


Organisational Procedure Administrative Action Complaints Process

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PROCESS FOR MANAGING ADMINISTRATIVE ACTION COMPLAINTS

Office of Queensland Ombudsman Good Decision Making Guidance

The below list outlines a ten step guide to good decision making provided by the Office of the Queensland Ombudsman. This list should be utilised by Officers when investigating a complaint.

1. Maintain a document trail;
2. Identify the power to make a decision;
3. Consider the authority and suitability of the decision maker;
4. Identify all relevant matters;
5. Follow procedures;
6. Gather all relevant information;
7. Provide Procedural Fairness;
8. Determine the facts;
9. Evaluate the facts to make the decision; and
10. Give meaningful and accurate reasons for your decisions.

Defining an administrative action

Section 268(2) of the LGA defines an administrative action complaint as one about an administrative action of Council by an affected person, i.e. one who is affected by the administrative action.

An administrative action of a local government includes the following:

- (i) a decision, a failure to make a decision, including a failure to provide written statement of reasons for a decision,
- (ii) an act, or a failure to do an act,
- (iii) the formulation of a proposal or intention; and
- (iv) the making of a recommendation.

Examples of administrative action complaints:

Type of Administrative action	Complaint examples
An act or, failure to do an act.	<ul style="list-style-type: none"> • A repeated complaint about the general quality of a park that is not responded to by Council; • Failure to take action after a request has been received to fix a pothole in the complainant's street or other place they regularly travel; • Failure to take appropriate action following a request by an affected person to investigate a barking dog or noisy air conditioner; or • A complaint about a process that Council is undertaking that is impacting on the complainant.
A decision, a failure to make a decision, including a failure to provide a written statement of reasons for a decision.	<ul style="list-style-type: none"> • A complaint in respect of a Council decision to vary a service. • A complaint in respect of a Council decision to not action a request.
The formulation of a proposal or intention.	<ul style="list-style-type: none"> • A complaint in respect of a proposal by Council to take a particular action in the future.
The making of a recommendation.	<ul style="list-style-type: none"> • A complaint in respect of a recommendation made by Council.

Distinction between an administrative action and a request for service

A request for service is not considered an administrative action complaint and is not subject to this policy.

Examples of requests for service commonly mistaken for as administrative action complaints include:

- A request to mow a park;
- A request to clean a park barbeque;
- A notification of a barking dog; or
- A request to fix a pothole.

Ways to make a complaint

Any affected person can make an administrative action complaint to Council as follows:

- by telephone or in person at our Customer Service Centre; or
- via online form on Council's website; or
- in writing by letter or email to addressed to the Chief Executive Officer at:
 - mail@noosa.qld.gov.au
 - Chief Executive Officer
Noosa Shire Council
PO Box 141
Tewantin QLD 4565

A complaint may be made on another person's behalf; however, Council will check that the affected person is happy for council to respond directly to their representative.

Anonymous Complaints

Affected persons are able to make a complaint anonymously either in writing, via email or by telephone. In doing so it is important to provide as much information and supporting documents for the complaint to be assessed and investigated. As a consequence of making an anonymous complaint, it will not be possible to advise the complainant of Council's decision.

Complainants Rights

Complainants are entitled to:

- A prompt acknowledgement of Council's receipt of the complaint;
- A prompt response to the complaint;
- Be kept informed of the progress and outcome of the complaints process;
- Confidentiality of personal details (where possible within the law); and
- A thorough and objective investigation or review of a complaint;
- Written confirmation of reasons for a decision.

Provision of assistance to complainants

Where requested, a Council officer will assist complainants on how to make a complaint.

Expectations of complainants

In order to ensure that a complaint is handled in the most efficient manner, Council requests that complainants:

- Clearly identify the issues of complaint, or ask for help from Council staff to do this;
- Give Council all the available information in support of the complaint in an organised format and not provide any information that is intentionally misleading or knowingly wrong or vexatious;
- Cooperate with the Council's inquiries or investigations; and
- Treat staff with courtesy and respect.

