

Public Interest Disclosure Procedure

Purpose

The objective of this procedure is to assist in the protection of integrity in the Attorney-General's Department (AGD) and public sector by seeking to ensure compliance with the *Public Interest Disclosure Act 2018* (PID Act) and informing employees as to the impact and operation of the Act.

The PID Act establishes a scheme that encourages and facilitates the *appropriate disclosure* of *public interest information* (which comprises both *public administration information* and *environmental and health information*) to certain persons or authorities (a public interest disclosure).

It provides protections for *public officers* who make an *appropriate disclosure* of *public administration information* and sets out processes for dealing with such disclosures. It also provides protections for all persons who make an *appropriate disclosure* of *environmental and health information*.

Overview

In accordance with the requirements of the [PID Act](#), this AGD Public Interest Disclosure Procedure (the Procedure) sets out the process:

- for any person who wants to make an *appropriate disclosure* of *public interest information* concerning an AGD employee or AGD (see Appendix 1 for details), and
- for any employee of AGD in dealing with any such *appropriate disclosure* (see Appendix 2 for details).

The Independent Commission Against Corruption (the ICAC) has published guidelines under section 14 of the PID Act (the ICAC Guidelines) to provide additional requirements. The [ICAC Guidelines](#) also provide general information about the PID Act. This Procedure has been prepared to comply, and be consistent, with the ICAC Guidelines.

Obligations on public sector agencies

In accordance with section 12 (5) of the PID Act and [ICAC Guideline four](#) this Procedure sets out the following:

- the manner in which AGD receives disclosures of *public interest information*, including:
 - the way in which a disclosure can be securely received (see Appendix 3 for details)
 - what steps AGD has put in place to ensure the *public interest information* is securely received and stored, and
 - who is responsible for ensuring compliance with these steps.
- the criteria that will be applied in the assessment of a *public interest disclosure*

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- the manner in which details of the assessment will be securely stored and the person in AGD who will be advised of the assessment
- the manner in which an informant will be kept informed as to action taken in respect of a disclosure
- the person in AGD who can be contacted if an informant believes that his or her disclosure is not being dealt with appropriately
- obligations on AGD and its officers and employees to take action to protect informants, and
- risk management steps for assessing and minimising detrimental action against people because of public interest disclosures and detriment to people against whom allegations are made in a disclosure.

This Procedure sets out how you can ensure you are complying with the PID Act and the ICAC Guidelines.

AGD Statement of Principles

The Chief Executive of the Attorney-General's Department is committed to:

- Accountability and transparency across the department.
- Protecting informants who disclose *public interest information* appropriately.
- Having sound procedures for receiving *public interest information*.
- Genuine and efficient consideration and investigation of any public interest disclosure matters relating to the department.
- Keeping persons who disclose information informed about the action taken or the outcome of any investigation.
- Addressing matters of corruption, maladministration and misconduct in public administration.
- Ensuring all AGD staff are informed about their rights and the correct process for disclosing and receiving *public interest information*.

Responsibilities

All employees will comply with the PID Act. Where employees are considering a disclosure of *public interest information* under the PID Act, they should also consider if they have obligations under the Directions and Guidelines issued by the ICAC and the OPI.

The Ombudsman also expects *public officers* and public authorities will report to the Ombudsman any matter that they reasonably suspect involves misconduct in public administration.

Definitions

Informant - A person who makes an *appropriate disclosure of public interest information* is referred to in this Procedure and throughout the PID Act as an informant.

Public officer - The term *public officer* is defined in Schedule 1 of the ICAC Act. The most common categories of *public officer* can be found in the appendices to the [ICAC Guidelines](#). Public sector employees are *public officers*.

Relevant authority - The PID Act designates certain persons or organisations who can receive an *appropriate disclosure of public interest information*, depending on who or what the information relates to.

Responsible Officer - Under section 12(1) of the PID Act, as *principal officer* of AGD the Chief Executive has appointed four people to be *responsible officers* for AGD.

In accordance with section 13 of the PID Act, the *responsible officer* must:

- receive *appropriate disclosures of public interest information* relating to AGD and ensure compliance with the PID Act in relation to such disclosures, and
- make appropriate recommendations to the AGD Chief Executive in relation to dealing with such disclosures, and
- provide advice to officers and employees of the AGD in relation to the administration of the PID Act.

Anyone wanting to disclose *public interest information* related to AGD can therefore seek the advice of the AGD *responsible officer*. In addition, information is also available on the following websites:

- ICAC (www.icac.sa.gov.au)
- Office for Public Integrity (OPI) (www.publicintegrity.sa.gov.au)
- Ombudsman SA (www.ombudsman.sa.gov.au).

