorate's jurisdiction and are matters for the employer or other agencies.

What authority do Inspectors have?

Inspectors have the specific authority to investigate matters related to council operations or breaches of the Act. These powers are consistent with those held by the Inspectors of Municipal Administration prior to the formation of the Inspectorate and are similar to the powers of many public sector regulatory agencies.

How to make a complaint to the Inspectorate

One of the primary functions of the Inspectorate is to provide an avenue for people to raise matters they feel should be investigated.

The process for making a complaint of this nature to the Inspectorate is outlined below. Before putting a complaint forward it is important to have considered all steps in this process.

1. If there is an issue you have concerns about, seek to engage internal complaint mechanisms within the council where appropriate.
2. As a guide, use the following questions to assist you in deciding if your complaint is within the jurisdiction of the Inspectorate:
 - Is it a potential breach of the Local Government Act?
 - Is it regarding actions of councillor(s), senior council officer(s) or people with responsibilities under the Act?
 - Does it relate to council operations or elections?

It is important that you provide any information or material you may have to support the allegation.

3. Proceed with the complaint by submitting the details in writing. You can lodge it anonymously if you wish. The Inspectorate accepts complaints via post: GPO Box 2392, Melbourne, VIC 3001 or via email, inspectorate@dpcd.vic.gov.au
4. You will receive an acknowledgment letter from the Inspectorate upon receipt of your correspondence and if more information is required from you, you will be contacted.
5. Finally, be aware that the investigation process can sometimes take longer than expected. All relevant parties are advised when an investigation is complete.

Do I have to take part in an investigation?

We encourage people to participate in investigations to assist us to identify poor governance or unlawful behaviours. You will usually be invited to participate in an investigation voluntarily to provide information or answer questions. In some extraordinary circumstances you may be required to participate to ensure allegations of corrupt behaviour are rigorously investigated, but stringent principles must be met before this happens.

What are my rights if I am being investigated?

Prior to interviews, the Inspectorate provides all parties involved with a detailed notice of the matter under investigation and what sort of questions they will be asked. Anyone involved in an investigation has the right to legal representation and is entitled to copies of the interview or other material. If you are accused of a breach, you also have the right not to answer questions. In summary, your rights are:

- right to representation
- right to silence for anyone accused of a breach
- right to copies of interview material.