



Public Interest Disclosure procedure for councillor conduct complaints

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Purpose

The Office of the Independent Assessor (OIA) is committed to maintaining integrity and promoting the public interest through effective reporting, assessment and management of public interest disclosures (PID). Accordingly, the OIA will provide support and protection to disclosers, such as council employees, who disclose matters in the public interest.

This procedure demonstrates this commitment, in accordance with the *Public Interest Disclosure Act 2010* (the PID Act) and the Public Interest Disclosure Standard Nos. 1/2019, 2/2019 and 3/2019. It is to be read in conjunction with the OIA’s Public Interest Disclosure policy and the OIA complaints management and internal review policy.

Scope

This procedure applies to complainants such as public officers, council employees, OIA employees and members of the public, making a PID about councillor conduct as defined under the PID Act.



Responsibilities and accountabilities

Role	Responsibilities
All OIA employees	<ul style="list-style-type: none"> • Ensure that they manage PIDs in compliance with the PID Act, the OIA Public Interest Disclosure Policy and OIA complaints management and internal review policy. • Undertake the role of PID contact person and, when necessary, liaise with the relevant local government CEO, who is the responsible officer to provide PID support for council officers. • Provide timely report to the DIA of any reasonable suspicion of reprisal action or non-compliance with the PID Act.
Managers and supervisors	<ul style="list-style-type: none"> • Ensure employees under their supervision are aware of and comply with PID management responsibilities as outlined above. • Notify the Deputy Independent Assessor (DIA) of reasonable suspicion of non-compliance with the PID Act. • Ensure that the relevant local government's chief executive officer (unless on the facts of a particular case is not appropriate) is made aware of any indication of action that may affect the health and safety of a local government employee because of a PID.
Deputy Independent Assessor	<ul style="list-style-type: none"> • Receive, assess and overview all PIDs made to the OIA in a confidential manner. • Ensure all staff are aware that they are the OIA contact for disclosers and are aware of who the relevant PID support officer is (ordinarily this will be the local government CEO when the discloser is a council officer). • If a PID is made, provide advice and information to the discloser on PID procedure. • If a PID is made by a local government employee, ensure the council's chief executive officer is made aware of the situation to appoint a support officer, where appropriate. • Provide statistical, de-identified information to the Queensland Ombudsman about PIDs. • Act as the PID coordinator being the principal contact for escalated issues relating to PIDs. • Ensure the PID is appropriately investigated.
Independent Assessor	<ul style="list-style-type: none"> • Ensure implementation of policy and procedure for the PID management system. • Where appropriate, refer PIDs to other appropriate authorities, including other entities if the matter relates to the conduct of another public sector entity or if the entity has the necessary jurisdiction, expertise and technical knowledge to investigate or take other action. • Ensure appropriate on-going risk assessments occur when the OIA deals with a PID.





Why make a PID

Disclosers who are prepared to speak up about wrongdoing in the public sector can be the most important sources of information to identify and address problems in public administration.

The OIA values and supports the disclosure of information about wrongdoing because:

- implementing systems for reporting and dealing with wrongdoing contributes to local government integrity
- the outcome of PIDs include improvements to systems that prevent fraud and other economic loss
- the community's trust in public administration is strengthened by having strong processes in place for reporting wrongdoing.

When making a PID, disclosers receive the protection provided under the PID Act, including:

- confidentiality – the discloser's name and other identifying information will be protected and maintained in confidence to the extent possible
- protection against reprisal – the discloser is protected from detrimental treatment by other persons following a PID
- immunity from liability – the discloser cannot be prosecuted for disclosing the information but is not exempt from action if they have engaged in wrongdoing
- protection from defamation – the discloser has a defence against an accusation of defamation for making a PID.

What is a PID

Under the PID Act, any person can make a disclosure about a:

- substantial and specific danger to the health or safety of a person with a disability
- the commission of an offence, or contravention of a condition imposed under a provision of legislation mentioned in Schedule 2 of the PID Act, if the offence or contravention would be a substantial and specific danger to the environment
- reprisal because of a belief that a person has made, or intends to make, a disclosure.

In addition, a public sector officer can make a disclosure about the following public interest matters:

- corrupt conduct
- maladministration that adversely affects a person's interests in a substantial and specific way
- a substantial misuse of public resources
- a substantial and specific danger to public health or safety
- a substantial and specific danger to the environment.

A discloser can have either a 'reasonable belief' that wrongdoing has occurred or provide evidence which tends to show the wrongdoing has occurred.

