



# Public Interest Disclosure Procedure

## Purpose

The objective of this procedure is to assist in the protection of integrity in the Department for Innovation and Skills (DIS) 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 DIS 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 DIS employee or DIS (see Appendix 1 for details), and
- for any employee of DIS in dealing with any such *appropriate disclosure* (see Appendix 2 for details).

The Independent Commissioner Against Corruption (the ICAC) has published four sets of 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](#) these Procedures set out the following:

- the manner in which DIS receives disclosures of *public interest information*, including:
  - the way in which a disclosure can be securely received (see Appendix 3 for details)
  - what steps DIS 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*
- the manner in which details of the assessment will be securely stored and the person in DIS 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 DIS who can be contacted if an informant believes that his or her disclosure is not being dealt with appropriately
- obligations on DIS 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.

These Procedures set out how you can ensure you are complying with the PID Act and the ICAC Guidelines.

## DIS Statement of Principles

The DIS Chief Executive 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 serious or systemic maladministration and misconduct in public administration
- Ensuring all DIS 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 Independent Commissioner Against Corruption.

## Definitions

**Informant** - A person who makes an *appropriate disclosure of public interest information* is referred to in these Procedures 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 officers** - Under section 12(1) of the PID Act, as *principal officer* of DIS the Chief Executive has appointed three people to be *responsible officers* for DIS.

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

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

Anyone wanting to disclose *public interest information* related to DIS can therefore seek the advice of a DIS *responsible officers*. In addition, information is also available on the ICAC / [Office for Public Integrity \(OPI\)](#) website ([www.icac.sa.gov.au](http://www.icac.sa.gov.au)).

## What is an appropriate disclosure of public interest information?

### Informant

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 [DIS responsible officers](#). Further information about the PID Act can also be found on the ICAC / [OPI](#) website ([www.icac.sa.gov.au](http://www.icac.sa.gov.au)).

### Public officer or responsible officers

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*.

Advice can be provided to you by a [DIS responsible officers](#). Further information about the PID Act can also be found on the ICAC / [OPI](#) website ([www.icac.sa.gov.au](http://www.icac.sa.gov.au)).

## 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*.
- Where information relates to a risk to the environment you should consider making a disclosure to the Environment Protection Authority (see the [ICAC Guidelines](#)).
- 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 (see the [ICAC Guidelines](#)).
- There are other *relevant authorities* that can receive disclosures relating to *environmental and health 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 disclosure of *public interest information*.
- This list of relevant authorities is included in the appendices to the ICAC Guidelines.
- If the *environmental and health information* relates to a *public officer* in DIS, the *relevant authority* is the DIS *responsible officers* or the person responsible for the supervision or management of the *public officer* the environmental and health information relates to.
- If the *environmental and health information* relates to a public officer in DIS or relates to DIS, the *relevant authority* is the DIS *responsible officers* or the Commissioner for Public Sector Employment.
- [OPI](#) is also a *relevant authority*.

#### 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 definitions of corruption, misconduct and maladministration in public administration are the same as those found in the ICAC Act and can be found in the appendices to ICAC Guidelines (see the ICAC Guidelines) .

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 the appendices to the ICAC Guidelines (see 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.

- 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 disclosure of *public interest information*.
- The list of relevant authorities is included in the appendices to the ICAC Guidelines (see the [ICAC Guidelines](#)).
- If the *public administration information* relates to a *public officer* in DIS, the *relevant authority* is the DIS *responsible officers* or the person responsible for the supervision or management of the *public officer* the *public administration information* relates to.
- If the *public administration information* relates to a public sector employee in DIS or relates to DIS, the *relevant authority* is the DIS *responsible officers* or the Commissioner for Public Sector Employment.
- The OPI is also a *relevant authority*.

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

- Each *relevant authority* has its own procedures in relation to disclosing and receiving public administration information.
- These Procedures set out how *public officers* in DIS can make, and what to do if they receive, an *appropriate disclosure of public interest information*.

See Appendix 1-3 for further details.

## False or Misleading Disclosures

A *public officer* should consult the [responsible officers](#) 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: Informant Confidentiality](#) sets out some exceptions to maintaining confidentiality 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 there are penalties associated with keeping confidentially of the informant.
- If you receive an *appropriate disclosure* of *public interest information*, when seeking any advice, for example from OPI or from the DIS *responsible officers*, 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 Guidelines three or if you have:
  - assessed the disclosure; and
  - based on that assessment, you are referring the *appropriate disclosure* of *public interest information* to OPI or to the DIS *responsible officers* for investigation; and
  - based on that assessment, 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 to the Office of Public Integrity (OPI). 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*.
- 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 but will also act consistently with the requirements of the PID Act.

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

### **Protecting Informants**

DIS 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 Procedures 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 [DIS responsible officers](#).

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 3](#).

### How DIS will protect informants

In order to ensure that the informants are protected, DIS will follow the below steps, including:

1. Providing support and information on the PID Act protections to the informant
2. Maintain confidentiality throughout the process and ensuring the identity of any informant is kept secure as set out in these Procedures
3. Proactively recognising and addressing any potential detrimental outcomes that may be caused from the disclosure
4. Removing liability from any actions and outcomes that come from the disclosure.

Remember you can seek the advice of the DIS *responsible officers* 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 Commissioner Against Corruption can be access through [www.icac.sa.gov.au](http://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 DIS.

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