

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 PID 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*
- 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 Office for Public Integrity (OPI).

The Ombudsman expects *public officers* and public authorities will report to the Ombudsman any matter that they reasonably suspect involves *misconduct or maladministration 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 *Independent Commission Against Corruption Act 2012 (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 five 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.

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 an [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

Environmental and health information is defined in the PID Act as meaning information that raises a potential issue of a substantial risk to the environment or to the health or safety of the public generally or a significant section of the public (whether occurring before or after the commencement of the PID Act).

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 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 an AGD *responsible officer* or the person responsible for the supervision or management of the *public officer* to which the environmental and health information relates are *relevant authorities*.
- If the *environmental and health information* relates to a public sector employee in AGD or relates to AGD, both an 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 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*.
 - The OPI Guidelines impose a mandatory obligation on 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.
 - There is no longer a statutory obligation to report *misconduct or maladministration in public administration*. However 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 *maladministration or misconduct in public administration* (as defined in section 4(1) and (2) of the Ombudsman Act), unless they know the conduct has already been reported to the Ombudsman or OPI.
- 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 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 an 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 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 Appendix 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, believe 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 OPI or from an 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 an 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.

Interaction with reporting obligations

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 the 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 by the disclosure.

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

Remember you can seek the advice of an 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.

Appendix 1

Making an appropriate disclosure of public interest information

Step 1

Before making a disclosure

To make an *appropriate disclosure* of *public interest information* you need to determine whether the information you have is *public interest information* and you need determine who you should disclose the information to (i.e. who the *relevant authorities* are).

Whether you receive protection under the PID Act will depend in part on who you are and the subject matter of the disclosure. Anyone can receive the protection of the PID Act if an *appropriate disclosure* is made of *environmental and health information* in accordance with the PID Act. Only *public officers* are eligible for the protections under the PID Act if making an *appropriate disclosure of public administration information*.

Step 2

Making a disclosure

If you want to make an *appropriate disclosure of public interest information* related to AGD or an AGD *public officer*, you have a number of options including:

1. **You can contact the [OPI](#) and speak to them.**

The OPI is a *relevant authority* to receive disclosures of *public administration information* or *environmental and health information* regarding AGD, AGD *public officers* and AGD public sector employees.

2. **You can contact an [AGD responsible officer](#).**

The AGD *responsible officer* can provide you with advice and assistance. AGD *responsible officers* are a *relevant authority* to receive disclosures of *public administration information* or *environmental and health information* regarding AGD and AGD public sector employees.

You can follow the steps at Appendix 3.

3. **Contact the person's manager or supervisor**

If your disclosure of *public administration information* or *environmental and health information* relates to an AGD *public officer*, the person responsible for the management or supervision of that AGD *public officer* is also a *relevant authority* and you can disclose to them.

4. **Contact the [Office of the Commissioner for Public Sector Employment](#)**

The Commissioner for Public Sector Employment is a *relevant authority* to receive disclosures of *public administration information* or *environmental and health information* regarding AGD and AGD public sector employees.

The person receiving the *appropriate disclosure of public interest information* is required to comply with a number of requirements set out under the PID Act and this Procedure.

When making the disclosure of information, if you are revealing your identity, you have rights set out below about being kept informed. Please speak to the *relevant authority* about how you wish to be contacted by them. It is important that keeping you informed is done in a way that maintains strict confidentiality. Decide together how they will keep you informed.

It is better to be kept informed in writing, although this is not a requirement.

Step 3

Assessment of disclosure

Once you make an *appropriate disclosure of public interest information* in accordance with section 5 of the PID Act the person to whom you made the *appropriate disclosure* must take certain steps as set out in section 7 of the PID Act.

This includes (amongst other things) taking reasonable steps to notify you (as the informant provided your identity is known) that an assessment of the information has been made and to advise you (as the informant) of either:

- the action being taken in relation to the information (section 7(1)(b)(i)), or
- if no action is being taken in relation to the information, the reasons why no action is being taken in relation to the information (section 7(1)(b)(ii)).

The action being taken in relation to the information can include referring it to another person. If the action being taken is referring it to another person, then your identity may be disclosed as part of that referral, provided divulging your identity is necessary for the purpose of investigating the disclosure.

If any action is being taken in relation to the information, then the person you disclosed the information to (or the person it has been referred to) must take reasonable steps to notify you (as the informant, if your identity is known) of the outcome of that action (section 7(3)(a)).