Information about the *responsible officers* for AGD can be found on the [Public Interest Disclosures page](#) of the AGD website: www.agd.sa.gov.au.

Making an appropriate disclosure of public interest information

Section 5 of the PID Act sets out what is an *appropriate disclosure of public interest information*.

In order to make an *appropriate disclosure of public interest information* you need to determine whether the information you have is *public interest information* and what type of *public interest information* it is. All persons can receive protections under the PID Act for disclosing *environmental and health information* but only *public officers* receive protections for disclosing *public administration information*. These terms are explained in more detail below.

You then need to determine who you should disclose the information to (i.e. who the *relevant authority* is).

Advice can be provided to you by the AGD *responsible officer*. Further information about the PID Act can also be found on the [ICAC website](#) or [OPI website](#).

Receiving an appropriate disclosure of public interest information

In order to determine whether an informant has made an *appropriate disclosure of public interest information* to you, you need to assess the information given to you, determine whether it is *public interest information* and consider whether you are a *relevant authority* for that type of information.

Advice can be provided to you by an AGD *responsible officer*. Further information about the PID Act can also be found on the [ICAC website](#), [OPI website](#) or [Ombudsman SA website](#).

What is Public Interest Information?

There are two types of *public interest information*. The first is *environmental and health information*. The second is *public administration information*.

Disclosures of environmental and health information

What is *environmental and health information*?

- *Environmental and health information* means information that raises a potential issue of a substantial risk to the environment or to the health and safety of the public generally or a significant section of the public (whether occurring before or after the commencement of the PID Act - see section 4).

Who can make a disclosure of *environmental and health information*?

- Anyone can make a disclosure of *environmental and health information*.
- However, to gain the protections provided under the PID Act, a person who makes a disclosure of *environmental and health information*:
 - must believe on reasonable grounds that the information is true; or
 - not being in a position to form such a belief, believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated.
- A disclosure of *environmental and health information* that is accompanied by either of these beliefs is referred to as an *appropriate disclosure of environmental and health information* for the purposes of the PID Act.

Who can receive a disclosure of *environmental and health information*?

- For a disclosure to be considered an *appropriate disclosure of environmental and health information* it must be made to a *relevant authority*.
- Whether a disclosure of *public interest information* is made to a *relevant authority* depends on the type of information being disclosed and what or who the information relates to.
- Section 5(5) of the PID Act specifies the *relevant authorities* that can receive a disclosure of *public interest information*.

- This list of relevant authorities is included in the appendices to the ICAC Guidelines.
- Where information relates to a risk to the environment you should consider making a disclosure to the Environment Protection Authority.
- Where the information relates to a location within the area of a particular local council, you should consider making a disclosure to a member, officer or employee of that council.
- There are other *relevant authorities* that can receive disclosures relating to *environmental and health information*.
- If the *environmental and health information* relates to a *public officer* in AGD, both the AGD *responsible officer* or the person responsible for the supervision or management of the *public officer* the *environmental and health information* relates to are relevant authorities.
- If the *environmental and health information* relates to a public sector employee in AGD or relates to AGD, both the AGD *responsible officer* or the Commissioner for Public Sector Employment are relevant authorities.
- The [OPI](#) is also a *relevant authority* for any *appropriate disclosure* of *environmental and health information*.

Disclosures of public administration information

What is *public administration information*?

- *Public administration information* means information that raises a potential issue of corruption, misconduct or maladministration in public administration (whether occurring before or after the commencement of the PID Act).
- The definition of corruption in public administration is the same as that found in section 5(1) of the ICAC Act and can be found in the appendices to the ICAC Guidelines (see the [ICAC Guidelines](#)).
- The definitions of maladministration in public administration and misconduct in public administration have the same meaning as in Section 4 of the *Ombudsman Act 1972* (Ombudsman Act) and can be found in the appendices to the ICAC Guidelines (see the [ICAC Guidelines](#)).
- It is important to note that the definition of misconduct in section 4(1) of the Ombudsman Act is limited to a contravention of a relevant Code by a *public officer* that is intentional and serious.

Who can make a disclosure of *public administration information*?

- While anyone can make a disclosure of *public administration information*, only *public officers* who make such a disclosure are eligible for the protections provided by the PID Act.
- The term *public officer* is defined in Schedule 1 of the ICAC Act.
- The most common categories of *public officer* can be found in Appendix A to the [ICAC Guidelines](#).
- Public sector employees are *public officers*.