If complainants do not meet these expectations, Council may set limits or conditions on the handling of the complaint. Any abuse, harassment or threats to the safety or welfare of staff may result in discontinuation of the complaint investigation and contact with the complainant may cease.

Similarly, if it is found that the complainant has engaged in unreasonable complaint conduct or has made a frivolous, trivial, or knowingly false or a vexatious complaint, future contact with the complainant may cease.

Unreasonable complaint conduct can have a major impact on staff and allocation of resources, which can raise equity issues as they lead to less resources for other complaints and priorities.

A complaint may be considered frivolous or trivial if the reviewing officer as without merit or unreasonably minor in nature.

A complaint may be considered vexatious if is it clearly mischievous, without merit and serving only to cause annoyance.

Once a reviewing officer has been allocated to the complaint, the complainant should direct all correspondence to that officer so that the complaint can be managed as efficiently as possible.

Receiving, Assessing and acknowledging a complaint

Guidance for timing of investigations and responses

Council will aim to respond to complaints as quickly as possible having regard to the following factors:

- Resource availability;
- The risk and urgency of the situation;
- The complexity of the complaint and number of issues involved; and
- The number of operational areas within Council involved in working through the complaint issues.

Assessment of complaint

Upon receipt of a complaint, the relevant Council officer must undertake a preliminary assessment to determine the appropriate resolution process. Council's Governance Team can provide assistance with this process as required.

The initial assessment process involves the following:

- Confirming that the subject of the complaint within Council's jurisdiction and responsibility;
- Confirming that the Administrative Action Complaints Process is the appropriate process for managing the complaint received as opposed to other review processes (if applicable), or initiating a request for service;
- Confirming whether the matter has already been considered as a first or second level complaint; and

- Advising the relevant manager of the complaint and, for second level complaints, the relevant Director, CEO and Governance Team.

Where a complaint is a ‘public interest disclosure’

In instances where a complaint may involve any of the items below, it must be referred to Council’s Governance Advisor, CEO, or Director of Executive Services for further review as it may be a Public Interest Disclosure and require management in accordance with the *Public Interest Disclosure Act 2010 and Council’s Public Interest Disclosure Procedure*:

- Corrupt Conduct;
- Maladministration;
- A substantial misuse of public resources;
- A substantial and specific danger to public health and safety;
- A substantial and specific danger to the health and safety of a person with a disability;
- A substantial and specific danger to the environment; or
- A reprisal.

Where a complaint involves staff conduct

Where a complaint involves staff conduct, the relevant Manager/Director should consider whether Council’s People and Culture team should be notified to assist with the process.

Acknowledgement of complaint by Council

Council staff will aim to acknowledge complaints received as soon as possible but no later than 5 business days. Response times may vary depending how the complaint was made to Council and whether the customer prefers to be contacted by post, email, online or telephone.

Registration of complaints

All complaints received by Council must be recorded in ECM and entered into Council’s Complaints Register by the Governance Team.

At times complaints may be received directly by an operational area within Council. If this is the case, the reviewing officer assessing the complaint must inform:

- The Governance Team of the complaint so it can be entered onto the Complaints Register; and
- The relevant Director/Manager for information.

Management of first level complaints received

Initial assessment and allocation of first level complaints

First level complaints are administrative action complaints, which have not previously been reviewed/assessed by Council.

As a general rule, first level complaints should be managed by the relevant operational area and investigated, managed and responded to at the manager, coordinator or supervisor level referred to as the reviewing officer. For non-complex matters, first level complaints may be capable of resolution at the frontline.

The table below outlines the initial assessment and allocation of first level complaints.

How the complaint was made to Council	Assessment and allocation process
Directly to an operational area	<ul style="list-style-type: none"> For non-complex complaints, frontline officers may be able to respond to and resolve complaints in the moment. Provide the complaint to the reviewing officer for investigation and response and the relevant Director for information. Advise the Governance Team of the complaint to enter on Council's Complaints Register. If the complaint is made via telephone, the relevant officer should document the complaint details and confirm them with the complainant via email/letter.
Centrally via Council mailbox/post	<ul style="list-style-type: none"> Council's Records Team to task Complaint via ECM to relevant operational area manager for action and Governance for information.
Customer service via telephone	<ul style="list-style-type: none"> The customer service officer can, depending on the customers preference: <ol style="list-style-type: none"> Provide the complainant with the details to make the complaint via email / letter/ online form; or Record the details of the complaint and provide that to the operational area to action (as outlined above); or Obtain the complainant's contact details for the relevant manager to discuss further.