However, if you make an *appropriate disclosure of public interest information* to a Minister of the Crown, the requirements set out above from section 7 do not apply. The following provisions apply instead:

- the Minister must, as soon as practicable, refer the disclosure to a *relevant authority*; and
- the *relevant authority*:
 - must deal with the information in accordance with section 7 (as if the disclosure had been made to the *relevant authority* in the first place); and
 - must ensure that the Minister is notified of the action taken under section 7 in relation to the information and the outcome of such action.

Step 4

Action to be taken

Section 7 of the PID Act requires the person to whom an *appropriate disclosure of public interest information* is made to take certain actions and notify the OPI in accordance with the ICAC Guidelines. This is set out in more detail in Appendix 2 under 'Receipt, assessment and notification of *appropriate disclosures of public interest information*'.

Section 7(2) provides that no action need be taken in relation to an *appropriate disclosure of public interest information* if:

- the information disclosed does not justify the taking of further action; or
- the information disclosed relates to a matter that has already been investigated or acted upon by a *relevant authority* and there is no reason to re-examine the matter or there is other good reason why no action should be taken in respect of the matter.

The requirements set out above from section 7 do not apply where an *appropriate disclosure of public interest information* is made to a *journalist* or a *member of Parliament* (see below).

Concerns about the action taken

If you are concerned or believe (as an informant) that your *appropriate disclosure* is not being dealt with by AGD appropriately:

- If your *appropriate disclosure of public interest information* was made to a *relevant authority* in AGD other than a *responsible officer*, please contact one of the [AGD responsible officers](#) (see contact details at Appendix 3). Responsible officers have obligations under the PID Act and will be able to assist you.
- If your *appropriate disclosure* was made to an AGD *responsible officer*, contact other *relevant authorities* such as the [OPI](#), the [Ombudsman](#) or the [Commissioner for Public Sector Employment](#).

If you are concerned or suspect (as an informant) that you may have been or will be the subject of detriment on the grounds of having made, or being about to make, an *appropriate disclosure of public interest information*, you are encouraged to report that suspicion.

- Please raise your concerns or suspicions with one of the AGD *responsible officers*. Responsible officers have obligations under the PID Act and will be able to assist you.
- If your concerns relate to the way in which an AGD *responsible officer* is handling your matter, you might want to raise your concerns with a different AGD *responsible officer*.
- Alternatively, you might prefer to contact other *relevant authorities* such as the [OPI](#), the [Ombudsman](#) or [the Commissioner for Public Sector Employment](#).

Disclosure to a journalist or member of Parliament

You have certain rights if:

- you have made an *appropriate disclosure of public interest information* in accordance with section 5; and
- you believe on reasonable grounds that the information is true, and
- you have made your identity known to the person to whom that *appropriate disclosure* was made (that is, they can contact you).

You should receive notification of the action being taken (or the reasons for no actions being taken) within 30 days after making that disclosure.

You should also receive notification of the outcome of the action within 90 days after making that disclosure. However, the person whom you notified can give you a written notice saying that this period of time will be longer.

These notifications can be either verbal or in writing. Under this Procedure the *relevant authority* is directed to provide the notification in writing but under the PID Act this is not a requirement.

If the above applies, and if after 30 days or 90 days (or such other longer period specified in writing) you have not been notified as required, you are entitled to receive the protections under the PID Act if you make an *appropriate disclosure of the public interest information to a journalist or member of Parliament* (other than a Minister of the Crown, as Ministers of the Crown are already *relevant authorities* under the PID Act) (see section 6 of the PID Act).

Under the PID Act a *journalist* means a person engaged in the profession or occupation of journalism in connection with the publication of information in a news medium.

Other information

As set out in this Procedure, AGD has an obligation to protect informants.

AGD *responsible officers* are directed to ensure matters are kept strictly confidential, for example, all printed materials are kept in a locked cupboard or drawer that only the AGD *responsible officer* can access and any conversations with an informant are to be held in private. In addition, the emails sent to and from AGD *responsible officers* are kept secure and are not accessed by other staff members.

AGD is committed to minimising any risk that an informant might be victimised as a consequence of making, or intending to make, a *public interest disclosure*.