Who can receive a disclosure of *public administration information*?

- To gain the protections provided by the PID Act a *public officer* must make a disclosure of *public administration information* to a *relevant authority* in circumstances where the *public officer* reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration.
 - This does not mean that you are obligated to make an appropriate disclosure of misconduct or maladministration in public administration. There is no obligation as it was previously the case prior to the amendment to the ICAC Act.
 - Presently, there is no longer a statutory obligation to report misconduct or maladministration in public administration, however *public officers* continue to have an obligation to report matters involving corruption in public administration.
 - The new OPI Guidelines impose a mandatory obligation upon *public officers* to report to the OPI any matter that they reasonably suspect involves corruption in public administration unless the *public officer* knows that the conduct has already been reported to the OPI.
 - While *public officers* are no longer mandated to report misconduct or maladministration in public administration, it is still encouraged to report any concerns to the OPI or the Ombudsman. In particular, the Ombudsman Directions and Guidelines provide that the Ombudsman expects *public officers* and public authorities will report to the Ombudsman any matter that they reasonably suspect involves misconduct in public administration (as defined in section 4(1) of the Ombudsman Act 1972).
- A disclosure of *public administration information* that is accompanied by such a suspicion is referred to as an *appropriate disclosure of public administration information* for the purposes of the PID Act.
- There are a number of *relevant authorities* that can receive disclosures relating to *public administration information*.
- Whether a disclosure of *public interest information* is made to a *relevant authority* depends on the type of information being disclosed and what or who the information relates to.
- Section 5(5) of the PID Act specifies the *relevant authorities* that can receive a disclosure of *public interest information*.
- The list of *relevant authorities* is included in Appendix B to the [ICAC Guidelines](#), in the [OPI Directions and Guidelines](#) and in the [Ombudsman Directions and Guidelines](#).
- If the *public administration information* relates to a *public officer* in AGD, both the AGD *responsible officer* or the person responsible for the supervision or management of the *public officer* the *public administration information* relates to are *relevant authorities*.
- If the *public administration information* relates to a public sector employee in AGD or relates to AGD, both the AGD *responsible officer* or the Commissioner for Public Sector Employment are *relevant authorities*.
- The OPI is also a *relevant authority* for any *appropriate disclosure* of *public administration information*.
- The Ombudsman is the *relevant authority* where the information relates to an agency to which the *Ombudsman Act 1972* applies.

How do I make a disclosure of *public administration information*?

- Each *relevant authority* has its own procedure in relation to disclosing and receiving *public administration information*.
- This Procedure sets out how *public officers* in AGD can make, and what to do if they receive, an *appropriate disclosure* of *public interest information*.

See Appendices 1-3 for further details.

False or Misleading Disclosures

A *public officer* should consult the *responsible officer* if they suspect a disclosure to be false or misleading.

It is an offence against the PID Act, with a maximum penalty of \$20 000 or imprisonment for 2 years, to make a disclosure of *public interest information* knowing that it is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular).

Such a disclosure of *public interest information* is not protected by the PID Act.

What protections are given under the PID Act?

There are two types of *public interest information*:

1. *Environmental and health information*
2. *Public administration information*.

Only *public officers* are eligible for the protections provided by the PID Act when they make an *appropriate disclosure* of *public administration information*.

However, anyone is eligible for the protections provided by the PID Act if they make an *appropriate disclosure* of *environmental and health information*, provided:

- they believe on reasonable grounds that the information is true; or
- not being in a position to form such a belief, believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated.

Confidentiality

- A person who makes an *appropriate disclosure* of *public interest information* is protected and their identity must be kept confidential in accordance with section 8 of the PID Act.
- [ICAC Guideline three](#) sets out some exceptions to maintaining confidentiality including in cases where it may be necessary to reveal the identity of an informant to prevent or minimise an imminent risk of serious physical injury or death to any person. Under the PID Act it is a criminal offence to divulge the identity of an informant except in the limited circumstances where that is permitted.
- If you receive an *appropriate disclosure* of *public interest information*, when seeking any advice, for example from the OPI or from the AGD *responsible officer*, you must not disclose the identity of the informant unless the informant has consented.

- You can only disclose the identity of the informant in accordance with ICAC Guideline three or if you have:
 - assessed the disclosure; and
 - based on that assessment, you are referring the *appropriate disclosure of public interest information* to the OPI or to the AGD *responsible officer* for investigation; and
 - based on that assessment, you have concluded that the matter cannot be fully investigated in the absence of the identity of the informant being disclosed.