Guidance for managing and resolving first level complaints

Required item	Guidance
Acknowledgement of complaint	<p>For non-complex complaints, frontline officers may be able to respond to and resolve complaints in the moment.</p> <p>If a complaint cannot be resolved on the frontline, the complaint should be formally acknowledged by a reviewing Officer as soon as possible but within 5 days.</p> <p>When providing an acknowledgement, the reviewing officer should also:</p> <ul style="list-style-type: none"> Provide an estimate of the time expected to respond to the complaint; and Contact details for providing further information. <p>For a non-complex matter, the reviewing officer should aim to resolve the complaint within 10 business days.</p>
Investigation process	<p>The investigation process should consider the following matters where relevant:</p> <ul style="list-style-type: none"> Concerns raised by the complainant; Clarification obtained from the complainant; Relevant Council policies and established processes, local laws and other statutory provisions; Relevant correspondence and other communications relating to the complaint; and Evidence and other material available to Council.

Required item	Guidance
Decision	<p>At the completion of the investigation, the reviewing officer should make a decision as to:</p> <ul style="list-style-type: none"> • Whether the complaint is upheld; and • What remedy or remedies (if applicable) will be appropriate.
Remedies available	<p>Remedies available to resolve a complaint may include:</p> <ul style="list-style-type: none"> • Admission of fault; • Explanation; • Apology; • Change of decision; • Change to policy or procedure; • Repair/rework/replacement; or • Further assistance.
Notification of decision to the complainant	<p>Once the investigation has been completed, the reviewing officer must:</p> <ul style="list-style-type: none"> • Notify the complainant in writing of the decision; • A summary of supporting reasons for the decision must be included in the response to the complainant. Where relevant, it may be appropriate to explain Council's roles and relevant powers with respect to the particular issues. • Consider whether a courtesy telephone call is appropriate to explain the decision to the complainant; • Notify the Governance Team as to the outcome to update the Complaint's Register; and • Provide notice to the complainant that if they remain dissatisfied with Council's response, they can request for an internal review in writing to Council's Chief Executive Officer.

Management of second level complaints - Internal Reviews

Initial Assessments and allocation of second level complaints

Generally, a complaint will not be investigated at the second level (internal review) until it has progressed through the first level complaint process and the complainant remains dissatisfied.

In certain instances, it may be appropriate for a matter to escalate straight to internal review having regard to the history of the matter, complexity, or other reasons deemed appropriate by the CEO.

All requests for an internal review should be addressed to Council's CEO in the first instance. The CEO will then nominate an appropriate Council Officer or external consultant to undertake the review having regard to the following factors:

- Subject matter of the complaint;
- Availability of in house expertise;
- Complexity of the complaint; and
- History of the complaint

Generally, internal reviews will be undertaken by the Director of the relevant operational area that the complaint relates to provided they have not been involved in the original matter or first level review.