AGD *responsible officers* will provide support and information about the PID Act protections to informants and encourage informants to raise any concerns they have about potential detrimental outcomes that may be caused from the disclosure.

Appendix 2

Receiving and dealing with an appropriate disclosure of public interest information

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

Advice can be provided to you by an [AGD responsible officer](#) and also by the [OPI](#).

When seeking advice, you must not disclose the identity of the informant, nor disclose any information that could reveal the identity of the informant, unless the informant consents.

There are two types of *public interest information*. The first is *environmental and health information*. The second is *public administration information*. Whether you are a *relevant authority* will depend on the subject matter of the information being received.

Once you have determined that you are a *relevant authority* who has received an *appropriate disclosure of public interest information* you must take certain steps to comply with the PID Act and the ICAC Guidelines.

To ensure you are complying with the PID Act it is recommended that you seek the advice and assistance of an [AGD responsible officer](#).

When seeking advice, you must not disclose the identity of the informant, nor disclose any information that could reveal the identity of the informant, unless the informant consents. When receiving the disclosure of information please speak to the informant about how they wish to be contacted by you. It is important that if the informant has provided their identity that they be kept informed as set out in this Appendix, but that it is done in a way that maintains strict confidentiality. Decide together how you will keep them informed.

It is better they be kept informed in writing, although this is not a requirement.

Receipt, assessment and notification of appropriate disclosures of public interest information

A person to whom an *appropriate disclosure of public interest information* is made, must assess the information as soon as practicable after the disclosure is made (see section 7(1) of the PID Act).

If you are a person to whom an *appropriate disclosure of public interest information* is made, then you should consider seeking the advice of an *AGD responsible officer* immediately. You will have numerous and complicated legal obligations, and the *AGD responsible officer* will be able to assist you.

Step 1

Assessment

Section 7 of the PID Act requires a person to whom an *appropriate disclosure* is made to assess the information as soon as practicable after the disclosure is made.

Assess for Imminent Risk

Immediately assess the disclosure to ascertain whether the 'imminent risk' provision of Guideline One applies (see below).

Assess to decide whether, on its face, it is a disclosure of public interest information

a) *Does the information disclosed raise a potential issue of:*

i) *corruption in public administration*

ii) *misconduct in public administration*

iii) *maladministration in public administration?*

b) *Does the information disclosed raise a potential issue of a substantial risk to the environment or to the health or safety of the public generally or a significant section of the public?*

If the disclosure assessed has the character of *public interest information* you have an obligation to report that matter to the OPI, applying the criteria in the ICAC Act, and in accordance with [Guideline One](#):

If the recipient of the disclosure forms a reasonable suspicion that the matter disclosed involves corruption in public administration, the recipient of the disclosure must comply with their reporting obligations under the ICAC Act.

It is important to note that amendments made to the ICAC Act in 2021:

- have conferred further functions on the Ombudsman in respect of matters of misconduct and maladministration in public administration;
- provide for establishing the OPI as a separate office with responsibility to assess and refer matters to inquiry agencies i.e. ICAC, the Ombudsman and the Judicial Conduct Commissioner;
- provide that a system for receipt of complaints about public administration is to be established for the OPI by the Director of the OPI; and
- remove references to systemic misconduct or maladministration (as being matters that can be investigated by the ICAC Commissioner).

Further, 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* and are encouraged (and expected by the Ombudsman SA) to report *misconduct in public administration and maladministration in public administration*.

Assess for no further action

If the obligation to report under the ICAC Act does not arise, assess whether this is information in relation to which no action need be taken seeking the advice of a *responsible officer*.

No action need be taken in relation to an *appropriate disclosure of public interest information* if:

- the information disclosed does not justify the taking of further action; or
- the information disclosed relates to a matter that has already been investigated or acted upon by a *relevant authority* and there is no reason to re-examine the matter or there is other good reason why no action should be taken in respect of the matter (see section 7(2)).

No Action Required: Notifying the Informant

If no action is being taken, as the person to whom the *appropriate disclosure of public interest information* was made, you still need to comply with 7(1)(b) of the PID Act.

The *responsible officer* can assist you, but you must take reasonable steps to notify the informant (if the informant's identity is known):

- that an assessment of the information has been made;
- that no action is being taken in relation to the information; and
- the reasons why no action is being taken in relation to the information.

Make this notification within 30 days of receiving the *appropriate disclosure of public interest information*.

