

## Procedure – Public Interest Disclosure

<b>Responsible Directorate</b>	Office of the Chief Executive Officer
<b>Responsible Business Unit/s</b>	Corporate Services
<b>Responsible Officer</b>	Director Corporate Services
<b>Affected Business Unit/s</b>	All

### Objective

To:

- outline how the Shire of Ashburton (the Shire) as a proper authority will meet its obligations under the *Public Interest Disclosure Act 2003* (the Act);
- cover the roles and responsibilities of the Shire’s Chief Executive Officer (CEO), and the person designated as the Shire’s Public Interest Disclosure Officer (PID Officer); and
- support the legislative requirement for the CEO to prepare and publish internal procedures pursuant to section 23(1)(e) of the Act.

### Scope

This procedure applies to all people involved in the Shire’s public interest disclosure process, including the CEO, the Shire’s PID Officer(s), employees generally and/or any person making a public interest disclosure, and any subject(s) of a disclosure made.

### Procedure Statement

#### Organisational commitment for reporting public interest information

The Shire will not tolerate corrupt or other improper conduct and is committed to the aims and objectives of the Act. The Act clearly recognises the value and importance of reporting as a means to identify and address wrongdoing.

The commitment to effectively manage public interest disclosures extends to the Shire as a proper authority. The Shire’s appointed PID Officer is responsible for receiving disclosures of public interest information and will abide by the [Public Information Disclosure - Code of Conduct and Integrity](#) and the Shire’s Employee Code of Conduct in performing their duties.

The Shire:

- strongly supports disclosures being made by employees about corrupt or other improper conduct. We also strongly support contractors and members of the community making disclosures about corrupt or improper conduct.

- does not tolerate any of its employees, contractors or subcontractors taking reprisal action against anyone who makes or proposes to make a public interest disclosure.
- will take all reasonable steps to protect employees from any detrimental action in reprisal for the making of a public interest disclosure.
- is committed to responding to the disclosure thoroughly and impartially. We will treat all people in the disclosure process fairly, including those who may be the subject of a disclosure.
- will provide as much information as possible to people considering making a public interest disclosure. These internal procedures are accessible to all employees and contractors. Copies are available from the Shire's Public Information Disclosure (PID Officer) and will be available in Sharepoint (staff only) and on the Shire's website at [www.ashburton.wa.gov.au](http://www.ashburton.wa.gov.au).

### Roles and responsibilities of parties involved in the disclosure process

Person/role	Responsibilities
Principal Executive Officer (section 23 of the Act)  Shire of Ashburton Chief Executive Officer	<ul style="list-style-type: none"> <li>• Designates the occupant of a specified position to be the Shire's PID Officer to receive public interest disclosures related to the Shire.</li> <li>• Provides protection from detrimental action or the threat of detrimental action for any employee of the Shire who makes a public interest disclosure.</li> <li>• Ensures the Shire complies with the Act and the Code of Conduct and Integrity.</li> <li>• Prepares and publishes internal procedures, consistent with those prepared by the Public Sector Commission, detailing how the Shire will meet its obligations under the Act.</li> <li>• Provide information to the Public Sector Commissioner on the:               <ul style="list-style-type: none"> <li>○ number of disclosures received by the Shire.</li> <li>○ results of any investigations conducted as a result of the disclosures</li> <li>○ action, if any taken, as a result of each disclosure</li> <li>○ any matters as prescribed.</li> </ul> </li> <li>• May have a role in enabling an investigation to be undertaken or taking disciplinary action against individuals under functions and powers separately from the Act.</li> </ul>