Guidance for managing and resolving a second level complaint

Required item	Guidance
<p>Acknowledgement of request for internal review</p>	<p>A request for internal review should be formally acknowledged by Council's Governance Team as soon as possible but within 5 days.</p> <p>When providing an acknowledgement, the Governance Team, will advise the complainant of:</p> <ul style="list-style-type: none"> • The details of the internal reviewer and their contact details for providing further information (as required); and • The estimated time expected to complete the review (with 6-8 weeks considered appropriate for complex matters).
<p>Investigation process</p>	<p>The investigation process should consider the following matters where relevant:</p> <ul style="list-style-type: none"> • Concerns raised by the complainant; • Relevant Council policies and established processes, local laws and other statutory provisions; • Relevant correspondence and other communications relating to the complaint; • Evidence and other material available to Council; and • Council's first level response and supporting reasons.
<p>Decision</p>	<p>At the completion of the investigation, the reviewing officer should make a decision as to:</p> <ul style="list-style-type: none"> • Whether the complaint is upheld; and • What remedy or remedies (if applicable) will be appropriate. <p>Further guidance can be provided from the Governance Team as to the appropriate review format.</p>
<p>Remedies available</p>	<p>Remedies available to resolve a complaint may include:</p> <ul style="list-style-type: none"> • Admission of fault; • Explanation; • Apology; • Change of decision; • Change to policy or procedure; • Repair/rework/replacement; or • Further assistance.
<p>Notification of decision to the complainant</p>	<p>Once the investigation has been completed, the reviewing officer must:</p> <ul style="list-style-type: none"> • Notify the complainant in writing of the decision; • A detailed summary of the investigation process and supporting reasons for the decision should be included in the response. • Consider whether a courtesy telephone call is appropriate to explain the decision to the complainant; • Notify the Governance Team as to the outcome; and • Provide notice to the complainant that if they are dissatisfied with Council's internal response, they can request for an external review by the Office of the Queensland Ombudsman

Request for review by an external agency

Where a complainant remains dissatisfied with the outcome of a second level (internal review), they may wish to lodge a complaint with an external agency such as the Office of the Queensland Ombudsman.

Generally, the Office of the Queensland Ombudsman will not review a complaint until it has been reviewed at the internal review level by Council.

General Guidance for managing and resolving complaints

Record keeping

When reviewing a complaint the reviewing officer must keep detailed and accurate records to be stored and retained in Council's ECM record management system under the relevant complaint file.

Records include:

- File notes of discussions regarding the complaint;
- Material relating to investigation;
- All correspondence relating to the matter; and
- Any documents relating to a review, including recommendations, decisions, reasons for the decisions and outcomes.

Confidentiality and privacy

A complainant's details should remain confidential. However, Council may be obliged to disclose a person's details to an external body for investigation or under a legal or statutory process.

Council officers should bear in mind that under Information Privacy Principle (IPP) (11), personal information must not be disclosed to an entity other than the person the subject of the personal information, relevant exclusions may include the following:

1. The person has expressly or impliedly agreed to the disclosure; or
2. Council officers are satisfied, on reasonable grounds, that the disclosure is necessary to lessen or prevent a serious threat to the life, health, safety or welfare of an individual, or to public health, safety or welfare; or
3. The disclosure is authorised or required under law.

Guidance for investigations

The reviewing officer who is investigating the complaint shall do so as expeditiously as possible and where a complex investigation is required, update the complainant on the progress of the response.

For complex complaints, the reviewing officer should prepare an action plan for conducting the investigation and gather all information necessary to conduct the investigation such as relevant laws and Council policies and processes. The reviewing officer may also obtain information from discussions with the complainant, Council officers and, where relevant, third parties.

When undertaking an investigation, officers must adhere to the principles of procedural fairness and natural justice. All relevant, credible and dispute issues must be properly examined free of bias. Any resulting decisions must be supported by evidence. A person whose rights, interests, or legitimate expectations could be affected by the review has a right to a non-biased, impartial assessment of the facts and allegations.

For complex matters, the reviewing officer shall prepare a report setting out their findings, what action, if any, is proposed to be taken and, if necessary, any recommendations for improvements to Council's administrative processes for consideration by the CEO.

DEFINITIONS

Administrative action complaint is a complaint that –

- (a) is about an administrative action of a local government, including the following, for example –
 - (i) a decision, or a failure to make a decision, including a failure to provide a written statement of reasons for a decision;
 - (ii) an act, or a failure to do an act;
 - (iii) the formulation of a proposal or intention;
 - (iv) the making of a recommendation; and
- (b) is made by the affected person.

Affected person refers to any person who is apparently affected by an administrative action of Noosa Council.

CEO refers to the Chief Executive Officer of the Council.

Complainant refers to the affected person or organisation making a complaint.

