

Town of Cottesloe



Public Interest Disclosure Act 2003

Internal procedures relating to the obligations of the Town of Cottesloe
under the *Public Interest Disclosure Act 2003*

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PUBLIC INTEREST DISCLOSURE

1. Support for Staff who make Public Interest Disclosures

The Town of Cottesloe does not tolerate corrupt or other improper conduct, including mismanagement of public resources, in the exercise of the public functions of the Town of Cottesloe and its officers, employees and contractors.

The Town of Cottesloe is committed to the aims and objectives of the *Public Interest Disclosure Act 2003*. It recognises the value and importance of contributions of staff to enhance administrative and management practices and strongly supports disclosures being made by staff as to corrupt or other improper conduct.

The Town of Cottesloe will take all reasonable steps to provide protection to staff who make such disclosures from any detrimental action in reprisal for the making of a public interest disclosure.

The Town of Cottesloe does not tolerate any of its officers, employees or contractors engaging in acts of victimisation or reprisal against those who make public interest disclosures.

2. Purpose of this Policy

These internal procedures provide for the manner in which the Town of Cottesloe will comply with its obligations under the *Public Interest Disclosure Act 2003* (the Act). They provide for the manner in which:

- Disclosures of public interest information shall be made to the Public Interest Disclosure Officer (PID Officer).
- The PID Officer shall investigate the information disclosed, or cause that information to be investigated.
- The PID Officer may take action following the completion of the investigation.
- The PID Officer shall report to the informant as to the progress and outcome of that investigation and the action taken as a consequence.
- The confidentiality of the informant, and any person who, may be the subject of a public interest disclosure, shall be maintained.
- Records as to public interest disclosures shall be maintained and reporting obligations complied with.

3. Object of the Act

The *Public Interest Disclosure Act 2003* commenced operation on 1 July 2003. The object of the Act is to:

- Facilitate the disclosure of public interest information.
- Provide protection for those who make disclosures.
- Provide protection for those who are the subject of a disclosure.

This is achieved by:

- Protecting the person making the disclosure from legal or other action.

- Providing for the confidentiality of the identity of the person making the disclosure and a person who is the subject of a disclosure.
- Providing remedies for acts of reprisal and victimisation that occur substantially because the person has made a disclosure.

The rights and obligations created by the Act are described in Appendix 1 to these Procedures.

4. Designation of Public Interest Disclosure (PID) Officer

The person from time to time holding or acting in the position of Manager of Corporate Services is designated as the PID Officer of the Town of Cottesloe. The PID Officer is responsible for receiving disclosures of public interest information relating to matters falling within the sphere of responsibility of the Town of Cottesloe.

The contact details of the PID Officer are as follows:

Manager of Corporate Services
Town of Cottesloe
109 Broome Street
Cottesloe WA
E-mail: council@cottesloe.wa.gov.au
Phone: 9285 5060
Fax: 9285 5001

The person holding or acting in the position of Manager of Corporate Services at the commencement of these procedures shall forward a completed PID Officer's Declaration (see Appendix 7) to the Office of the Public Sector Standards Commissioner as soon as is practicable. A copy of the completed PID Officer's Declaration shall be retained on a file to be kept for that purpose.

Thereafter, any person assuming or beginning to act in the position of Manager of Corporate Services the person holding or acting in that position shall also forward a completed PID Officer's Declaration (see Appendix 7) to the Office of the Public Sector Standards Commissioner. A copy of the completed PID Officer's Declaration shall be retained on a file to be kept for that purpose.

5. Receiving Public Interest Disclosures

5.1 Advice to Informants

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

- a. 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

- be liable for any breach of a duty of secrecy or confidentiality or any other applicable restriction on disclosure
- b. 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.
- c. If they choose to make a public interest disclosure then their identity will not be disclosed except in accordance with the Act (disclosure of their identity may be required in the course of the investigation or in taking action in some circumstances).
- d. 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.
- e. 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 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 Act if they disclose the information otherwise than under the Act (for example, 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 Act if they fail, without reasonable excuse, to assist a person investigating the matter to which the information relates, by supplying any information requested
 - 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
- f. The disclosure will only be protected if the PID Officer is the proper authority for receiving that kind of information, as indicated in the following table:

Proper Authorities for Receiving Disclosures of Public Interest Information

When the disclosure relates to...	the proper authority is...
The sphere of responsibility of a public authority (for example, matters about the public authority or its officers, or which the public authority has the function of investigating)	The Public Interest Disclosure Officer (PID Officer) of the public authority
Offences under State law.	A police officer or the Anti-Corruption Commission
Substantial unauthorised or irregular use of, or substantial mismanagement of, public resources	The PID Officer of the public authority concerned, or the Auditor General
Matters of administration affecting someone in their personal capacity falling within the jurisdiction of the Ombudsman	The PID Officer of the public authority concerned or the Ombudsman
A police officer	The Commissioner of Police or Ombudsman

A Member of the Legislative Council	The President of the Legislative Council
A Member of the Legislative Assembly	The Speaker of the Legislative Assembly
A judicial officer	The Chief Justice
A public officer who is not a member of Parliament, a Minister, a Judicial Officer or a Commissioned or other officer specified in schedule 1 of the <i>Parliamentary Commissioner Act 1971</i>	The PID Officer of the public authority concerned, the Ombudsman or the Commissioner for Public Sector Standards
A person or a matter of a prescribed class	A person declared by the regulations to be a proper authority

Note: In addition, the information disclosed must be public interest information as defined in the Act.

