Procedures for handling Public Interest Disclosures

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1 Receiving a public interest disclosure

1.1 Before a discloser makes a public interest disclosure to a PID Officer, a PID Officer shall advise the discloser of the following matters:

(i) If they choose to make a public interest disclosure they will not, as a result:
   - incur any civil or criminal liability;
   - be liable to any disciplinary action under State law;
   - be liable to be dismissed or have his or her services dispensed with or otherwise terminated; and
   - be liable for any breach of a duty of secrecy or confidentiality or any other applicable restriction on disclosure.

(ii) If they choose to make a public interest disclosure, they may have the right to take civil proceedings if they are subject to detrimental action as a result of making the disclosure.

(iii) If they choose to make a public interest disclosure, then their identity will not be disclosed except in accordance with section 16 of the PID Act (i.e. disclosure of their identity may be required in the course of the investigation).

(iv) If they choose to make a public interest disclosure then they will have the right to be informed of the progress and outcome of the investigation and action taken as a result.

(v) If they choose to make a public interest disclosure:
   - they are only protected if they believe on reasonable grounds that the information to be disclosed is or may be true;
   - they will commit an offence, and lose the protection of the PID Act, if they know the information to be false or misleading in a material particular or are reckless about whether the information is false or misleading in a material particular;
   - they will forfeit the protection given by the PID Act if they disclose the information other than under the PID Act (i.e. if they provide the information to the media or a person who is not a proper authority);
   - they will forfeit the protection given by the PID Act if they fail, without reasonable excuse, to assist a person investigating the matter to which the information relates, by supplying any information requested; and
   - they may commit an offence if they disclose information that might identify or tend to identify anyone as a person in respect of whom a disclosure of public interest information has been made.

2 Assessing a public interest disclosure

2.1 A PID Officer must, on receiving the information confirm that the discloser, after receiving the advice referred to in Section 1 above, wishes to make a public interest disclosure under the Act.

2.2 If they do, a PID Officer must make an initial assessment of whether:
   - (a) the information disclosed relates to a public authority, a public officer or a public sector contractor of the University;
   - (b) the information disclosed relates to the performance of a public function;
   - (c) the information disclosed tends to show improper conduct;
   - (d) the improper conduct is of the kind for which a PID Officer is the proper authority;
   - (e) the discloser believes on reasonable grounds that the information is or may be true; and
   - (f) the information is not protected by legal professional privilege.

A PID Officer should complete Part 1 of the Assessment form for public interest disclosures to assist with this task (Appendix A).

2.3 If the above questions are all answered "yes", then the disclosure of information is a public interest disclosure to which the PID Act will apply. The questions to be considered for the
resultant investigation can be found in the Flowchart for receiving and assessing disclosures (Appendix B).

3 Public interest disclosure lodgement form and file

3.1 If a disclosure is a public interest disclosure, the discloser and a PID Officer can use the Public interest disclosure lodgement form (Appendix C). A PID Officer should also complete Part 2 of the Assessment form for public interest disclosures (Appendix A).

3.2 On completion of this form, a PID Officer should create a separate TRIM file for the public interest disclosure, with the following text clearly marked on the front of the file.

CONFIDENTIAL
The material in this file relates to a public interest disclosure made under the Public Interest Disclosure Act 2003.

Disclosure of information that might identify or tend to identify either the discloser or a person in respect of whom the disclosure has been made is an offence, unless the disclosure occurs in accordance with the PID Act.

Penalty: $24 000 or imprisonment for two years.

3.3 The public interest disclosure should also be recorded in the University’s Public interest disclosure register by the PID Officer and maintained in a secure location. A Public interest disclosure register template is available at Appendix D.

4 Investigating a public interest disclosure

4.1 After receiving a disclosure, a PID Officer must consider:
   (a) whether the disclosure relates to the University, its officers, employees or contractors, or
   (b) the disclosure relates to a matter or person that the University has a function or power to investigate.

4.1.2 If the answer to both of these questions is “no”, a PID Officer is not required by the PID Act to investigate the matter.

