



Public Interest Disclosure by, or about, an OIA employee procedure

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Purpose

The Office of the Independent Assessor (the OIA) is committed to maintaining integrity and promoting the public interest through effective reporting, assessment and management of public interest disclosures (PIDs) that relate to the conduct of an employee at the OIA. Accordingly, the OIA will provide support and protection to employees and external people, who disclose matters relating to the conduct of OIA employees 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:

- any person who makes a PID that relates to the conduct of an OIA employee as defined under the PID Act, and
- employees of the OIA and non-employees including contractors, consultants, volunteers and any other person or entity who provides the OIA with services on a paid or voluntary basis, who make a PID.





Responsibilities and accountabilities

Role	Responsibilities
All OIA employees	<ul style="list-style-type: none"> Have an ethical responsibility and duties under the Code of Conduct for the Queensland Public Service to report suspected wrongdoing including corrupt conduct, maladministration, substantial misuse of public resources, substantial and specific danger to public health, safety, the environment or a person with a disability, and reprisal action. Ensure that PIDs made by external complainants to the OIA about the conduct of an OIA employee are managed in compliance with the PID Act. If nominated as a PID support person, ensure that support and guidance is provided in a timely manner and communications recorded in a document
Managers and supervisors	<ul style="list-style-type: none"> Ensure employees under their supervision are aware of, and comply with, their reporting obligations and PID management responsibilities as outlined above. Notify the Deputy Independent Assessor (DIA) or Independent Assessor (IA) if they receive a PID relating to the conduct of an OIA employee and maintain confidentiality about the matter. Ensure that the nominated support person (OIA employee under their managerial responsibility) provides timely advice, guidance and response to concerns by the discloser. If a PID is made by an OIA employee, monitor and assess the workplace for signs of reprisal against a discloser or subject officer and where appropriate, provide the needed support and protection. If a PID is made by an OIA employee, notify the DIA or IA as soon as they become aware of any detrimental action taken against the disclosure and/or the subject officer and discuss concerns and available options for addressing the situation before it escalates.
Deputy Independent Assessor	<ul style="list-style-type: none"> Receive, assess and manage all PIDs that relate to the conduct of an OIA employee in a confidential manner. Nominate an appropriate OIA employee to undertake the role of a support person for the discloser to contact and ensure the discloser is provided contact details for that support person. If a PID is made by an OIA employee, provide advice and information to the discloser on PID procedure. If a PID is made by an OIA employee, protect and support the rights of all disclosers, witnesses and subject officers. Ensure maintenance of the OIA's PID reporting system for PIDs relating to the conduct of an OIA employee. Provide statistical, de-identified information to the Queensland Ombudsman about PIDs. Act as the PID coordinator being the principal contact for OIA staff making PIDs. Ensure the PID is either reported to the appropriate other authority or appropriately internally investigated.



Independent Assessor	<ul style="list-style-type: none">• Ensure implementation of policy and procedure for the PID management system.• Ensure that all suspected PIDs that relate to the conduct of an OIA employee are reported to the appropriate authority as necessary.• Undertake risk assessments in consultation with the DIA to ensure PID management compliance.
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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 by an OIA employee because:

- implementing systems for reporting and dealing with wrongdoing contributes to OIA 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 the OIA and employees of the OIA or 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>OIA employees can make a disclosure to:</p> <ul style="list-style-type: none"> • any person in a supervisory or management position • the Independent Assessor or Deputy Independent Assessor 	<p>Disclosures can 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

If the PID involves the Deputy Independent Assessor, the matter should be raised with the Independent Assessor.

If the PID involves the Independent Assessor, guidance should be sought from the Deputy Independent Assessor about appropriate action.

If the PID involves both the Independent Assessor and the Deputy Independent Assessor, the matter should be reported to the Crime and Corruption Commission.

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.

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:
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
- 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
- for OIA employees, contact details for the employee assistance program (EAP).

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:

- the PID includes a concern about wrongdoing by that agency or an employee of that agency
- 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 confidentiality obligations of the PID Act allow appropriate officers of the OIA (such as the Independent Assessor or Deputy Independent Assessor) to communicate with another agency about the referral of a PID.

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, the OIA will 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. This assessment will consider the actual and reasonably perceived risk of the discloser, witnesses or affected third parties suffering detriment, and may include consultation with the discloser.

A risk assessment will be undertaken if the discloser is anonymous based on information available in the PID. The risk assessment will also take into account the risk to persons who may be suspected of making the PID.

The OIA will regularly reassess the risk of reprisal while the PID is being managed, in consultation with the discloser, and review the risk management plan if required.

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

- attend to the safety of the discloser, witnesses or affected third parties as a matter of priority
- review its risk assessment, risk management plan and any protective measures needed to mitigate any further risk of reprisal
- manage 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 is too trivial and dealing with it would substantially and unreasonably divert the OIA from the performance of its functions
- 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

Under the PID Act, the OIA must give reasonable information to a discloser, including OIA 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 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.

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 OIA employees subject of a PID

The OIA acknowledges that for OIA employees 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 the OIA's EAP and/or other specialist assistance for support.

Information and support will be provided to a subject employee until the matter is finalised.





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 procedure for councillor conduct complaints
- ☐ Service delivery complaints procedure

Document control

Document Owner	Independent Assessor, Office of the Independent Assessor		
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