Not all proper authorities to which a disclosure may be made will be required or have the power to investigate the information disclosed. In some cases it may be necessary for the informant or information to be referred to another proper authority with power to investigate the information.

5.2 Assessing a Public Interest Disclosure

The PID Officer must, on receiving the information, make an initial assessment of whether;

- the information disclosed relates to a public authority, a public officer or a public sector contractor
- the information disclosed relates to the performance of a public function
- the information disclosed tends to show improper conduct
- the improper conduct is of the kind for which the PID Officer is the proper authority (see the table in section 1)
- the informant believes on reasonable grounds that the information is or may be true
- the information is not protected by legal professional privilege
- the informant, after receiving the advice referred to in section 1, wishes to make a public interest disclosure under the Act

If the above questions are all answered "yes", then the disclosure of information is a public interest disclosure to which the Act will apply.

In assessing whether a disclosure is a public interest disclosure, the PID Officer should consider the Flowchart for Receiving Disclosures at Appendix 2, as well as complete Part 1 of the Assessment Form Public Interest Disclosure at Appendix 5.

5.3 Form of Public Interest Disclosure

If a disclosure is a public interest disclosure, the informant and the PID Officer should complete the Public Interest Disclosure Lodgement Form (see Appendix 7). The PID Officer

should also complete Part 2 of the Assessment Form for Public Interest Disclosures (see Appendix 7).

On completion of this form, the PID Officer should create a separate 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 informant or a person in respect of whom the disclosure has been made is an offence, unless the disclosure occurs in accordance with the Act.

Penalty: \$24,000 or imprisonment for two years

The making of the public interest disclosure should also be recorded in the Public Interest Disclosure Register, described in section J of these procedures, for reporting to the Commissioner for Public Sector Standards.

6. Investigating a Public Interest Disclosure

6.1 Determining whether the matter must be investigated

After receiving a disclosure, the PID Officer must consider whether;

- the disclosure relates to the Town of Cottesloe, its officers or contractors, or
- the disclosure relates to a matter or person that the Town of Cottesloe has a function or power to investigate.

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

The PID Officer must also consider whether:

- 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 occurrence of the matter
- 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 Act

If the answer to any of these questions is 'yes', the PID Officer is not required by the Act to investigate the matter.

Where the 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 or public sector contractor may have engaged in improper conduct, the 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.

The questions to be considered in the initial assessment by the PID Officer are indicated in the Flowchart for Investigating Information Disclosed at Appendix 3, and Part 1 of the Assessment Form for Public Interest Disclosures (see Appendix 7) should be completed.

In assessing whether a public interest disclosure should be investigated, a PID Officer should consider the Flowchart for Investigating Information Disclosed (Appendix 3) and complete Part 3 of the Assessment Form for Public Interest Disclosures (see Appendix 7).

6.2 Investigating information received in a Public Interest Disclosure

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

In conducting an investigation, typical procedures could include:

- drawing up terms of reference, which should clarify the key issues identified by the disclosure
- specifying a date by which the investigation should be completed
- ensuring the objectives of the investigation include collecting and collating information relating to the disclosure, considering the information collected and drawing conclusions objectively and impartially
- maintaining procedural fairness for the person who is the subject of the disclosure
- giving information to the person who is the subject of a disclosure about their rights and obligations under the Act, the Code of Conduct and Integrity, any agency code of conduct, and the law
- the investigator making contemporaneous notes of discussions and interviews and, where practicable and appropriate, recording discussions and interviews on audio or videotape
- ensuring strict security with all investigations, so as to maintain the confidentiality requirements of the Act

If a disclosure is withdrawn, a proper authority may still continue to investigate the issues raised.

6.3 Maintaining Confidentiality in an Investigation

The Act imposes strict confidentiality requirements in relation to the identity of the informant 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 the Act, is a serious offence, punishable with a maximum penalty of \$24,000 or two years.

The confidentiality provisions of the 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 informant and persons in respect of whom a public interest disclosure has been made.

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 (see Appendix 7).

Identifying information relating to an informant may be disclosed without the informant's consent where:

- it is necessary to do so, having regard to the rules of natural justice
- it is necessary to do so to enable the matter to be investigated effectively

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:

- that the disclosure is being made
- the reasons for the disclosure being made

This information should be given, where practicable, in the form for Notification of Disclosure of Identifying Information (see Appendix 7).

Where identifying information in relation to an informant 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.

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:

- is necessary to enable the matter to be investigated effectively
- 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

In addition, disclosures under the Anti-Corruption Commission Act are exempt from these confidentiality requirements.

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

Where a PID Officer appoints a third person to conduct an investigation in relation to the public interest disclosure, he or she must consider whether it is necessary to inform the investigator of the identity of the informant. In some cases it may not be necessary to provide

the investigator with the identity of the informant. Where it is necessary, to enable an effective investigation, or having regard to the rules of natural justice, to provide identifying information to the investigating officer, then the informant should be notified in the manner described above.