4.2 A PID Officer must also consider whether:
   (a) the matter is trivial;
   (b) the disclosure is vexatious or frivolous;
   (c) there is no reasonable prospect of obtaining sufficient evidence due to the time that has elapsed since the occurrence of the matter; or
   (d) the matter is being or has been adequately or properly investigated by another proper authority to which an appropriate disclosure of public interest information has been made under the PID Act.

   A PID Officer should also complete Part 3 of the Assessment form for public interest disclosures (Appendix A).

4.2.1 If the answer to any of these questions, (a) to (d) is “yes”, a PID Officer is not required by the PID Act to investigate the matter.

4.3 Where a PID Officer considers that he or she lacks sufficient power to effectively investigate the matter, but the information received causes him or her to form the opinion that a public authority, public officer, employee or public sector contractor may have engaged in improper conduct, a PID Officer should refer the matter to another appropriate investigative body. For example, an allegation of an offence supported by cogent evidence may need to be referred by a PID Officer to the Police for investigation.
Investigating information received in a public interest disclosure

4.4 Where a PID Officer determines that the disclosure is a public interest disclosure that should be investigated, the officer must investigate the disclosed matter himself or herself or engage another person to carry out the investigation.

4.5 A disclosure once properly made cannot be withdrawn. The University may still continue to investigate the issues raised.

4.6 The questions to be considered in the investigation can be found in the flowchart for investigating information disclosed (Appendix E).

Confidentiality

4.7 The PID Act imposes strict confidentiality requirements in relation to the identity of the discloser and persons in respect of whom a public interest disclosure has been made. The disclosure of information which might identify or tend to identify these persons, except in accordance with section 16 of the PID Act, is a serious offence, punishable with a maximum penalty of $24,000 or two years imprisonment.

4.8 The confidentiality provisions of the PID Act do not apply to all information disclosed in a public interest disclosure, but only to information that might identify or tend to identify the discloser and persons in respect of whom a public interest disclosure has been made.

4.9 One of the circumstances in which identifying information may be disclosed is with the consent of the person concerned. It is important that this consent be recorded. The Consent to disclosure of identifying information form should be used for this purpose (Appendix F).

4.9.1 Identifying information relating to a discloser may be disclosed without the discloser's consent where:
   (a) it is necessary to do so, having regard to the rules of natural justice; or
   (b) it is necessary to do so to enable the matter to be investigated effectively.

4.9.2 However, before information is disclosed for these reasons the person making the disclosure must take all reasonable steps to inform the person whose identity is to be disclosed:
   (a) that the disclosure is being made
   (b) the reasons for the disclosure being made.

This information should be given, where practicable, in the Notification of disclosure of identifying information form (Appendix G).

4.9.3 Where identifying information in relation to a discloser is conveyed to another person for these reasons, the other person should be warned that disclosure of the information to a third person may involve a serious offence.

4.10 Identifying information relating to a person in respect of whom a public interest disclosure has been made can be disclosed at the investigation stage where the disclosure:
   (a) is necessary to enable the matter to be investigated effectively; or
   (b) there are reasonable grounds to believe that the disclosure of identifying information is necessary to prevent or minimise the risk of injury to any person or damage to any property.

4.11 In addition, disclosures made in accordance with section 152 or 153 of the Corruption and Crime Commission Act 2003 are exempt from these confidentiality requirements.

4.12 Particularly where a discloser works for the University, protecting the identity of the discloser is an important part of protecting the discloser from reprisals and victimisation. Careful consideration must be given as to whether the disclosure of information that might identify or
tend to identify a discloser is necessary for the effective investigation of the matter or having regard to the rules of natural justice.

4.13 Where a PID Officer appoints an investigating officer to conduct an investigation in relation to the public interest disclosure, he or she must consider whether it is necessary to inform the investigating officer of the identity of the discloser. Where it is necessary, to enable the investigation, or having regard to the rules of natural justice, to provide identifying information to the investigating officer, then the discloser should be notified in the manner described above.

**Recording the outcome of an investigation**

4.14 The outcome of an investigation should be clearly and comprehensively recorded. In addition to any investigation report, the investigating officer should complete **Part 4 of the Assessment form for public interest disclosure** *(Appendix A)*.

