

District Council of Peterborough



Amalgamated 1997

**DISTRICT COUNCIL
of
PETERBOROUGH**

Handling Frivolous or Vexatious Complaints Policy



DISTRICT COUNCIL of PETERBOROUGH

HANDLING FRIVOLOUS OR VEXATIOUS COMPLAINTS POLICY

Adoption Reference:	Council Meeting 22/08/2016 Resolution 126/08
Applicable Legislation:	NA
Version:	The electronic version of this document is the controlled version. Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the current version.
Accessibility:	This Policy, and all policies and By-Laws, are available for viewing, downloading or printing from Council's website: www.peterborough.sa.gov.au Hard copies can be provided in accordance with Council's Fees and Charges at the Council office at 108 Main Street, Peterborough, SA 5422 during ordinary business hours.
Grievances:	Any grievances in relation to this Policy or Code, or its application, should be forwarded in writing addressed to the Chief Executive Officer of Council.
Review Dates:	<i>Reviewed : 18/04/17 Res.No : 30/17</i>

1. CONTEXT

Council is required under Section 270 of the *Local Government Act 1999* (SA) (**the Act**) to establish grievance procedures for the review of decisions of the elected body, employees of the Council and persons acting on behalf of Council.

The grievance procedures must address:

- the manner in which an application for review may be made;
- the assignment of a suitable person to reconsider a decision under review;
- the matters that must be referred to the elected body for consideration or further consideration;
- in the case of applications that relate to the impact that any declaration of rates or service charges may have had on ratepayers - provision must be made to ensure that these applications can be dealt with promptly and, if appropriate, addressed through the provision of relief or concessions under the Act;
- the notification of the progress and outcome of an application for review; and
- the time frames within which notifications will be made and procedures on a review will be completed

Under Section 270 of the Act Council has the ability to refuse to consider an application for review of a decision on the grounds that the application is frivolous or vexatious, or where the applicant does not have sufficient interest in the matter.

Council considers a comprehensive policy which guides how Council responds to frivolous and vexatious complaints is an important part of its grievance procedure.

2. GUIDING PRINCIPLES

Complaints provide an opportunity for Council to:

- identify service improvements;
- increase customer satisfaction;
- strengthen customer input into services; and
- respond appropriately to cases of dissatisfaction.

All complaints received by Council will be treated with the utmost seriousness. Council has a responsibility to deal with each complaint in a fair, impartial, professional, respectful and timely manner.

Each complaint will be dealt with on its merits and Council will not lightly refuse to deal with a complaint.

Council recognises and accepts that complainants will sometimes display anger, frustration, belligerence or other difficult behaviour when coming into contact with Council staff. Council staff will maintain a professional approach in these situations and ensure difficult complainants are not unreasonably denied their rights.

3. WHY MANAGE FRIVOLOUS OR VEXATIOUS COMPLAINTS

While all complaints will be treated on their individual merits, frivolous or vexatious complaints have the capacity to unnecessarily tie up Council resources, or bring the Council into unjustified disrepute. They could also be regarded as an abuse of process.

4. WHAT IS A FRIVOLOUS OR VEXATIOUS COMPLAINT

The Courts have considered on a number of occasions what amounts to a frivolous or vexatious complaint.

In *Aspar Autobarn Co-operative Society v Dovala Pty Ltd*¹ the Federal Court considered vexatious to mean proceedings: '*instituted without sufficient grounds for the purpose of causing trouble or annoyance.*'

In *Pridmore v Magenta Nominees Pty Limited*² the Federal Court stated:

The terms 'vexatious' and 'frivolous' have been used interchangeably (The Atlantic Star [1974] AC 436 at 464-468). 'Frivolous' has been held to be apt to describe proceedings in which the ... claim is so obviously untenable that it cannot possibly succeed (Burton v Shire of Barnsdale (1908) 7 CLR 76 at 92). 'Vexatious' has been held to be apt to describe an action which is a sham and which cannot possibly succeed (Wills v Earl Beauchamp (1856) 11 PD 59, 63).

In *L Grollo Darwin Management Pty Ltd v Victor Plaster Products Pty Ltd*³ the Court considered that a complaint may be frivolous and vexatious if useless expense would be involved in allowing it to proceed.

In deciding whether a complaint is frivolous or vexatious, Council will consider the objective elements (namely the merits of the claim) and the subjective elements (namely whether or not the claim was brought for an ulterior purpose of causing trouble or annoyance). Council will consider all the evidence available in each case, not just that which is supplied by the complainant and will take a favourable view of that evidence if possible.

5. THE WARNING SIGNS

There may be a number of factors which indicate that a complaint is not genuine and could potentially be either frivolous or vexatious.