6.4 Recording the Outcome of an Investigation

The outcome of an investigation should be clearly and comprehensively recorded. In addition to any investigation report, the person conducting the investigation should complete part 4 of the Assessment Form for Public Interest Disclosure (see Appendix 7).

The result of the investigation should also be recorded in the Public Interest Disclosure Register (see Appendix 5). All reporting requirements to the Commissioner for Public Sector Standards required under the Act will be based on extracts from this register.

7. Taking Action Following an Investigation

7.1 General

The 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
- taking disciplinary action against a person responsible for the matter

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.

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

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

7.2 Maintaining Confidentiality when Taking Action

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

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.

7.3 Recording Action Taken

In addition to keeping other records, the PID Officer shall complete Part 5 of the Assessment Form for Public Interest Disclosures (see Appendix 7) and record a summary of the action taken in the Public Interest Disclosure Register. All reporting requirements to the

Commissioner for Public Sector Standards required under the Act will be based on extracts from this register.

8. Reporting to an Informant on the Progress and Outcome of an Investigation

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

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

An informant may also request a progress report.

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

If an investigation is complete, the PID Officer must provide a final report to the informant, stating the outcome of the investigation and the reason for taking action following the investigation.

In providing information and reports to informants, the PID Officer must not give information that, in the officer's opinion, would be likely to adversely affect:

- any person's safety
- the investigation of an offence or possible offence
- necessary confidentiality as to the existence or identity of another person who has made a disclosure of public interest information under the Act

9. Protecting Informants

9.1 Victimization and Reprisals

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

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

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.

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 Town of Cottesloe.

9.2 Confidentiality

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

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.

It is strongly recommended that sensitive information is not emailed or faxed to machines with general or shared access.

10. Public Interest Disclosure Register

The Town of Cottesloe shall maintain a Public Interest Disclosure Register (see Appendix 5) recording a unique register number and key information for each disclosure.

The register includes a summary of information relating to:

- The informant
- Public authorities about which a disclosure is made
- People named in the disclosure
- The nature of the disclosure
- The investigation process and the action, if any, taken
- Communication with the informant
- Disclosure of the informant's identity, if applicable
- Disclosure of identity of persons named in the disclosure
- Claims of unlawful disclosure of informant's identity or identity of persons named in the disclosure
- Claims of victimisation
- Key dates

An electronic version of the register can be found on the website of the Office of the Public Sector Standards Commissioner under Reporting by Public Authorities. Additional information may also be recorded in the register at the discretion of the Town of Cottesloe.

All reporting requirements to the Commissioner for Public Sector Standards required under the Act will be based on extracts from the fields shown in the register.

11. Reporting Requirements

Under the Act the Town of Cottesloe shall report to the Commissioner each year as outlined below.

11.1 CEO's Report

Under section 23 (f) of the Act, the Town of Cottesloe is required to report annually to the Commissioner for Public Sector Standards on;

- the number of public interest disclosures received over the report period
- the results of any investigations conducted as a result of the disclosures
- the action, if any, taken as a result of each investigation

11.2 Commissioner’s Compliance Report

Under sections 19, 22 and 27 of the Act, the Commissioner is required to monitor compliance with the Act, to assist public authorities to comply with the Act and the Code, to provide an Annual Report to Parliament and to carry out a review of the Act.

To enable the Commissioner to meet these obligations the Town of Cottesloe will provide a report each year on compliance with and administration of the Act as requested by the Commissioner.

11.3 Report Format and Submission

An electronic format for the report and the information for the Commissioner’s Compliance Report will be provided each year by the Commissioner and both will be able to be submitted in a single electronic submission. The reports will cover the period 1 July in any year to 30 June in the subsequent year.

Where there has been no action on a disclosure in the reporting period the format of the report will provide for a simple nil return. Where action relating to one or more disclosures has occurred, all data required will be obtainable as a simple extract from the Public Interest Disclosure Register.

12. Making Information Available

These internal procedures shall be made available for access by all staff and members of the public. Copies of these internal procedures are available from the Public Interest Disclosure Officer and are kept on file and on the Town of Cottesloe’s website www.cottesloe.wa.gov.au.

After the commencement of the Act all staff should be provided with the Information for Staff at Appendix 6. This information should also be provided to new staff on induction.

Where a person makes an allegation about improper conduct, but the person has not referred to the Act, the person should be advised that they might want to make a public interest disclosure under the Act. They should be referred to the PID Officer for guidance on how to make a disclosure under the Act and on the implications of having done so.

Adopted	27 September 2005
Expected date of review	

PUBLIC INTEREST DISCLOSURE – APPENDIX ONE

RIGHTS AND OBLIGATIONS UNDER THE PUBLIC INTEREST DISCLOSURE ACT

1. Overview of the Public Interest Disclosure Act

1.1 Introduction

The *Public Interest Disclosure Act 2003* facilitates the disclosure of public interest information, and provides protection for those making such disclosures and those who are the subject of disclosures. The Act provides a system for the matters disclosed to be investigated and for appropriate action to be taken.

