



Education
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senior schooling



Government
of South Australia

Procedure

Receiving and dealing with an appropriate disclosure of public interest information

DOCUMENT CONTROL

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Purpose

To provide information about how to receive and deal with an appropriate disclosure of public interest information

Scope

The procedure applies to public officers (public service employees and contractors). For a full definition of *public officer*, see the [ICAC 'Glossary'](#).

Background 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.

Advice can be provided to you by the [ESB responsible officer](#) and also by the [Office for Public Integrity \(OPI\)](#).

*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. And whether you are a relevant authority will depend on 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 [Public Interest Disclosure Act 2018 \(SA\)](#) (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 the ESB 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 they be kept informed as set out below, 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 person to whom an appropriate disclosure of public interest information is made, then the first step is to seek the advice of an ESB responsible officer.

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 1 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 raised 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, consider whether an obligation arises to report that matter to the OPI, applying the criteria in the ICAC Act, and in accordance with [guideline 1](#):

If the recipient of the disclosure forms a reasonable suspicion that the matter(s) the subject of the disclosure involve(s) corruption in public administration, or serious or systemic misconduct or maladministration in public administration, the recipient of the disclosure must comply with his or her reporting obligations under the ICAC Act.

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 the 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

- 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: notification of 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 for further action 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 ESB responsible officer.

For example, an appropriate disclosure of public interest information would not be referred to an ESB responsible officer if the information related to them.

Following your assessment, when referring the appropriate disclosure of public interest information to an ESB 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 the ESB responsible officer for investigation; and
- based on that assessment, the matter cannot be fully investigated in the absence of the identity of the informant being disclosed.

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

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

The ESB responsible officer can assist you.

The first step is to ensure you are complying with [ICAC guideline 1: 'Receipt, assessment & notification of appropriate disclosures'](#).

ICAC guideline 1 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) should 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, Environment Protection Authority).
2. If you (as the recipient of the disclosure) form a reasonable suspicion that the matter(s) that is/are the subject of the disclosure involve(s) corruption in public administration, or serious or systemic misconduct or maladministration in public administration, you must comply with your reporting obligations under the ICAC Act.

3. If you (as the recipient of the disclosure) assesses 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 the matter the subject of the disclosure 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 ICAC website 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 other 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 must 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.

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 ESB responsible officers 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, 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, later on either you or a person to whom you have referred the disclosure to, 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) unless you let the person know it will take longer.

If you or the ESB responsible officers form the view that it will take longer than 90 days from the appropriate disclosure of public interest information for an outcome, then 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 information

It is recommended that you refer any appropriate disclosure of public interest information to an ESB 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 ESB 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 ESB responsible officer, or to another person, then the ESB 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 of OPI

If you take action in relation to an appropriate disclosure of public interest information, you must provide OPI with information relating to the outcome of that action in accordance with [ICAC guideline 2: 'Notification of action'](#) taken 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 OPI with information relating to the outcome of that action in accordance with ICAC guideline 2 (see section 7(3)(b) of the PID Act).

ICAC guideline 2 provides that in addition to the requirement for OPI to be notified when an appropriate disclosure of public interest information is received (see Guideline One above), the OPI must also be notified of any action taken in relation to the disclosure. ICAC guideline 2 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 [ICAC online notification form](#) 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.

Appropriate disclosure of public interest information made to 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 this section (as if the disclosure had been made to the relevant authority); and
 - must ensure that the Minister is notified of the action taken under this section 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.

ESB 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 has appropriate ICT security measures in place.

ESB 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 ESB responsible officers can access and any conversations with an informant are to be held in private. In addition, the emails sent to and from ESB responsible officers are kept secure and are not accessed by other staff members.

ESB 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.

ESB 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.