



Department of **the Premier and Cabinet**  
Government of **Western Australia**

# Public Interest Disclosures: Procedures

## CONTENTS

RIGHTS AND OBLIGATIONS UNDER THE <i>PUBLIC DISCLOSURE ACT 2003</i>	3
What is a Public Interest Disclosure?	3
Proper Authorities for receiving Disclosures of Public Interest information	5
Role of a Proper Authority	6
Protection under the Act	7
Must a Public Interest Disclosure be investigated?	7
What action must a Proper Authority take following an investigation?	8
Is the Informant given details of the investigation and action taken?	8
What if an Informant does not agree with the action taken by the Proper Authority?	9
Is an Informant's identity to be kept confidential?	9
Protecting Informants against Victimisation and Reprisals	10
Making Information Available	10

# **RIGHTS AND OBLIGATIONS UNDER THE *PUBLIC INTEREST DISCLOSURE ACT 2003***

## ***What is a Public Interest Disclosure?***

The *Public Interest Disclosure Act 2003* (the Act) came into effect on 1 July 2003. The Act facilitates the disclosure of public interest information by providing protection for those who make disclosures and those who are the subject of disclosures.

The Department of the Premier and Cabinet is committed to the aims and objectives of the Act. It recognises the value and importance of staff, and general public contributions to enhance administrative and management practices, and strongly supports disclosures by staff or members of the public regarding corrupt or other inappropriate conduct.

In order to be a disclosure to which the Act applies, a disclosure must be:

- made by an informant who believes on reasonable grounds that the information is or may be true;
- a disclosure of public interest information; and
- made to the appropriate proper authority.

The Act deals with disclosures by anyone (not just government employees) but the information must be specific to the following areas:

- Improper conduct;
- An offence under State law, including corruption;
- Administration matter(s) affecting you;
- Irregular or unauthorised use of public resources;
- Substantial unauthorised or irregular use of, or substantial mismanagement of public resources;
- Conduct involving a substantial and specific risk of injury to public health, prejudice to public safety or harm to the environment.

If your information falls outside the above areas then you may still be able to make a complaint, but this will not be a public interest disclosure under the Act.

Before making a disclosure it is important that you are aware of the rights and responsibilities imposed on informants and others under the Act. These key responsibilities are:

- it is an offence to make a disclosure if you know, or are reckless about it being false and misleading;

- with some exceptions, the public authority will investigate your information and in doing so you will be expected to cooperate; and
- you will have to keep your information confidential, or you may lose protection under the Act, or commit an offence under the Act.

Making a disclosure is a serious matter and needs to be fully considered. You should ask yourself:

- Whether you have reasonable grounds to believe the information you are thinking of disclosing is or may be true;
- Whether the information is something that you think is important to be disclosed because it is in the public interest - the information should not be linked to any personal grievance;
- Whether you have sought proper advice; and
- Whether you fully understand your responsibilities under the Act should you make a disclosure.

The Act only confers protection where a disclosure is made to an appropriate proper authority. The identity of the appropriate proper authority will vary according to the kind of information to be disclosed.

## ***Proper Authorities for receiving Disclosures of Public Interest information***

<b>When the disclosure relates to...</b>	<b><i>The proper authority is...</i></b>
The sphere of responsibility of a public authority (eg matters about the public authority or its officers, or which the public authority has the function of investigating)	The Public Interest Disclosure Officer (PID Officer) of the public authority
Offences under State law	A police officer or the Corruption and Crime Commission
Substantial unauthorised or irregular use of, or substantial mismanagement of, public resources	The PID Officer of the public authority concerned or the Auditor General
Matters of administration affecting someone in their personal capacity falling within the jurisdiction of the Ombudsman	The PID Officer of the public authority concerned or the Ombudsman
A police officer	The Commissioner of Police or the Ombudsman
A Member of the Legislative Council	The President of the Legislative Council
A Member of the Legislative Assembly	The Speaker of the Legislative Assembly
A Judicial officer	Chief Justice
A public officer who is not a member of Parliament, a Minister, a judicial officer or a Commissioned or other officer specified in schedule 1 of the <i>Parliamentary Commissioner Act 1971</i>	The PID Officer of the public authority concerned, the Ombudsman or the Commissioner for Public Sector Standards
A person or a matter of a prescribed class	A person declared by the regulations to be a proper authority

**The Public Interest Disclosure Officer of the Department of the Premier and Cabinet is Mr Ken Jones, Principal Project Officer, State Administration and Corporate Support Division.**

**Contact details: Phone: (08) 9222 8738  
Email: [kjones@dpc.wa.gov.au](mailto:kjones@dpc.wa.gov.au)**

This Officer is responsible for receiving disclosures of public interest information relating to matters falling within the sphere of responsibility of the Department of the Premier and Cabinet.