The Act does not confer additional powers on public authorities to investigate or take action in relation to public interest disclosures. Rather, it provides for protection to persons who make disclosures that may result in a proper authority exercising its existing powers to investigate and take action in relation to the subject matter of the disclosure. In some circumstances the Act requires a public authority to investigate a matter and to notify the person making the disclosure of the action taken.

The Act also requires the principal executive officer of each public authority to prepare and publish internal procedures relating to their authority's obligations under the Act. These internal procedures must be consistent with these Guidelines.

1.2 What is a Public Interest Disclosure?

A public interest disclosure is made when a person discloses to a proper authority information that tends to show past, present or proposed future improper conduct by a public body in the exercise of public functions.

In order to be a disclosure to which the Act applies, a disclosure must be:

- made by an informant who believes on reasonable grounds that the information is or may be true
- a disclosure of public interest information
- made to the appropriate proper authority

While the Act provides for the protection of all public interest disclosures, not every proper authority will have the obligation or power to investigate and take action in relation to the disclosure. In some cases the informant or information may need to be referred to another proper authority to enable an effective response to the disclosure to be made.

Specific information about how a public interest disclosure is made and assessed can be found in section B of this appendix.

1.3 What is Protection?

When a person makes an appropriate disclosure of public interest information to a proper authority, the Act:

- protects the person making the disclosure from legal or other action
- provides for the confidentiality of the identity of the person making the disclosure and a person who is the subject of a disclosure
- provides remedies for acts of reprisal and victimisation that occur substantially because the person has made a disclosure

In general terms, for people who make disclosures, protection is provided against detrimental action, which includes injury, intimidation, harassment, adverse treatment or reprisal. More specific information about protection can be found in section D of Part 1 of these Guidelines.

The Act also provides penalties for disclosing the identity of those persons about whom public interest disclosures are made, as well as emphasising the need for those persons to be accorded natural justice or procedural fairness.

1.4 Key Aspects of the Legislation

From the point of view of a public authority developing internal procedures, there are certain aspects of the Act that require careful consideration and a more in-depth understanding.

- Part 2 of the Act is concerned with the action of making a disclosure. It clarifies who may make a disclosure, to whom it can be made and their obligations, including investigation, action and notification.
- Part 2 of the Act deals with protection. It describes the forms of protection available and when protection is lost. It provides for offences relating to the disclosure of the identity of informants and those in respect of whom a public interest disclosure is made.
- Part 5 of the Act enumerates the obligations of principal executive officers of public authorities. Of particular importance is the requirement for a principal executive officer to designate a person within the authority who is responsible for receiving disclosures and to provide protection for their employees from detrimental action arising from their making of a disclosure.

2. Making, Receiving and Assessing a Public Interest Disclosure

2.1 What is Different About a Public Interest Disclosure?

Not all disclosures about government can be classified as public interest disclosures that are protected by the Act.

In order to be a disclosure to which the Act applies, a disclosure must be:

- made by an informant who believes on reasonable grounds that the information is or may be true
- a disclosure of public interest information
- Made to the appropriate proper authority

2.2 Who can make a Disclosure?

Any person may make a disclosure of public interest information. While public officers may make disclosures of public interest information, the Act also allows for members of the public to make these disclosures.

A person making a public interest disclosure can be called an informant.

A person making a public interest disclosure must believe, on reasonable grounds, that the information disclosed is true or may be true. A person making a disclosure purporting to be a disclosure of public interest information commits an offence where they:

- know the information to be false or misleading in a material particular
- are reckless about whether the information is false or misleading in a material particular

The informant does not necessarily need to be able to identify any person whom the disclosure concerns.

2.3 What is Public Interest Information?

The Act only applies to disclosures of public interest information.

Public interest information must meet a number of criteria. It must:

- relate to a public authority, public officer or public sector contractor ('a public body')
- relate to the performance of a public function of the public body
- tend to show that the public body is, has been, or proposes to be, involved in improper conduct

2.4 Who are the Public Bodies to which Public Interest Information Must Relate?

The following are public authorities to which public interest information may relate:

- a department in the public service
- an agency within the public sector
- a local government or regional local government
- a body established under State law for a public purpose (for example, public universities, port authorities, government boards, etc.)
- bodies established by the Governor or a minister

The following are public officers to whom public interest information may relate:

- Ministers, Parliamentary Secretaries and Members of Parliament
- Judicial officers
- Police officers
- Officers such as a bailiff serving or executing the process of a court or tribunal for remuneration
- Public service officers
- Members, officers and employees of public authorities
- Holders of offices under the State and offices established by the Governor or a minister
- Officers of the Commonwealth exercising a function on behalf of the State

The Act does not apply to information relating to Commonwealth Government bodies, apart from officers of the Commonwealth exercising functions for the State under State law.

Public sector contractors to whom public interest information may relate are contractors engaged by public authority for the supply of goods and services or the performance of public functions.

2.5 What is a Public Function to Which Public Interest Information Must Relate?

The Act does not apply to the disclosure of information concerning improper conduct, unless the conduct relates to the performance of the functions of the public authority, public officer or public sector contractor.

So, for example, the Act would not apply to information that an employee of a Department had engaged in criminal behaviour unconnected with their employment.