Person/role	Responsibilities
<p>PID Officer (section 23(1)(a)) of the Act</p> <p>Director Corporate Services</p>	<ul style="list-style-type: none"> <li>• Receiving, investigating and actioning and recording disclosures.</li> <li>• Monitoring responses to disclosures under the Act including the aspects of timeliness, communication with the disclosure, recordkeeping, the conduct of investigations, compliance with the Act and the adequacy of outcomes.</li> <li>• Responsible for supporting and advising other PID officers (if any) and coordinating reporting requirements.</li> <li>• Maintaining the Public Information Disclosure (PID) Register.</li> <li>• Responding to queries and requests for information including annual reporting to the Public Sector Commissioner.</li> <li>• Coordination the appointment and training of other PID Officers (in consultation with the CEO).</li> <li>• Ensuring that the policy, procedures and contact lists are up to date.</li> </ul>
Person/role	Responsibilities
<p>The Proper Authority (The Shire) and the PID Officer</p>	<ul style="list-style-type: none"> <li>• Provides information to potential disclosers about their rights and responsibilities consistent with the Code of Conduct and Integrity.</li> <li>• Receives and manages public interest disclosures in accordance with the Act.</li> <li>• Notifies the discloser within three months of the disclosure being made about what action is planned in dealing with the disclosure.</li> <li>• Where appropriate, investigates, or causes an investigation of, the matters in the disclosures.</li> <li>• Where appropriate, provides information to subjects of a disclosure about their rights, responsibilities, duties and potential offences under the Act.</li> <li>• Where appropriate, takes such action as is necessary and reasonable, within their functions and powers as prescribed in the Act.</li> <li>• Maintains confidentiality of the identity of the discloser and subject(s) of disclosures, in accordance with the requirements of the Act.</li> <li>• Provides progress reports, where requested and a final report to the discloser.</li> <li>• Creates and maintains proper and secure records in relation to the disclosures in</li> </ul>

	<p>accordance with the Code of Conduct and Integrity established under section 20(1) and the <i>State Records Act 2000</i>.</p> <ul style="list-style-type: none"> <li>• Completes a PID Register for each disclosure lodged.</li> <li>• Acts in accordance with the rules of natural justice and in accordance with the Code of Conduct and Integrity established by the Public Sector Commissioner and any authority-specific code of conduct established separately from the Act.</li> </ul>
Person/role	Responsibilities
<p>The subject of the disclosure  (person about whom a disclosure is made)</p>	<ul style="list-style-type: none"> <li>• Is afforded the opportunity to make a submission, either orally or in writing, in relation to the matter before preventative or disciplinary action is taken.</li> <li>• Maintains confidentiality of the identity of the discloser, in accordance with the requirements of the Act.</li> <li>• Does not take or threaten to take detrimental action (defined in section 3) against a person because they have made or intend to make a disclosure.</li> <li>• Does not incite another person to take detrimental action against another because they have made or intend to make a disclosure.</li> <li>• Does not commit an act of victimisation by taking or threatening to take detrimental action against the person making or intending to make a disclosure.</li> </ul>

### Managing public interest disclosures

The following describes how the Shire will manage the public interest disclosure process.

#### Overarching requirements of the Public Interest Disclosure Act 2003

The Act has some overarching requirements for handling disclosures. These requirements separate the public interest disclosure process from other reporting or complaint handling processes.

The Act does not, however, displace the notification or reporting requirements of the *Corruption, Crime and Misconduct Act 2003*, which are paramount.

The following sections outline how the Shire will meet these requirements, as well as expectations of you, as a discloser, and any subject(s) of your disclosure.

## What is 'public interest information'?

The Act only applies to disclosures of public interest information (as defined in section 3).

Public interest information means information that:

- relates to the performance of a public function by a public authority, public officer or public sector contractor (either before or after the commencement of the Act); and
- shows or tends to show that a public authority, a public officer, or a public sector contractor is, has been or proposes to be involved in:
  - improper conduct, or
  - an act or omission that constitutes an offence under a written (State) law, or
  - substantial unauthorised or irregular use of, or substantial mismanagement of, public resources, or
  - an act done or omission that involves a substantial and specific risk of
- injury to public health, or
- prejudice to public safety, or
- harm to the environment, or
- a matter of administration that can be investigated under section 14 of the *Parliamentary Commissioner Act 1971* by the Parliamentary Commissioner (Ombudsman Western Australia).

## Confidentiality

Maintaining confidentiality is an important part of managing a disclosure. The confidentiality requirements of section 16 of the Act not only protect the discloser, but also any other people affected by the disclosure.