You can make a disclosure to more than one proper authority and in that instance, the protection and obligations created by the Act will apply to each of the disclosures.

A public authority may not be required to investigate a matter raised by a public interest disclosure where it considers that the matter is being, or has been adequately investigated by another person to whom a disclosure has been made under the Act.

In some cases the proper authority to which the disclosure is made may refer the matter to some other person having the power to investigate the matter.

In general, a disclosure about a public authority or its officers or contractors, or a disclosure falling within the sphere of responsibility of a public authority, should in the first instance, be made to the public authority concerned.

### ***Role of a Proper Authority***

- Receives a Public Interest Disclosure.
- Considers whether an investigation is required.
- Carries out, or causes to be carried out, any investigation.
- Maintains confidentiality of the identity of the informant and persons subject to the disclosure, in accordance with the requirements of the Act.
- Where appropriate, takes action following an investigation.
- Provides appropriate reports of investigation and action taken to informant.
- Creates and maintains proper records in relation to disclosure.
- Keeps statistics of disclosures made.
- Acts in accordance with the rules of natural justice and procedural fairness.

## ***Protection under the Act***

When a person makes an appropriate disclosure of public interest information to a proper authority, the Act:

- protects the person making the disclosure from legal or other action;
- provides for the confidentiality of the identity of the person making the disclosure and any person who is the subject of a disclosure; and
- provides remedies for acts of reprisal and victimisation that occur substantially because a person has made a disclosure.

In general terms, a person who makes a disclosure is protected against detrimental action that may include adverse treatment or reprisal, intimidation, harassment or injury.

The Act also provides penalties for disclosing the identity of those persons about whom public interest disclosures are made, emphasising the need for those persons to be accorded natural justice and procedural fairness.

A disclosure may relate to matters that occurred before the commencement of the Act. There is no time limit to the retrospectivity of a disclosure. However, a claim cannot be made in relation to victimisation that occurred prior to the 1 July 2003 (the date of effect of the Act).

The Proper Authority is obliged to investigate a public interest disclosure received, whether or not an informant subsequently decides that they do not wish to proceed. A Public Interest Disclosure, once made cannot be withdrawn.

An informant may forfeit the protection given by the Act if they fail, without reasonable excuse, to assist a person investigating the matter to which the information relates by supplying any information requested, unless a court otherwise orders.

## ***Must a Public Interest Disclosure be investigated?***

A proper authority is not obliged to investigate every public interest disclosure made to it. Generally, a proper authority must investigate information disclosed under the Act where:

- the disclosure relates to the proper authority, its officers or contractors; or
- the disclosure relates to a matter or person that the proper authority has a function or power to investigate (eg where a police officer may investigate an offence committed in a Department).

A proper authority may refuse to investigate, or discontinue an investigation, where it considers that:

- the matter is trivial; or
- the disclosure is vexatious or frivolous; or

- there is no reasonable prospect of obtaining sufficient evidence due to the time that has elapsed since the occurrence of the matter; or
- the matter is being or has been adequately or properly investigated by another proper authority to which an appropriate disclosure of public interest information was made.

### ***What action must a Proper Authority take following an investigation?***

A proper authority is only required to take action following an investigation if it forms the view that a person may be, may have been, or may in the future be, involved in conduct to which the Act applies. If the proper authority does not form that view after undertaking the investigation that is within its power, it is not required to take further action other than reporting to the informant and recording the outcome.

If the proper authority forms the view that a person may be, may have been, or may in the future be, involved in conduct to which the Act applies, then it will be required to take action in relation to the matter.