Immunity

- A person who makes an *appropriate disclosure of public interest information* has the immunity provided for in section 5(1) of the PID Act.

Victimisation

- It is a criminal offence to victimise a person who makes an *appropriate disclosure of public interest information*.
- The PID Act provides that a person who personally commits an act of victimisation under the PID Act is guilty of an offence. The offence carries a maximum penalty of a \$20 000 fine or imprisonment for 2 years.
- The PID Act also contains provisions dealing with victimisation of a person who suffers a detriment on the ground, or substantially on the ground, that the person has made (or intends to make) an *appropriate disclosure of public interest information*. This is also addressed in section 9 of the PID Act.

Preventing or hindering disclosures

- It is an offence against the PID Act for a person to prevent another person from making an *appropriate disclosure of public interest information* or to hinder or obstruct another person in making such a disclosure. The offence carries a maximum penalty of \$20 000 or imprisonment for 2 years.

I have an obligation to make a report under the ICAC Act or seek to make a complaint about misconduct or maladministration to the OPI or the Ombudsman. Can I still be protected under the PID Act?

- A *public officer* who makes a report to the OPI under the ICAC Act may also be protected under the PID Act.
- Where a *public officer* makes a report to the OPI about a matter the *public officer* reasonably suspects involves a potential issue of corruption, misconduct or maladministration in public administration that report will also be an *appropriate disclosure of public administration information* because the OPI is itself a *relevant authority*.
- A *public officer* **must** report to the OPI any matter that they reasonably suspect involves corruption in public administration unless the *public officer* already knows that the conduct has already been reported to the OPI.

- While there is no mandatory obligation for a public officer to report information that raises a potential issue of misconduct or maladministration in public administration to the OPI under the ICAC Act, there is an expectation that public officers will report any matter that they reasonably suspect involves misconduct or maladministration in public administration to the Ombudsman unless the public officer knows that it has already been reported to the OPI or the Ombudsman.
- Accordingly, such a report will ordinarily provide the *public officer* the protections under the PID Act.
- The OPI will deal with your report in accordance with the ICAC Act and the OPI Directions and Guidelines but will also act consistently with the requirements of the PID Act. The Ombudsman will deal with your report in accordance with the Ombudsman Directions and Guidelines and the Ombudsman Act and also consistent with the requirements of the PID Act.

For more information about how the OPI deals with complaints and reports visit the [OPI website](#).

Protecting Informants

AGD is committed to protecting people who make an *appropriate disclosure of public interest information*. The protections afforded under the PID Act are outlined in the section 'What protections are given under the PID Act' in this Procedure document.

The PID Act creates an obligation to maintain the confidentiality of all people who make an *appropriate disclosure of public interest information*.

This is reflected in section 8 of the PID Act which states that a person to whom an *appropriate disclosure of public interest information* is made, or a person to whom such a disclosure is referred or who otherwise knows that such a disclosure has been made, must not, without the consent of the informant, knowingly divulge the identity of the informant except:

- so far as may be necessary to ensure that the matters to which the information relates are properly investigated; or
- in accordance with any applicable ICAC Guidelines.

An offence against this section carries a maximum penalty of \$20 000 or imprisonment for 2 years.

As set out in the Appendices, the identity of the informant must be kept confidential unless the informant has consented to their identity being disclosed, even when seeking advice from the AGD *responsible officer*.

The obligation to maintain confidentiality imposed by section 8 applies despite any other statutory provision, or a common law rule, to the contrary. The exceptions to maintaining confidentiality are set out in [ICAC Guideline three](#) and in section 8(1) of the PID Act.

How AGD will protect informants

In order to ensure that informants are protected, AGD will:

1. Provide support and information on the PID Act protections to the informant
2. Adopt and apply internal procedures that require compliance with section 8(1) of the PID Act in relation to confidentiality
3. Store information about appropriate disclosures securely
4. Proactively recognise and address any potential detrimental outcomes that may be caused from the disclosure.

Furthermore, *public officers* are able to refer to the [AGD Employee Grievance Resolution Procedure](#) for any concerns or complaints that need to be addressed.

Remember you can seek the advice of the AGD *responsible officer* to ensure you are complying with the ICAC Guidelines, as well as with the PID Act.

More information

The Directions and Guidelines issued by the Independent Commission Against Corruption can be accessed through www.icac.sa.gov.au.

Appendices

- Appendix 1 Making an appropriate disclosure of public interest information.
- Appendix 2 Receiving and dealing with an appropriate disclosure of public interest information.
- Appendix 3 How informants can contact AGD.

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