2.6 What is Improper Conduct to Which Public Interest Information Must Relate?

Public interest information must tend to show the involvement of a public body in:

- improper conduct
- an offence against State law
- a substantial unauthorised or irregular use of public resources
- a substantial mismanagement of public resources
- conduct involving a substantial and specific risk of injury to public health, prejudice to public safety or harm to the environment
- conduct relating to matters of administration affecting someone in their personal capacity falling within the jurisdiction of the Ombudsman

A public authority can receive many different types of complaints. These can range from workplace disputes, through harassment, bullying or occupational health concerns, to allegations of improper conduct or corruption. Not all of these disclosures will be of public interest information to which the Act will apply. Public authorities should establish a chart or matrix or similar for identifying the nature of a complaint to determine if it is a public interest disclosure.

For example, the chart below identifies some of the differences between a grievance to which the Act would not apply and a public interest disclosure.

Grievance	Public Interest Disclosure
Aims to resolve a complaint or dispute.	Does not aim to resolve a grievance or dispute.
Aims to deal with the complaint as close to the source as possible, ie to resolve differences directly between the parties concerned.	This principle is not relevant to the handling of a public interest disclosure.
Usually a dispute between an employee and management, or between two parties.	More than a dispute between two parties – relates to a matter of public interest.

A complainant generally 'owns' the complaint and can withdraw it at any stage.	The informant doesn't 'own' the disclosure once it has been made and cannot withdraw it.
Generally can be resolved by agreement between the parties.	The aim is not to resolve the issue between two or more parties.

2.7 To Whom Must a Public Interest Disclosure Be Made?

A disclosure will only be a public interest disclosure if it is made to the appropriate proper authority. Depending on the nature of the disclosure, the identity of the appropriate proper authority will vary. It is important that the disclosure be made to the appropriate proper authority as disclosures to other persons will not be protected.

The Act only applies to disclosures made to an appropriate proper authority. Disclosures to a journalist, the media or other persons who are not specified as proper authorities are not protected by the Act.

A public interest disclosure may be made internally to the public authority concerned or, in appropriate cases, externally to the proper authorities named in the Act. The named proper authorities are listed in the following chart.

Generally, disclosures about a public authority or its officers or contractors should be made to the Public Interest Disclosure Officer, or PID Officer, of the public authority concerned. The Act requires that each public authority specify a position the holder of which is the PID Officer responsible for receiving disclosures of public interest information.

The PID Officer of a public authority is the proper authority for the disclosure of information relating to a matter falling within the sphere of responsibility of that public authority. The PID Officer should become familiar with procedures. Importantly, the PID Officer has a responsibility to keep up to date with all information made available by the Commissioner for Public Sector Standards. The PID Officer must also comply with the Code of Conduct and Integrity made under the Act.

In some cases a public interest disclosure may be made to an external named proper authority. The authority to which a disclosure ought to be made will vary according to the nature of the information disclosed.

The chart below identifies the appropriate proper authority for each type of disclosure.

Proper authorities for receiving disclosures of Public Interest Information

When the disclosure relates to ...	the proper authority is ...
The sphere of responsibility of a proper authority (matters about the public authority or its officers, or which the public authority has the function of investigating).	The Public Interest Disclosure Officer (PID Officer) of the public authority.

TOWN OF COTTESLOE POLICY

Offences under State law.	A police officer or the Anti-Corruption Commission.
Substantial unauthorised or irregular use of, or substantial mismanagement of, public resources.	The PID Officer of the public authority concerned, or the Auditor General.
Matters of administration affecting someone in their personal capacity falling within the jurisdiction of the Ombudsman	The PID Officer of the public authority concerned or the Ombudsman.
A police officer.	The Commissioner of Police or the Ombudsman.
A Member of the Legislative Council.	The President of the Legislative Council.
A Member of the Legislative Assembly.	The Speaker of the Legislative Assembly.
A judicial officer.	The Chief Justice.
A public officer who is not a member of Parliament, a Minister, a Judicial Officer or a Commissioned or other officer specified in schedule 1 of the <i>Parliamentary Commissioner Act 1971</i> .	The PID Officer of the public authority concerned, the Ombudsman or the Commissioner for Public Sector Standards.
A person or a matter of a prescribed class.	A person declared by the regulations to be a proper authority.

Important Note: In addition, the information disclosed must be public interest information as defined in the Act.

Not all proper authorities to which a disclosure may be made will be required or have the power to investigate the information disclosed. In some cases it may be necessary for the informant or information to be referred to another proper authority with power to investigate the information.

2.8 Can a Disclosure of Public Interest Information be made to more than one Proper Authority?

Yes – the Act refers to a disclosure being made to more than one proper authority. In such a case the protection and obligations created by the Act will apply to each of the disclosures.

A public authority may not have to investigate a matter raised by a public interest disclosure where it considers that the matter is being or has been adequately investigated by another person to whom a disclosure under the Act has been made.

In some cases the proper authority to which the disclosure is made may refer the matter to some other person having power to investigate the matter.

In general, a disclosure about a public authority or its officers or contractors, or a disclosure falling within the sphere of responsibility of a public authority, should in the first instance, be made to the public authority concerned.