In taking that action the proper authority remains limited by the powers and functions that are conferred by the legislation under which the authority operates. The Act does not give the proper authority additional powers to take action.

As well as being limited to matters within the functions and powers of the proper authority, the action to be taken is guided by what is necessary and reasonable.

Having regard to those matters, the proper authority must take action to:

- prevent the matter to which the disclosure relates from continuing or occurring in future;
- refer the matter to the Commissioner of Police or another person, body, or organisation having power to investigate the matter; or
- take disciplinary action or commence or enable disciplinary proceedings to be commenced against a person responsible for the matter.

These options are not mutually exclusive, and a proper authority may initiate one or more of the actions above.

Before taking preventative or disciplinary action, the proper authority is to afford any person against whom, or in respect of whom the action is to be taken, the opportunity to make a submission, either orally or in writing in relation to the matter.

### ***Is the Informant given details of the investigation and action taken?***

Where a proper authority refuses to investigate information disclosed under the Act, or discontinues an investigation, it must give the informant reasons for doing so.

Within three months of receiving a public interest disclosure, the proper authority must notify the informant of the action taken, or proposed to be taken in relation to the disclosure.

An informant may also request a progress report.

If an investigation is not complete, the proper authority may provide a progress report on the current status of the investigation to the informant.

If an investigation is complete, the proper authority must provide a final report to the informant stating the outcome of the investigation and the reason for taking action following the investigation.

In providing information and reports to informants, a proper authority must not give information that, in its opinion, would be likely to adversely affect:

- any person's safety;
- the investigation of an offence or possible offence; or
- confidentiality about the existence or identity of another person who has made a disclosure of public interest information under the Act.

### ***What if an Informant does not agree with the action taken by the Proper Authority?***

The Act does not provide for any right of appeal against decisions of an appropriate authority with regard to their investigations and subsequent action.

If an informant is dissatisfied with a decision made by a proper authority, they may make a further disclosure of the information to another proper authority. For example, where an informant is dissatisfied with the response to a public interest disclosure about a matter of administration made to a PID Officer of a Department, the informant may disclose that information to the Ombudsman.

However, a proper authority to which a subsequent disclosure is made need not investigate the matter if it considers the matter has been adequately or properly investigated by another proper authority. In deciding whether or not this is the case, the second proper authority may need to contact the authority that has dealt with, or is dealing with the information in relation to its investigation.

### ***Is an Informant's identity to be kept confidential?***

Generally, a person must not make a disclosure of information that might identify or tend to identify anyone as a person who has made an appropriate disclosure of public interest information under the Act.

This prohibition against disclosure applies both to disclosures that identify an informant and disclosures that might tend to identify an informant. For example, to disclose that a young woman in a small accounts section has made a public interest disclosure about irregularities she has detected in the accounts of a particular public authority might tend to identify the informant, even though she is not named.

Exceptions arise where the disclosure of an informant's identity is:

- made with the informant's consent; or
- made under the *Corruption and Crime Commission Act 2003*; or
- necessary, having regard to the rules of natural justice; or
- necessary to enable the matter to be investigated effectively.

With regard to the last two points, the person making the disclosure must take all reasonable steps to inform the person whose identity is to be disclosed:

- that the disclosure is being made; and
- the reasons for the disclosure being made.

The person is to be informed at a reasonable time before the identifying disclosure is made.

### ***Protecting Informants against Victimisation and Reprisals***

The Department of the Premier and Cabinet will not tolerate any acts of victimisation or reprisal as a result of a person making, or proposing to make a public interest disclosure.

Any victimisation or reprisals must be reported immediately to the Director General or the PID Officer, who must take immediate action to prevent any continuation of such unlawful conduct.

Where victimisation or reprisals are reported, a record of the report and the action taken must be placed on the file relating to the public interest disclosure.

The Act sets out the remedies for acts of victimisation (section 15), and the Department's obligations to prevent acts of victimisation or reprisal.

### ***Making Information Available***

Members of the public considering whether to make a disclosure should contact the Department's Public Interest Disclosure officer, Mr Ken Jones on (08) 9222 8738 or e-mail [kjones@dpc.wa.gov.au](mailto:kjones@dpc.wa.gov.au) to seek advice, and obtain the required documentation.