These could include complainants:

- making constant complaints against one person or body whether about the same or different issues;
- seeking to revisit the same issue after an initial investigation and subsequent review, where no new evidence or material is produced;
- making repetitive complaints and then withdrawing them;
- making complaints about another person in an attempt to divert attention from their own situation;
- making complaints based on false statements of fact;
- displaying an unwillingness to co-operate with Council to resolve the complaint;
- submitting numerous and on-going complaints about something which would be considered trivial; or
- making constant complaints where they do not have a sufficient direct interest in the matter.

While these factors may point to a complaint which is frivolous or vexatious, a determination will not be made without an initial investigation of the complaint.

No complaint will be dismissed as frivolous or vexatious without referral to the Chief Executive Officer.

¹ (1987) 16 FCR 284 at 287.

² (1999) 161 ALR 458.

³ (1978) 19 ALR 621.

6. HOW COUNCIL WILL RESPOND

Where Council determines a complaint to be frivolous or vexatious, it will respond in a consistent manner, taking into account the individual circumstances of each complaint.

a. Limiting Contact Between the Council and Members of the Public

Council is entitled to expect that members of the public who have a complaint will behave in an acceptable manner. In certain circumstances it is appropriate and legitimate for Council to place certain limits on the type of services that will be made available to complainants whose behaviour goes beyond acceptable limits.

Council may impose limits on the times and days that correspondence may be accepted from a complainant, or may request all complaints be made in writing.

Where limitations on contact with the complainant are imposed, Council will inform the complainant in writing, specifying the limits and the reasons for their imposition.

Council is aware of the legitimate right of members of the public to access Council information under the *Freedom of Information Act 1991 (SA)*, and notes that any limits to contact will not impede these statutory rights.

Before imposing limits councils will be prepared to try alternatives, such as determining whether a different and more senior officer is able to deal with the complainant.

Imposing limitations may also be appropriate where a complainant continually includes substantial inappropriate, offensive, threatening or abusive content in their complaint.

b. Not Replying to Correspondence

Where, following an appropriate written warning to the author, Council receives further correspondence that details the same or substantially similar complaints to those received previously, Council is entitled to inform the author that Council will not provide a substantive response to this, or similar communications.

This provides the complainant with the opportunity to reframe the correspondence if the similarities were unintentional.

c. Terminating Phone Calls

In some circumstances, it may be appropriate for a Council officer to inform the complainant that they will no longer deal with their complaints over the telephone and to terminate the call. This will only be done in exceptional circumstances.

Where a complainant repeatedly telephones an officer, or employs insulting, threatening or abusive language, they will be asked to limit their communications to written correspondence with the Chief Executive Officer. This will be communicated to the complainant in writing.

d. Limiting Face to Face Contact

Where a complainant is making the same, or a substantially similar complaint, to numerous Council officers in person, it is appropriate for Council to nominate a particular officer to deal with the complaints.

Council will notify the complainant in writing of the name and contact details of the officer who will respond to complaints and specify that no other officer will respond to complaints made by the complainant.

e. Declining to Further Investigate Complaints

Where:

- a thorough examination of a complaint has occurred; and
- the complainant remains dissatisfied with the outcome of the complaint and demands further review

Council will consider placing limits on further communications with the complainant.

This action will only be taken as a last resort; with the decision taken by a senior manager after all other avenues have been exhausted, and where the complainant is making unacceptable demands on Council's complaint handling resources.

Limits could include:

- declining to respond to any further communications unless they are in writing; and/or
- informing the author that any further correspondence will be filed with acknowledgement unless it includes significant new information or new issues which in the opinion of Council warrant action; and/or
- informing the complainant that the complaint will be referred to the Ombudsman (or other external agency) for action.

If it appears to Council that the complainant is deliberately providing information in a selective manner, Council will request the complainant to immediately pass on all relevant information to Council.

Council will advise the complainant that if further material is provided, Council will require a satisfactory explanation as to why it was not provided earlier, before it will give consideration to the material.

f. Seeking Legal Advice

In some instances, it may be appropriate for Council management to seek legal advice with respect to the implications of a suspected frivolous or vexatious complaint. A decision to seek legal advice will be taken by the Chief Executive Officer.

Where a complaint relates to a particular member of Council staff, consideration will be given to making advice available to that staff member on request.

Where a particular officer believes that a complaint may have impugned their professional reputation, they may seek their own legal advice in relation to what private action they may take.

g. Supporting Staff

Council has certain obligations under the Occupational Health, Safety and Welfare legislation to provide a safe working environment. Council is mindful of the stress that dealing with difficult complainants can place on Council staff.

Management will always provide support to junior staff when dealing with difficult complainants and ensure appropriate customer service policies are in place.

7. DECISION MAKING TREE

The following diagram outlines the process Council will follow when dealing with a frivolous or vexatious complaint.