The confidentiality requirements do not apply to all information in a disclosure, although, we are committed to maintaining confidentiality around:

- any information that may identify the discloser or any person who may be the subject of a disclosure, including the fact a disclosure has been made; and
- information relating to a disclosure that, if known, may cause detriment.

Throughout the disclosure process and after its completion, the Act provides for the discloser's identity and the identity of any persons, that is, any subject of the disclosure to be kept confidential, except in certain circumstances.

Disclosing information which might identify, or tend to identify the disclosers, or any person that is the subject(s) of your disclosure, except in accordance with the Act is an offence. Penalty \$24 000 or imprisonment for two years.

## Confidentiality regarding the discloser

Maintaining confidentiality is an important part of protecting the discloser, from any detrimental action in reprisal for making or intending to make a disclosure.

If the discloser consents to having their identity revealed to assist us in dealing with the disclosure, our PID Officer will record this using the Consent - Disclosure of Identifying Information Form.

Sometimes we may need to identify the discloser, without the discloser's consent, but only where:

- it is necessary to do so having regard to the rules of natural justice; or
- it is necessary to do so to enable the matter to be investigated effectively; or
- we are ordered by a court, or any other person or body having authority to hear, receive or examine evidence; or
- we are required by sections 152 or 153 of the *Corruption, Crime and Misconduct Act 2003*.

Before we identify the discloser for any of the reasons above, our PID Officer will take all reasonable steps to inform the discloser that this will happen and the reasons why. Our PID Officer will use the Notification - Disclosure of Identifying Information Form to do this.

If we need to provide information about the identity of the discloser to another person for the reasons above, our PID Officer will inform the other person that further disclosure to a third person may put them at risk of committing an offence.

Our PID Officer will also consider whether it is necessary to inform any external investigator about the identity of the discloser. Where it is necessary to provide this identifying information, our PID Officer will notify as described above.

## Confidentiality plan

If your confidentiality cannot be maintained, we may develop a plan to support and protect you from any potential risks of detrimental action. You will be involved in developing this plan if required, which will consider strategies that cover:

- communication methods and frequency of communication;
- meeting locations; and
- frequency of progress reports.

## Confidentiality regarding the person, that is, the subject of the disclosure

The subject of a disclosure may consent to having their identity revealed to assist with the disclosure process. Our PID Officer will use the Consent - Disclosure of Identifying Information Form to record this.

Additionally, the Shire may need to reveal identifying information about the subject(s) of a disclosure without their consent, where:

- it is necessary to do so to enable the matter to be investigated effectively;

- it is necessary to do so in the course of taking action under the Act;
- there are reasonable grounds to believe that it is necessary to prevent or minimise the risk of injury to any person or damage to any property;
- it is ordered by a court, or any other person or body having authority to hear, receive or examine evidence, or
- it is required by sections 152 or 153 of the *Corruption, Crime and Misconduct Act 2003*.

There is no obligation to advise the subject of a disclosure that identifying information will be released.

### Protections

The Act provides a range of protections for disclosers. It also requires that the Shire's CEO provide protections for any employees who make disclosures.

The Shire is committed to ensuring that no detrimental action, including workplace reprisals by managers or other employees, occurs as a result of a person making a disclosure. If any of the above does occur, the discloser can request that we take action to protect them.

The Act also provides that the discloser may lose the protections provided in some circumstances, including where they on-disclose information or fail, without reasonable excuse, to assist any person investigating the matters of the disclosure.

### Notification requirements

A PID Officer must ensure that all reporting and recording occurs in accordance with the legislative and administrative requirements of the Act.

Provided it is not an anonymous disclosure, the PID Officer will provide the following reports:

- within three months of making a disclosure, the action taken, or propose to take, in relation to the disclosure; and
- when the disclosure process has concluded, the outcome of the investigation and the reasons for taking any action following the investigation).

The PID Officer may also provide a progress report during any investigation, either on their initiative or upon your request.

Our PID Officer has some limits on what they can include in their reports. Section 11 of the Act prevents provision of information that would be likely to adversely affect:

- any person's safety; or
- the investigation of an offence or possible offences; or
- confidentiality as to the existence or identity of any other person who made a public interest disclosure.