4.15 The result of the investigation should also be recorded in the **Public interest disclosure register**. *(A Public interest disclosure register template is available at Appendix D)*. All annual reporting requirements to the Public Sector Commissioner required under section 22 of the PID Act will be based on extracts from this register. This register (electronic and hard copy) is to be kept strictly confidential and in a secure place.

5 **Taking action following an investigation**

5.1 A PID Officer must take action where he or she forms the opinion that a person may be, or has been or may in the future be, involved in improper conduct. Action that may be taken includes:
- preventing the matter to which the disclosure relates from continuing or occurring;
- referring the matter to the Police or other appropriate body, or
- taking disciplinary action against a person responsible for the matter.

5.2 Before taking any action, the person against whom the action is to be taken is to be given the opportunity to make written or oral submissions.

5.3 In taking that action, a PID Officer remains limited by the powers and functions that are conferred by the legislation under which a PID Officer operates. **The PID Act does not give PID Officer additional powers to take action.**

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

5.3.2 The questions to be considered when taking action can be found in the **Flowchart for taking action** *(Appendix H)*.

**Maintaining confidentiality when taking action**

5.4 When taking action, the confidentiality of identifying information must be maintained, unless its disclosure is authorised by the PID Act.

5.4.1 The only additional exception, beyond those identified in relation to investigations, is where disclosure of the identity of a person who is the subject of a public interest disclosure is necessary in taking action following the investigation.

**Recording action taken**

5.5 In addition to keeping other records, a PID Officer shall complete **Part 5 of the assessment form for public interest disclosures** and record a summary of the action taken in the **Public interest disclosure register**.
6 Reporting to a discloser

6.1 Where a PID Officer decides not to investigate information disclosed under the PID Act, or discontinues an investigation, a PID Officer must give the person who made the disclosure reasons for doing so.

6.2 Within three months of the disclosure being made, a PID Officer must notify the discloser of the action taken or proposed to be taken in relation to the disclosure.

6.2.1 A discloser may also request a progress report.

6.2.2 If an investigation is not complete, a PID Officer may provide to the discloser a progress report on the current status of the investigation.

6.2.3 If an investigation is complete, a PID Officer must provide a final report (section 10 of the PID Act) to the discloser, stating the outcome of the investigation and the reason for taking action following the investigation.

6.2.4 In providing information (section 11 of the PID Act) and reports to disclosers, a PID Officer must not give information that, in their opinion, would be likely to adversely affect:
   (a) any person’s safety
   (b) the investigation of an offence or possible offence; or
   (c) necessary confidentiality as to the existence or identity of another person who has made a disclosure of public interest information under the PID Act.

7 Protecting disclosers

Victimisation and reprisals

7.1 The University will not tolerate any acts of victimisation or reprisal as a result of a person making, or proposing to make, a public interest disclosure.

7.2 Any victimisation or reprisals must be reported immediately to the PID Officer who must take immediate action to prevent the continuance of this unlawful conduct.

7.2.1 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.

7.3 Steps taken to prevent acts of victimisation or reprisal should be recorded in a manner that they will be accessible for reference, should legal action be taken against the University.

Confidentiality

7.4 The confidentiality requirements in relation to information which might identify or tend to identify a discloser or a person in respect of whom a public interest disclosure has been made must be complied with at all times. The disclosure of this identifying information, except in accordance with the PID Act, is an offence.

7.5 All files relating to a public interest disclosure, whether paper or electronic, must be secure and accessible only by authorised persons. Files should carry clear warnings that there are penalties for unauthorised divulgence of information concerning a disclosure.

7.6 It is strongly recommended that sensitive information is not transmitted to devices with general or shared access.
8 Public interest disclosure register

8.1 To assist with annual reporting to the Commissioner, PID Officers shall maintain a Public interest disclosure register recording a unique register number and key information for each disclosure. A Public interest disclosure register template is available at Appendix D.

8.1.1 All annual reporting requirements to the Public Sector Commissioner required under section 22 of the PID Act will be based on extracts from this register.

8.1.2 This register (electronic and hard copy) is to be kept strictly confidential and in a secure place.