2.9 No Time Limit on a Disclosure

A disclosure may relate to matters that occurred before the commencement of the Act. There is no time limit to the retrospectivity of a disclosure. However, a claim cannot be made in relation to victimisation that occurred prior to the Act coming into effect on 1 July, 2003.

2.10 Can Information Protected by Legal Professional Privilege be Disclosed?

The Act does not protect disclosures of information protected by legal professional privilege. Legal professional privilege protects confidential communications between public authorities and their legal advisers, and associated documents. This protection exists where the communication was made or document was created for the dominant purpose of:

- Obtaining or giving legal advice; or
- With reference to current or contemplated litigation.

3. Dealing with Public Interest Disclosures

3.1 How Should a Public Interest Disclosure be Made?

The Act does not specify a form in which an appropriate disclosure of public interest must be made.

However, each public authority is required to prepare and publish internal procedures relating to the authority's obligations under the Act. These internal procedures will need to provide for the manner in which disclosures of public interest information may be made to the public authority concerned.

The internal procedures will need to provide for making a written record of the information disclosed, which clearly identifies the disclosure as a public interest disclosure made under the Act. This is necessary to enable public interest disclosures to be identified for reporting purposes, and to be distinguished from ordinary complaints made to the public authority. This provision is also necessary to ensure that the information is identified as information to which the protection and confidentiality provisions of the Act apply.

3.2 Must a Public Interest Disclosure be Investigated?

A proper authority is not obliged to investigate every public interest disclosure made to it. Generally, a proper authority must investigate information disclosed under the Act where:

- the disclosure relates to the proper authority, its officers or contractors
- the disclosure relates to a matter or person that the proper authority has a function or power to investigate (for example, where a police officer may investigate an offence committed in a Department)

A proper authority may refuse to investigate, or discontinue an investigation, where it considers that:

- 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 occurrence of the matter

- 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

The obligations in relation to investigations do not apply to the Anti-Corruption Commission or the Ombudsman where they have functions in relation to the disclosure under their own legislation. These provisions are made in the legislation.

The Act does not give proper authorities investigative powers that they do not otherwise have. The proper authority must look to the other legislation which they operate under for their investigative powers.

Where a proper authority lacks sufficient power to effectively investigate the matter, but the information received causes the proper authority to form the opinion that a public body has engaged in improper conduct, the proper authority may need to refer the matter to another investigative body.

3.3 What Action Must a Proper Authority Take Following an Investigation?

A proper authority is only required to take action following an investigation if it forms the view that a person may be, may have been, or may in the future be, involved in improper conduct to which the Act applies. If the proper authority does not form that view after undertaking the investigation that is within its power, it is not required to take further action other than reporting to the informant and recording the outcome.

If the proper authority forms the view that a person may be, may have been, or may in the future be, involved in improper conduct to which the Act applies, then it will be required to take action in relation to the matter.

In taking that action the proper authority remains limited by the powers and functions that are conferred by the legislation under which the authority operates. The Act does not give the proper authority additional powers to take action.

As well as being limited to matters within the function and powers of the proper authority, the action to be taken is guided by what is necessary and reasonable.

Having regard to those matters, the proper authority must take action to:

- prevent the matter to which the disclosure relates from continuing or occurring in future
- refer the matter to the Commissioner of Police or another person, body or organisation having power to investigate the matter
- take disciplinary action or commence or enable disciplinary proceedings to be commenced against a person responsible for the matter

These options are not mutually exclusive, and a proper authority may take more than one of the indicated steps, for example, to seek to terminate the employment of an officer caught stealing and refer the matter to the police.

Before taking preventative or disciplinary action the proper authority is to afford any person against whom, or in respect of whom, the action is to be taken the opportunity to make a submission, either orally or in writing, in relation to the matter.

The above obligations to take action do not apply to the Anti-Corruption Commission or the Ombudsman where they have functions in relation to the disclosure under their own legislation. Provision relating to their actions after investigation is made in their legislation.

3.4 Is the Informant Given Details of the Investigation and Action Taken?

Where a proper authority refuses to investigate information disclosed under the Act, or discontinues an investigation, it must give the informant reasons for doing so.

Within three months after a public interest disclosure is made the proper authority must notify the informant of the action taken or proposed to be taken in relation to the disclosure.

An informant may also request a progress report.

If an investigation is not complete, the proper authority may provide a progress report on the current status of the investigation to the informant.

If an investigation is complete, the proper authority must provide a final report to the informant stating the outcome of the investigation and the reason for taking action following the investigation.

In providing information and reports to informants, a proper authority must not give information that, in its opinion, would be likely to adversely affect:

- any person's safety
- the investigation of an offence or possible offence
- necessary confidentiality about the existence or identity of another person who has made a disclosure of public interest information under the Act

The obligations to report do not apply to the Anti-Corruption Commission or the Ombudsman where they have functions in relation to the public interest disclosure under their own legislation.

3.5 Can an Informant Withdraw a Public Interest Disclosure?

No. Once a disclosure of public interest information is made, a proper authority is required to investigate it and take action regardless of the subsequent attitude of the informant.