The PID Officer is also prevented from giving any information they must not disclose under sections 151, 152 or 153 of the *Corruption, Crime and Misconduct Act 2003*.

## Recordkeeping

During an investigation our PID Officer may make comprehensive and contemporaneous records of any discussions and interviews. These records along with any other documentation or files relating to the disclosure, whether paper or electronic, will be stored securely and only accessed by authorised persons.

## PID Register

To assist with annual statutory reporting to the Public Sector Commissioner, the Shire's PID Officer will maintain a Public Interest Disclosure Register for each disclosure made.

This register will assign a unique register number to each disclosure and record key information about your disclosure, any investigation and the outcome in the public interest disclosure register.

This register will be kept strictly confidential and maintained in a secure location within the Shire's recordkeeping system.

## How to make a public interest disclosure

### Before you make a disclosure

We strongly encourage anyone thinking about making a public interest disclosure to seek advice from our PID Officer, before they do.

A number of other requirements apply to the discloser, so it is important to understand the rights and responsibilities in the process. This and other relevant information is generally detailed below or provided in the Shire's Public Interest Disclosure Guide.

At the Shire, the following person is designated to receive disclosures of public interest information in accordance with section 23 of the Act. This person is the proper authority designated under section 5(3)(h) of the Act for dealing with information that falls within the Shire's sphere of responsibility.

### Mr Darren Kennedy

#### Director Corporate Services

(08) 9188 4444

[darren.kennedy@ashburton.wa.gov.au](mailto:darren.kennedy@ashburton.wa.gov.au)

If the information appears not to be the type covered by the Act, our PID Officer will discuss other options, for example our general complaints or grievance resolution process.

Our PID Officer will be able to provide more detailed information about the Shire's disclosure process and what people can expect from it.

### What is 'sphere of responsibility'?

Under section 5(3)(h) of the Act the Shire's PID Officer can receive information relating to a matter which falls within the Shire's 'sphere of responsibility'. 'Sphere of responsibility' is not defined in the Act, but may include:

- matters that relate to the Shire; or



- a public officer or public sector contractor of the Shire; or
- a matter or person that the Shire has a function or power to investigate.

The proper authority to which you need to make the disclosure depends on the type of disclosure information. Where the information is outside of our PID Officer's sphere of responsibility, it may need to be made to another proper authority for it to be considered as a public interest disclosure and for the discloser to receive the protections of the Act.

Refer to Public Interest Disclosure Guide for information on appropriate proper authorities and the category of information they may received

### **Making the disclosure**

A discloser needs to clearly identify that they are making a public interest disclosure. For the purposes of accountability and certainty, persons wishing to make a disclosure of public interest information under the Act are encouraged to do so in writing. As we expect that most disclosures will be made in writing, the Shire has developed this form to assist with disclosures being made Public Interest Disclosure Lodgement Form.


Whilst there is no requirement to use the form. The form helps to define the details of the disclosure being made. A discloser may fill out the form or the PID Officer may complete the form if they are speaking with the discloser and then have them sign the form to acknowledge they are making a disclosure voluntarily and consciously.

We must accept anonymous disclosures, but if a discloser decides to make an anonymous disclosure they should understand that it may be more difficult for our PID Officer to investigate or take action about the disclosure. This is because they cannot come back to seek any further information. We are also not required to provide any reports about the progress or final outcome of the disclosure, if the discloser chooses to remain anonymous.

An anonymous disclosure may not prevent the discloser from being identified during an investigation. Additionally, if our PID Officer does not know who made the disclosure, it will be difficult for them to ensure the discloser is protected and to prevent any reprisal or detrimental action.

### **Determining whether your matter is an appropriate disclosure**

Once our PID Officer has received the disclosure they will assess whether it meets the requirements under the Act. It may be that our PID Officer undertakes initial inquiries and decides not to take the matter any further, as it does not constitute an appropriate public interest disclosure.



If the disclosure is not one to which the Act applies, our PID Officer will let the discloser know the reasons for their decision (unless you made an anonymous disclosure) and make proper and adequate records about it. Some matters raised within the disclosure may not be matters to which the Act applies and the PID Officer may discuss with the discloser other pathways to report these matters.