If you take longer than 30 days and if the informant believes on reasonable grounds that the information is true, the informant is entitled to disclose the *public interest information* to a *journalist* or a *member of Parliament* other than a Minister of the Crown, and the disclosure will be considered to be an *appropriate disclosure of public interest information*.

Assess if further action is required

If the information does not give rise to a potential issue of corruption, but warrants further action, you need to determine who best should take action in relation to it, having regard to the following criteria:

- a) If investigation of the information may be warranted, who has the skills, resources and powers to investigate the matter?
- b) If the information is substantiated following an investigation, what action would be appropriate? Who has the skills, resources and powers to take appropriate action in relation to the matter arising from the information, if the information is substantiated?

Having identified the appropriate person or authority to take action in relation to the matter raised by the information, the information should be further assessed to determine what information should be communicated to that person or authority to enable the information to be properly addressed.

Action Required: Provide Information to OPI

If action needs to be taken, unless good reasons exist for not doing so, please refer the *appropriate disclosure of public interest information* to an AGD *responsible officer*.

For example, an *appropriate disclosure of public interest information* would not be referred to an AGD *responsible officer* if the information related to them. Instead, it would be referred to another responsible officer.

Following your assessment, when referring the *appropriate disclosure of public interest information* to an AGD *responsible officer*, you can only disclose the identity of the informant if you have:

- assessed the disclosure; and
- based on that assessment, you are referring the *appropriate disclosure of public interest information* to an AGD *responsible officer* for investigation; and
- based on that assessment, you conclude that the matter cannot be fully investigated in the absence of the identity of the informant being disclosed.

If you do not have enough information to draw that conclusion, please omit the informant's identity from your referral. If the AGD *responsible officer* considers that they need the informant's identity to properly investigate, they will tell you.

Even if you refer the *appropriate disclosure of public interest information* to an AGD *responsible officer* then you must still:

- take action in relation to the information in accordance with [ICAC Guideline One](#) set out below (as required by section 7(1)(a)); and
- provide OPI with information relating to the disclosure in accordance with [ICAC Guideline One](#) (as required by section 7(1)(c)).

The AGD *responsible officer* can assist you.

You must ensure that you are complying with [ICAC Guideline One](#) entitled Receipt, assessment and notification of *appropriate disclosures*.

ICAC Guideline One applies in respect of the action to be taken by **a person to whom an *appropriate disclosure of public interest information* has been made** (the recipient of the disclosure) and in respect of the notification to the OPI of the receipt of the *appropriate disclosure*.

If you are a person **to whom an *appropriate disclosure of public interest information* has been made**:

1. If the content of the disclosure suggests that there is an imminent risk of serious physical injury or death to any person or the public generally, you (as the recipient of the disclosure) must immediately communicate such information as may be necessary to mitigate that risk to the most appropriate agency (e.g. South Australia Police, SafeWork SA, SA Ambulance Service, Environment Protection Authority).
2. If you (as the recipient of the disclosure) form a reasonable suspicion that the matter disclosed involves *corruption in public administration*, you must comply with your reporting obligations under the ICAC Act.

3. If you (as the recipient of the disclosure) assess the content of the disclosure as requiring further action, you must, unless the matter is reported to the OPI as a potential issue of *corruption in public administration*, ensure that:
 - (a) such action as may be appropriate in the circumstances is taken by you to ensure that the matter is properly addressed; or
 - (b) such information as is necessary to enable action to be taken is communicated to the most appropriate person or *relevant authority* to take such action.
4. You (as the recipient of the disclosure) must notify the OPI of the *appropriate disclosure* as soon as reasonably practicable after the receipt of the *appropriate disclosure* by making an electronic notification via the [dedicated notification form](#) on the Office for Public Integrity website (publicintegrity.sa.gov.au) and must include in that notification:
 - (a) the date the disclosure was received;
 - (b) your name and contact details;
 - (c) a summary of the content of the disclosure;
 - (d) the assessment made of the disclosure;
 - (e) the action taken by you (as the recipient of the disclosure) including:
 - (i) whether the disclosure was referred to another *relevant authority*, public authority, *public officer* or another person; and
 - (ii) if the disclosure was referred to another *relevant authority*, public authority or *public officer* or another person:
 - (1) the date of the referral;
 - (2) the identity of that *relevant authority*, public authority or *public officer* or another person to whom the disclosure was referred;
 - (3) the manner of referral; and
 - (4) the action to be taken by that *relevant authority*, public authority or *public officer* or another person (if known).
 - (f) if no action was taken by you (as the recipient of the disclosure) the reason why no action was taken; and
 - (g) whether the identity of the informant is known only to you (as the recipient of the disclosure) or if the identity of the informant has been communicated to a *relevant authority*, public authority or *public officer* or another person (and if so, the reasons why such communication was made).
5. As the recipient of the disclosure you should retain the unique reference number issued by the OPI after the making of a notification and must ensure that that unique reference number is provided to any other person or authority to whom the disclosure is referred.