In addition, an informant may forfeit the protection given by the Act if they fail, without reasonable excuse, to assist a person investigating the matter to which the information relates by supplying any information requested, unless a court otherwise orders.

3.6 What if an Informant Does Not Agree with the Action Taken by the Proper Authority?

The Act does not provide for any right of appeal against decisions of an appropriate authority as to investigations and subsequent action.

If an informant is dissatisfied with a decision made by a proper authority, they may make a further disclosure of the information to another proper authority. For example, where an informant is dissatisfied with the response to a public interest disclosure about a matter of administration made to a PID Officer of a Department, the informant may disclose the information to the Ombudsman.

However, a proper authority to which a subsequent disclosure is made need not investigate the matter if it considers the matter has been adequately or properly investigated by another proper authority. In deciding whether this is the case, the second proper authority may need to contact the authority that has already dealt, or is already dealing, with the information in relation to its investigation.

3.7 Record Keeping

It is extremely important that comprehensive and secure records are kept for each disclosure made.

As well as being normal administrative practice, keeping proper records enables a proper authority to give account of their decisions and actions. The period for which any record should be kept and the manner of disposal must be in accordance with the provisions of the *State Records Act 2000*.

Additionally, the Act requires all proper authorities to provide to the Commissioner for Public Sector Standards annual information about the number of disclosures received, investigations conducted and actions taken.

3.8 Code of Conduct and Integrity

Any person to whom a public interest disclosure may be made must comply with the Public Interest Disclosure Code of Conduct and Integrity.

4. Confidentiality and Protection for Informants

4.1 What Protection Does the Act Provide to Informants?

The Act offers protection to informants by:

- providing for immunity from legal or other action in relation to the disclosure
- providing for an offence of reprisal
- providing for civil remedies for acts of victimisation
- providing for confidentiality of the identity of the informant, subject to exceptions
- requiring public authorities to provide protection from detrimental action for informants who are their employees

4.2 What Immunity do Informants Have?

Making an appropriate disclosure of public interest information to a proper authority does not result in an informant:

- incurring any civil or criminal liability
- being liable to any disciplinary action under State law
- being liable to be dismissed or have his or her services dispensed with or otherwise terminated
- being liable for any breach of a duty of secrecy or confidentiality or any other applicable restriction on disclosure

4.3 Is it an Offence to take Reprisals against an Informant?

Yes. A person must not take, or threaten to take, detrimental action against another because someone has made, or intends to make, a disclosure under the Act. This is the offence of reprisal.

Detrimental action for these purposes includes action causing:

- injury, damage, or loss
- intimidation or harassment
- adverse discrimination, disadvantage, or adverse treatment in relation to a person's career, profession, employment, trade or business
- a reprisal

A person who attempts to commit the offence of reprisal, or incites another to commit that offence, is also guilty of this offence.

The maximum penalty for the offence of reprisal is a fine of \$24,000 or imprisonment for two years.

4.4 What Remedies does an Informant have against Victimisation?

A person who takes or threatens to take detrimental action against another because someone has made, or intends to make, a disclosure of public interest information commits an act of victimisation.

A person who is subject to detrimental action may either take civil proceedings for damages or make a complaint under the *Equality Opportunity Act 1984*. Instituting one of these alternative avenues of relief extinguishes the other.

Civil proceedings may be taken against either the perpetrator of the act of victimisation or any employer of the perpetrator. For example, the employer of the perpetrator may be:

- the State, in the case of public service officers
- the public authority which employs the perpetrator
- a public sector contractor whose employees engage in victimisation

However, an employer may have a defence to civil proceedings for damages where it proves that it:

- was not knowingly involved in the act of victimisation
- did not know and could not reasonably be expected to have known about the act of victimisation

- could not, by the exercise of reasonable care, have prevented the act of victimisation

4.5 Is an Informant's Identity to be Kept Confidential?

Generally, a person must not make a disclosure of information that might identify or tend to identify anyone as a person who has made an appropriate disclosure of public interest information under the Act.

This prohibition against disclosure applies both to disclosures that identify an informant and disclosures that might tend to identify an informant. For example, to disclose that a young woman in a small accounts section has made a public interest disclosure about irregularities she has detected in the accounts of a particular public authority might tend to identify the informant, even though she is not named.

Exceptions arise where the disclosure of an informant's identity:

- is made with the informant's consent
- is made under the Anti-Corruption Commission Act
- is necessary, having regard to the rules of natural justice (see Section E2 in relation to the rules of natural justice)
- is necessary to enable the matter to be investigated effectively

In the case of the last two bullet points, the person making the disclosure must take all reasonable steps to inform the person whose identity is to be disclosed:

- that the disclosure is being made
- the reasons for the disclosure being made

Those steps to inform the person must be taken a reasonable time before the identifying disclosure is made.

A breach of these confidentiality requirements is an offence punishable with a penalty of \$24,000 or imprisonment for two years.

5. Managing Person(s) Subject to Disclosure

5.1 Is the Identity of a Person about whom a Disclosure is made to be kept Confidential?

The protection that the Act gives to the informant is largely mirrored in the protection offered to a person to whom disclosed public interest information relates.

A person must not make a disclosure of 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 under the Act.