If the disclosure is one to which the Act applies, our PID Officer will ensure proper and adequate records are made and will communicate with the discloser further, unless it is an anonymous disclosure.

Our PID Officer will notify the discloser within three months about what we plan to do in dealing with the disclosure unless it is an anonymous disclosure.

### **Determining whether your public interest disclosure will be investigated**

After assessing the disclosure as one to which the Act applies, our PID Officer will consider whether it will be investigated, guided by the requirements in section 8 of the Act.

The reasons a PID Officer may not investigate the disclosure include:

- the matter is trivial;
- the disclosure is vexatious or frivolous;
- there is no reasonable prospect of obtaining sufficient evidence due to the time that has elapsed since the matter(s) occurred; or

the matter is being or has been adequately or properly investigated by another proper authority.

The PID Officer will make proper and adequate records of their decision and reasons about whether to investigate or not.


### **Referring public interest matters**

Where our PID Officer assesses the disclosure as one to which the Act applies, but they do not have the functions or power to investigate one or more matters within the disclosure, they will refer the information to the appropriate authority for investigation as provided for under the Act. Alternatively, a discloser may also be able to make a disclosure directly to this new authority, if they wish to receive reports from them about the disclosure.

For example, our PID Officer may need to refer an allegation of an offence supported by evidence to the Western Australia Police for investigation.

### **Investigating the disclosure**

Our PID Officer will investigate, or cause to be investigated, any matters in the disclosure within the sphere of responsibility. Our PID Officer may cause the disclosure to be investigated by engaging another suitably skilled staff member or by way of an externally contracted investigator.



If causing the disclosure to be investigated, our PID Officer will ensure that the person undertaking the investigation understands the requirements of the Act, in particular the confidentiality requirements and protections for disclosers.

Our PID Officer will only provide the name of the discloser and that of the subject of the disclosure to the investigator in accordance with the requirements of the Act.

When investigating the disclosure, our PID Officer or investigator is limited by the functions and powers derived from our operating legislation. The Act does not provide for any additional investigative powers.

If you are an employee, you are expected to cooperate with any investigation into the disclosure to maintain the protections under the Act. A discloser is also expected to act in accordance with our Code of Conduct and Integrity at all times.

Employees who are the subject of the disclosure can clarify the process and what to expect with our PID Officer.

Our PID Officer may also decide to discontinue an investigation, in accordance with the Act. If this happens, they will give the discloser reasons for their decision in accordance with the statutory requirements, unless they made an anonymous disclosure. The PID Officer may also notify any subject(s) of the disclosure if they discontinue the investigation.


### **What are your responsibilities if you are the subject of a disclosure?**

A subject of a disclosure is a person of interest about whom an allegation of a public interest disclosure has been made.

We will treat the person fairly and impartially throughout the process and inform them of their rights and obligations. We will generally keep the parties involved informed during any investigation, although we cannot release any information to the person that may prejudice our investigation. As an employee it is expected that they will act in accordance with our Employee Code of Conduct at all times.

The Act provides the person with some rights and obligations as a person subject to a disclosure. Firstly, the subject has a right to have their identity kept confidential, unless one of the following conditions apply:

- you consent to your identity being disclosed;
- it is necessary to enable the matter to be investigated effectively;
- it is necessary to do so in taking action within section 9;
- there are reasonable grounds to believe that it is necessary to prevent or minimise the risk of injury to any person or damage to any property
- is made in accordance with a court order or other body having authority to hear evidence
- it is made in accordance with section 152 or 153 of the *Corruption, Crime and Misconduct Act 2003*.



We will also provide appropriate natural justice. This means that, before we take any disciplinary or other action against the person under section 9 of the Act, the PID Officer will provide you an opportunity to:

- be informed of the substance of the allegations; and
- make a submission either verbally or in writing in relation to the matter.

If you are the subject of a disclosure, you must not identify or tend to identify the identity of the discloser or a person who they think might be the discloser, as they also have rights to confidentiality under the Act. It is an offence under section 16 to identify or tend to identify any person who has made a disclosure under the Act.