Public officers may also report to the OPI or the Ombudsman any reasonable suspicion of misconduct or maladministration. It is also worth noting that the Ombudsman Directions and Guidelines stipulate that the Ombudsman expects *public officers* will report to Ombudsman SA any matter that the *public officer* reasonably suspects involves *misconduct or maladministration in public administration* (see the Ombudsman Directions and Guidelines published under the Ombudsman Act) unless it has already been referred to the OPI or the Ombudsman.

Step 2

Action Required: Notification of Informant

As a person to whom an *appropriate disclosure of public interest information* has been made, you also need comply with section 7(1)(b) of the PID Act.

The AGD *responsible officer* can assist you.

You must take reasonable steps to notify the informant (if the informant's identity is known) that an assessment of the information has been made and to advise the informant of the action being taken in relation to the information.

Make this notification within 30 days of receiving the *appropriate disclosure of public interest information*. Make this notification in writing. However, before emailing an informant, please ensure they have agreed to an appropriate email address to be used.

If you take longer than 30 days to do this, and if the informant believes on reasonable grounds that the information is true, then they are entitled to disclose the *public interest information* to a *journalist* or a *member of Parliament* other than a Minister of the Crown, and the disclosure will be considered to be an *appropriate disclosure of public interest information*.

As set out below, either you or a person to whom you have referred the disclosure, will also need to notify the informant of the outcomes of the action. This needs to be done within 90 days of receiving the *appropriate disclosure of public interest information* (see below).

If you or the AGD *responsible officer* form the view that it will take longer than 90 days from the *appropriate disclosure of public interest information* for an outcome, you must notify the informant in writing of this alternative longer period of time in which you will report to them on the outcomes of the actions.

Do this when you notify the informant of the action being taken.

Step 3

Outcomes of Action: Notification of Informant

It is recommended that you refer any *appropriate disclosure of public interest information* to an AGD *responsible officer*. You must take reasonable steps to notify the informant (if the informant's identity is known) of the outcome of that action (see section 7(3)(a) of the PID Act).

If you don't refer the matter to an AGD *responsible officer*, you must take the appropriate action as decided through the assessment of the information.

You must take reasonable steps to notify the informant (if the informant's identity is known) of the outcome of that action (see section 7(3)(a) of the PID Act).

If you refer the *appropriate disclosure of public interest information* to an AGD *responsible officer*, or to another person, then the AGD *responsible officer* or the other person must take reasonable steps to notify the informant (if the

informant's identity is known) of the outcome of that action (see section 7(3)(a) of the PID Act).

Please make this notification in writing; however, before emailing an informant, please ensure they have agreed to an appropriate email address to be used. This notification to the informant must be done within 90 days of receiving the *appropriate disclosure of public interest information*, or within such longer period if you have made a notification to the informant that you will take longer to report to them on the outcomes (see above).

If it takes longer than 90 days (or the alternative longer period of time notified above) to notify the informant of the outcomes of the action, and if the informant believes on reasonable grounds that the information is true, then they are entitled to disclose the *public interest information* to a *journalist* or a *member of Parliament* other than a Minister of the Crown, and the disclosure will be considered to be an *appropriate disclosure of public interest information*.

Outcomes of Action: Notification to the OPI

If you take action in relation to an *appropriate disclosure of public interest information*, you must provide the OPI with information relating to the outcome of that action in accordance with [ICAC Guideline Two](#) entitled *Notification of action taken* as set out below (see section 7(3)(b) of the PID Act).

If you take action in relation to an *appropriate disclosure of public interest information*, and if such action consists of referring the *appropriate disclosure of public interest information* to another person, then that other person to whom it is referred must provide the OPI with information relating to the outcome of that action in accordance with [ICAC Guideline Two](#) (see section 7(3)(b) of the PID Act).