Complaint means an expression of dissatisfaction by a person regarding an administrative action of Council

Corrupt conduct means conduct of a person, regardless of whether the person holds or held an appointment, that –

- (a) Adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of –
 - (i) A unit of public administration; or
 - (ii) A person holding an appointment; and
- (b) Results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a way that –
 - (i) Is not honest or is not impartial; or
 - (ii) Involves a breach of trust placed in a person holding an appointment, either knowingly or recklessly; or
 - (iii) Involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; and
- (c) Is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person; and
- (d) Would, if provided, be –
 - (i) A criminal offence; or
 - (ii) A disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.

Fair and objective means that complaints are considered on their merits and addressed in an unbiased and equitable manner, the principles of natural justice are observed and complainants will not suffer any reprisal from Council.

Maladministration is defined in schedule 4 of the Public Interest Disclosure Act 2010, maladministration is administrative action that –

- (a) Was taken contrary to law; or
- (b) Was unreasonable, unjust, oppressive, or improperly discriminatory; or
- (c) Was in accordance with a rule of law or a provision of an Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory in the particular circumstances; or
- (d) Was taken –
 - (i) For an improper purpose; or
 - (ii) On irrelevant grounds; or
 - (iii) Having regard to irrelevant considerations; or
- (e) Was an action for which reasons should have been given, but were not given; or
- (f) Was based wholly or partly on a mistake of law or fact; or
- (g) Was wrong.

Natural Justice means that persons who are the subject of a complaint allegation and other potentially affect parties have the following rights:

1. To be informed of the substance of allegations that may affect their rights and interests in as much detail as possible;
2. To be given a reasonable opportunity to present their case to a decision maker or investigator in writing or at a meeting; and
3. To have the decision maker act fairly without bias.

A **reprisal** is a form of detriment to a person because it is believed that somebody has made or intends to make a public interest disclosure.

A Reprisal may include any action that:

- Causes personal injury or prejudice to safety;
- Results in property damage or loss;
- Intimidates or harasses;
- Discriminates against or disadvantages the discloser's career, profession, employment, trade or
 - business;
 - Causes financial loss; and/or
 - Causes damage to reputation.

Reviewing officer means a Council officer who has been tasked with investigating an Administrative Action Complaint. At the first level, the reviewing officer will generally be a branch manager/supervisor or coordinator. At the second level, the reviewing officer will generally be a Director.

Substantial misuse of public resources is defined in Section 13 of *Public Interest Disclosure Act 2010* as more than an alleged misuse based on mere disagreement over policy that may properly be adopted about amounts, purposes or priorities of expenditure.

Substantial and specific danger to public health and safety includes any substantial and specific danger to the health and safety of the public. **Public health or safety** is defined in schedule 4 of the *Public Interest Disclosure Act 2010* to include the health or safety of individuals who are:

- Under lawful care or control (i.e. students, patients, prisoners); or
- Using community facilities or services provided by the public or private sector; or
- In employment workplaces.

A substantial and specific danger to the health and safety of a person with a disability means any substantial and specific danger to the health or safety of a person with a disability.

Section 11 of The *Disability Services Act 2006*, defines ‘disability’ as follows:

- (1) A disability is a person’s condition that –
 - (a) Is attributable to –
 - (i) an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment; or
 - (ii) a combination of impairments mentioned in subparagraph (i); and
 - (b) Results in –
 - (i) a substantial reduction of the person’s capacity for communication, social interaction, learning, mobility or self-care or management and
 - (ii) The person needing support.
- (2) For subsection (1), the impairment may result from an acquired brain injury.
- (3) The disability must be permanent or likely to be permanent.
- (4) The disability may be, but not need be, of a chronic episodic nature.

A substantial and specific danger to the environment refers to any conduct that is an offence, or the contravention of a condition imposed, under Queensland environmental legislation

Unreasonable complaint conduct is any behaviour by a person because of its nature and/or frequency raises substantial health, safety, resource or equity issues for the parties involved. Unreasonable persistence, demands, lack of cooperation, arguments and behaviours can be considered as unreasonable complaint conduct.

Version control:

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1.0	Create new	N	Council	21/06/2018
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