A disclosure amounts to a PID and is covered by the PID Act even if the:

- discloser reports the information as part of their duties, such as an auditor reporting a fraud or a workplace health and safety officer reporting a safety breach
- disclosure is made anonymously
- discloser has not identified the material as a PID, as it is up to the OIA to assess information received and decide if it is a PID
- disclosure is unsubstantiated following investigation. The discloser is protected when the information provided is assessed as a PID, whether or not it is subsequently investigated or found to be substantiated.





Where to make a PID

A PID must be made to the 'proper authority' to receive disclosures of the type being made.

Disclosers are encouraged to make a disclosure to an appropriate officer of the OIA first. If the matter is not resolved, or the discloser is concerned about confidentiality, the disclosure may be made to another appropriate agency.

Who to contact	Other agencies that can receive PIDs
<p>Disclosers can make a PID relating to the conduct of a councillor in the following ways:</p> <ul style="list-style-type: none"> • Contact an OIA employee • Email case assessment officers • online complaint portal 	<p>Disclosures can also be made to an agency that has a responsibility for investigating the information disclosed:</p> <ul style="list-style-type: none"> • Crime and Corruption Commission (CCC) for disclosures about corrupt conduct including reprisal • Queensland Ombudsman for disclosures about maladministration • Queensland Audit Office for disclosures about a substantial misuse of resources • Department of Child Safety, Youth and Women for disclosures about danger to the health and safety of a child or young person with a disability • Department of Communities, Disability Services and Seniors for disclosures about danger to the health and safety of a person with a disability • Department of Environment and Science for disclosures about danger to the environment • A member of the Legislative Assembly (MP) for any wrongdoing or danger • The Chief Judicial Officer of a court or tribunal in relation to a disclosure about wrongdoing by a judicial officer

A disclosure can also be made to a journalist if the following conditions have been met:

- a valid PID was initially made to a proper authority, and
- the proper authority:
 - decided not to investigate or deal with the disclosure, or
 - investigated the disclosure but did not recommend taking any action, or
 - failed to notify the discloser within six months of making the disclosure whether or not the disclosure was to be investigated or otherwise dealt with.

A person who makes a disclosure to a journalist in these circumstances is protected under the PID Act. However, disclosers should be aware that journalists are not bound under the confidentiality provisions of section 65 of the PID Act.

The OIA also requests that complainants maintain confidentiality of their PID to allow due process to occur.

OIA procedure for dealing with a PID

A discloser can make a PID in any way, including anonymously, either verbally or in writing. To assist in the assessment, and any subsequent investigation of a PID, disclosers are requested to:

- provide contact details (this could be an email address that is created for the purpose of making the disclosure or a telephone number if the matter was made anonymously)





- provide as much information as possible about the suspected wrongdoing, including who was involved, whether there were any witnesses and any evidence that supports the PID
- provide this information in writing to the Independent Assessor to:
independentassessor@oia.qld.gov.au.

Deciding whether a matter is a PID

If there is any doubt as to whether a matter is a PID, further information may be obtained to inform the decision. If doubt still remains, the matter will be considered and managed as a PID.

Mere disagreements over policy do not meet the threshold for a PID under the PID Act.

It is an offence under the PID Act to intentionally give false or misleading information intending it be acted on as a PID. Employees may be subject to disciplinary action for intentionally giving false or misleading information in a PID, or during an investigation into a PID.

Where a discloser states they are making a PID, but it is assessed that the matter is not a PID, the Independent Assessor or Deputy independent Assessor will advise the discloser:

- their information has been received but was not assessed as a PID
- the reasons for the decision
- the review rights available if the discloser is dissatisfied with the decision and how to request a review
- any action the OIA proposes to take in relation to the matter, and
- any other options the discloser has in relation to the matter.

Assessing a PID

The disclosure will be assessed in accordance with the PID Act, the PID standards, the OIA's PID procedure and any other relevant policies and procedures.

Once the OIA determines that a matter is a PID, the discloser will be advised:

- that their information has been received and assessed as a PID
- the action to be taken by the OIA in relation to the disclosure, including possibly referring the matter to an external agency
- the likely timeframe involved
- the name and contact details of the PID support officer they can contact for updates or advice (normally this would be the local government's CEO if the discloser is a council officer)
- the discloser's obligation regarding confidentiality
- the protection they have under the PID Act
- the commitment of the OIA to keep appropriate records and maintain confidentiality, except where permitted under the PID Act
- how updates about intended actions and outcomes will be provided to the discloser

Referring a PID to another entity

If the Independent Assessor determines there is another proper authority that is better able to deal with the PID, the PID may be referred to that agency. This may be because:

- that agency has the power to investigate or remedy the matter
- the OIA is statutorily bound to refer the matter to an oversight agency e.g. suspected corrupt conduct to the CCC





- the other agency is the Councillor Conduct Tribunal and an application to the CCT is in contemplation.