Also, you must not engage in reprisal action, threaten anyone with reprisal action or have someone else conduct this action on your behalf because someone has made, or intends to make, a disclosure. It is still an offence to conduct this action against any person you believe has made the disclosure even if they were not the individual who actually made the disclosure. This is an offence under section 14(1) of the Act.

### **Taking action**

The PID Officer will take action where they form the opinion that a person may be, may have been or may in the future be involved in conduct which may be the subject of a public interest disclosure. Usually, our PID Officer will form this opinion at the conclusion of an investigation, although there may be instances where they need to take immediate action, and the Act enables them to do this.

The action a PID Officer may take, includes, but is not limited to:

- preventing the matter disclosed from continuing or occurring
- referring the matter to the Western Australia Police or other appropriate body; or
- taking disciplinary action against a person responsible for the matter.

The options above are not mutually exclusive. The PID Officer may take more than one action depending on the circumstances. For example, the PID Officer may, following internal consultation seek to terminate the employment of an employee caught stealing and refer the matter to the Western Australia Police.

In taking action the PID Officer and/or the Shire is limited by the powers and functions derived from our operating legislation. The Act does not provide for any additional powers to take action. We are also guided by what is necessary and reasonable in the circumstances.

Before taking any action we will give the person against whom the action is to be taken (the subject of the disclosure) an opportunity to respond, either verbally or in writing, to ensure procedural fairness.

### **Confidentiality and record keeping when taking action**

We will maintain confidentiality in accordance with the Act when taking action.

Our PID Officer will keep appropriate records about any action taken, as well as recording a summary of this action in the public interest disclosure register.

### **After the public interest disclosure process has been finalised**

The Act places no further obligations on the Shire or our PID Officer after the disclosure process is complete. The confidentiality requirements of the Act, continue to apply to the discloser and all other people directly involved.

The Act does not provide a means to appeal the outcome of the disclosure process. A discloser may be able to make another disclosure to another proper authority if the information relates to sphere of responsibility of another proper authority.

However, this 'new' proper authority may be able to decline to investigate the disclosure if they consider the matter(s) has already been properly or adequately investigated (as a public interest disclosure).

### **Making a disclosure to a journalist**

The Act provides for certain circumstances where a discloser may be able to make a protected disclosure to a journalist. These circumstances apply where the discloser has first made a disclosure to the PID Officer, or another proper authority named in the Act.

Importantly, the Act states that to attract the privileges and protections of the Act when disclosing to a journalist, the discloser must disclose information that is substantially the same as what was disclosed in the original disclosure and the PID Officer that received the original disclosure:

- did not notify the discloser within three months of making the disclosure about actions they propose to take or have already taken; or
- refused to investigate, or discontinued the investigation of, a matter raised in the disclosure; or
- did not complete an investigation within six months of the discloser making the disclosure; or
- completed an investigation but did not recommend that action be taken; or
- did not provide the discloser with a report stating the outcome of any investigation or any action proposed or taken and the reasons for those actions.

The Shire is committed to ensuring that it provides the notifications required under the Act and that the discloser understands the reasons for decisions and actions.

If a discloser is considering making a disclosure to a journalist because they believe their circumstances meet one or more of the requirements outlined above, we would encourage the discloser to discuss this with the PID Officer prior to disclosure to a journalist.

It is also recommended that the discloser seek their own legal advice before taking any action in relation to matters that have been disclosed under the Act.

If a discloser makes an anonymous disclosure they may not be able to demonstrate they meet the above requirements, and we are not obliged to provide the discloser with any notifications about what happens to the disclosure.

Further information regarding public interest disclosures is available on the Public Sector Commission’s website at [www.publicsector.wa.gov.au](http://www.publicsector.wa.gov.au).

## Definitions

Nil

## Relevant policies/documents

[Employee Code of Conduct](#)

[Code of Conduct and Integrity](#)

[Public Interest Disclosure Guide](#)

[Public Interest Disclosure Lodgement Form](#)

Public Interest Disclosure Register

Notification - Disclosure of Identifying Information Form

Consent - Disclosure of Identifying Information Form

## Relevant legislation/local laws

*Public Information Disclosure Act 2003*

*Corruption, Crime and Misconduct Act 2003*

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