[ICAC Guideline Two](#) provides that in addition to the requirement for the OPI to be notified when an *appropriate disclosure of public interest information* is received (see [ICAC Guideline One](#)), the OPI must also be notified of any action taken in relation to the disclosure.

[ICAC Guideline Two](#) applies in relation to the notification to the OPI of the outcome of any action taken upon receipt of, or referral of, an appropriate disclosure of public interest information.

If you have received an *appropriate disclosure of public interest information*, or if you have received a referral of such a disclosure from someone else, you must notify the OPI as soon as reasonably practicable via the [online notification form](#) advising the following:

- a. the unique identification number issued by the OPI upon notification of the original disclosure
- b. the name and contact details of the informant
- c. the name and contact details of the person or authority responsible for taking the action
- d. what (if any) findings were made in respect of the disclosure
- e. the nature of the action taken (if any)

- f. the outcome of any action taken (if applicable)
- g. whether the identity of the informant was disclosed to a person other than the original recipient of the disclosure, and
- h. whether the informant was notified of the action taken and, if so, when and how that notification was made.

Upon submission of the form, an email is provided to the complainant, with a receipt number.

Appropriate disclosure of public interest information made to a Minister of the Crown

If an *appropriate disclosure of public interest information* is made to a Minister of the Crown, the following provisions apply:

- the Minister must, as soon as practicable, refer the disclosure to a *relevant authority*; and
- the *relevant authority* -
 - must deal with the information in accordance with section 7 of the PID Act (as if the disclosure had been made to the *relevant authority*); and
 - must ensure that the Minister is notified of the action taken in relation to the information and the outcome of such action (see section 7(5) of the [PID Act](#)).

Keeping the information safe

Any person who has received an *appropriate disclosure of public interest information* must keep that information confidential.

AGD *responsible officers* will have access to a secure positional mailbox through their email account. The mailbox will only be accessed by the *responsible officers* and will have appropriate ICT security measures in place.

AGD *responsible officers* are directed to ensure matters are kept strictly confidential, for example, all printed materials are kept in a locked cupboard or drawer that only the AGD *responsible officer* can access and any conversations with an informant are to be held in private. In addition, the emails sent to and from AGD *responsible officers* are kept secure and are not accessed by other staff members.

AGD is committed to minimising any risk that an informant might be victimised as a consequence of making, or intending to make, a *public interest disclosure*.

AGD *responsible officers* will provide support and information about the PID Act protections to informants and encourage informants to raise any concerns they have about potential detrimental outcomes that may be caused by the disclosure.

Appendix 3

How informants can contact AGD

There are a number of ways you can contact AGD to make an *appropriate disclosure of public interest information*, including:

- Email: AGD_PID@sa.gov.au, or
- Phone: 1800 177 076 (free call), or
- Post: **Mark the envelope private and confidential*
Public Interest Disclosure, Attorney-General's Department
GPO Box 464, Adelaide SA 5001.

You can contact the *responsible officer* via the channels above to make an *appropriate disclosure* or you may request to meet them face to face in a neutral location.

Upon receiving the disclosure, the AGD *responsible officer*, will ensure:

- that the information is securely received and not divulged to other parties;
- only *responsible officers* will be able to access the AGD PID mailbox (with appropriate ICT security measures);
- the Chief Executive is responsible for ensuring compliance with these steps.

When making the disclosure of information, if you are revealing your identity, you have rights about being kept informed. Please speak to the *responsible officer* about how you wish to be contacted by them.

The person receiving the *public interest information* must comply with the requirements set out under the PID Act and must also follow the procedure outlined in this document (see the section '*Receiving and dealing with an appropriate disclosure of public interest information*').

Accessibility and assistance

For customers who do not have English as their first language or customers who are hearing impaired or mute, the Australian Government provides the following services:

- Translating and Interpreting Service (TIS): call 131 450
- National Relay Service (Speak and Listen): call 1300 555 727
- National Relay Service (TTY users): call 133 677
- Internet relay users can make an online call using the [National Relay service](#)

Persons using these services can request to be put through to AGD via telephone on 1800 177 076 to provide a *disclosure* or to make an enquiry.

Date approved	Approved by	Date for review	Responsible unit	Version
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