Before referring the PID to another agency, the OIA will consider implications for the PID and consult with the PID and or their support officer as appropriate.

The discloser will be advised of the action taken by the OIA.

Risk assessment and protection from reprisal

Disclosers should not suffer any form of detriment as a result of making a PID.

On receiving a PID, it is the obligation of the council or other relevant PID support officer to conduct a risk assessment to assess the likelihood of the discloser, witnesses or affected third parties suffering reprisal action because of having made the disclosure.

It is the responsibility of the OIA contact officer to consult with the PID and or the council or other relevant PID support officer before taking any action in respect of PID that would result in the referral of a PID to another agency.

Disclosers are encouraged to contact their nominated support officer or the relevant OIA officer responsible for dealing with their complaint if they have any concerns about potential reprisal.

In the event of reprisal action being alleged or suspected, the OIA will:

- work with the council or other relevant support officer to attend to the safety of the discloser, witnesses or affected third parties as a matter of priority
- work with the council or other relevant support officer to review its risk assessment, risk management plan and any protective measures needed to mitigate any further risk of reprisal
- assess and or raise any allegation of a reprisal as a PID in its own right.

Declining to take action on a PID

Under the PID Act, the OIA may decide not to investigate or deal with a PID in various circumstances, including:

- the information disclosed has already been investigated or dealt with by another process
- the information disclosed should be dealt with by another process
- the age of the information makes it impractical to investigate
- the information disclosed does not raise a reasonable suspicion of misconduct or corrupt conduct
- another agency with jurisdiction to investigate the information has informed the OIA that an investigation is not warranted.

If a decision is made not to investigate or deal with a PID, the OIA will give the discloser written reasons for that decision.

Communication with PID disclosers including council employees

Under the PID Act, the OIA must give reasonable information to a discloser including public officers such as council employees.

The OIA will acknowledge receipt of the PID in writing as soon as practicable.





The discloser will be provided with information that meets the requirements of the PID Act and the standards issued by the Queensland Ombudsman, including:

- the action that will be taken in response to the PID
- the protections under the PID Act
- confidentiality obligations of the discloser and the OIA, and
- support arrangements.

The OIA will maintain contact with the discloser and provide regular updates during the management of the PID, including arranging support for the discloser through the relevant local government CEO as necessary.

In accordance with the PID Act, after finalising action in response to the PID, the OIA will advise the discloser in writing of the action taken and the results of the action.

For PIDs made by employees or councillors from local governments, they will also be advised of protection from reprisal as provided by the Local Government Act 2009, section 150AW.

Confidentiality

While the OIA will make every attempt to protect confidentiality, a discloser's identity may need to be disclosed to:

- provide a natural justice process, or
- respond to a court order, legal directive or court proceedings.

The OIA will ensure that communication with all parties involved will be arranged discreetly to avoid identifying the discloser wherever possible.

Disclosers should be aware that while the OIA will make every attempt to keep their details confidential, it cannot guarantee that others will not try to deduce their identity.

Rights of councillor's subject of a PID

The OIA acknowledges that for councillors who are the subject of a PID the experience may be stressful.

The OIA will endeavour to protect their rights by:

- assuring them that the PID will be dealt with impartially, fairly and reasonably in accordance with the principles of natural justice
- confirming that the PID is an allegation only until information or evidence obtained through an investigation substantiates the allegation
- providing them with information about their rights and the progress and outcome of any investigation
- referring them to specialist assistance for support where appropriate.

Record-keeping

In accordance with its obligations under the PID Act and the Public Records Act 2002, the OIA will ensure that:

- accurate data is collected about the receipt and management of PIDs including, where appropriate, terms of reference for any investigation and stored securely in confidential files
- anonymised data is reported to the Office of the Queensland Ombudsman in their role as oversight agency, through the PID reporting database.

Records about disclosures, investigations and related decisions will be kept secure and accessible only to appropriately authorised people involved in the management of the PID.





Reference documents

- Public Interest Disclosure Act 2010***
- Public Sector Ethics Act 1994***
- Crime and Corruption Act 2001***
- Public Records Act 2002***
- Queensland Ombudsman's Public Interest Disclosure Standards**
- Queensland Ombudsman's Public Interest Disclosure Guides**

Related documents

- OIA complaints management and internal review policy**
- Public Interest Disclosure policy**
- Public Interest Disclosure about, or by, an OIA employee procedure**
- Service delivery complaints procedure**