Exceptions arise where:

- the disclosure is made with the consent of that person
- the disclosure is made under the Anti-Corruption Commission Act
- the disclosure is necessary to enable the matter to be investigated effectively

- the disclosure is necessary in the course of taking action following the investigation
- 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

A breach of these confidentiality requirements is an offence punishable with a penalty of \$24,000 or imprisonment for two years.

5.2 Providing Natural Justice

The Act requires that natural justice, or procedural fairness, be accorded to those who may be the subject of a public interest disclosure. An exception to the obligation to keep identifying information confidential arises where, having regard to the rules of natural justice, disclosing identifying information is necessary.

The rules of natural justice will generally include a requirement that, before disciplinary or other action is taken against them, those subject to a disclosure be given the opportunity to:

- be informed of the substance of the allegations
- make a submission, either orally or in writing, in relation to the matter

The precise requirements of the rules of natural justice will vary according to the circumstances, and legal advice should be obtained in a case where there is any doubt as to these requirements.

6. Roles and Responsibilities of Public Authorities

6.1 What is the Role of the Commissioner for Public Sector Standards?

The role of the Commissioner for Public Sector Standards under the Act is to:

- develop a Code setting out the minimum standards of conduct and integrity to be complied with by proper authorities
- monitor compliance with the Act and Code
- assist public authorities and public officers to comply with the Act and Code
- prepare and publish guidelines on internal procedures relating to the functions of a proper authority under the Act
- report annually to Parliament on the performance of his/her obligations and the compliance or non-compliance with the Act and Code
- at any time report to Parliament on any matter arising in connection with the exercise of his/her functions under the Act

6.2 What are the Responsibilities of Public Authorities?

The principle executive officer of a public authority must ensure that his or her public authority complies with the Act and Code.

In particular, the principal executive officer must:

- designate the occupant of a specified position as the person responsible for receiving disclosures of public interest information

- prepare and publish internal procedures relating to the authority’s obligations under this Act, which are consistent with the guidelines published by the Commissioner for Public Sector Standards

The principal executive officer must also provide protection from detrimental action or the threat of detrimental action for any employee of the public authority who makes an appropriate disclosure of public interest information.

There is also an obligation to report to the Commissioner for Public Sector Standards annually on:

- the number of disclosures made to the public authority under the Act
- the outcome of investigations conducted as a result of disclosures
- the action taken as a result of the investigation
- other matters prescribed (at present it is not contemplated that other matters will be prescribed)

In order to enable these reports to be consolidated into the Commissioner’s report to Parliament, it will be necessary for the information to be provided in a common format. These guidelines will provide for a reporting format, and the internal procedures that each public authority is required to establish will need to implement these requirements.

6.3 Roles and Responsibilities of Persons Directly Involved in a Public Interest Disclosure

In the case of a typical public interest disclosure there will be a number of people involved with different roles and responsibilities.

The main players and their principal roles and responsibilities are noted in the chart below. A more detailed description of the rights and obligations of these individuals is given elsewhere in these guidelines, and reference should be made to the preceding sections, as well as this chart, in determining rights and responsibilities.

Who	Role and Responsibilities
The informant	<ul style="list-style-type: none"> • Makes a Public Interest Disclosure. • Maintains confidentiality of the information disclosed and, in particular, the identity of the persons to whom the information relates.
The proper authority	<ul style="list-style-type: none"> • Receives a Public interest Disclosure. • Considers whether an investigation is required. • Carries out, or causes to be carried out, any investigation. • Maintains confidentiality of the identity of the informant and persons subject to the disclosure, in accordance with the requirements of the Act. • Takes action following an investigation, where appropriate. • Provides appropriate reports of investigation and action taken to informant.

	<ul style="list-style-type: none"> • Creates and maintains proper records in relation to disclosure. • Keeps statistics of disclosures made. • Acts in accordance with the rules of natural justice or procedural fairness.
The person about whom the disclosure is made	<ul style="list-style-type: none"> • May be subject to investigation and other action if improper conduct is established. • Maintains confidentiality of the identity of the informant.
An investigating officer	<ul style="list-style-type: none"> • May conduct investigations of public interest information on behalf of a proper authority, within the terms of reference given. • Maintains confidentiality of the identity of the public interest informant and persons subject to the disclosure, in accordance with the requirements of the Act. • Makes and keeps secure, comprehensive records of any investigation undertaken.

7. Further Information

For information about agency roles generally, contact:

Office of the Commissioner for Public Sector Standards

17th Floor
 St Martin's Tower
 44 St Georges Terrace
 PERTH WA 6000

Telephone: (08) 9260 6600
 Fax (08) 9260 6611
 National Relay Service 133677
 Website: www.wa.gov.au/opssc/
 Email: pssc@opssc.wa.gov.au

For advice on information related to an act or omission that constitutes an offence under a written law contact:

Anti-Corruption Commission

PO Box Z5068
 St Georges Terrace
 PERTH WA 6831

Level 11, 66 St Georges Terrace
 PERTH WA 6000

Telephone: 9213 4300

Outside Metro: 1800 653 622
Facsimile: 9322 4329
Website: www.acc.wa.gov.au

Commissioner of Police

Police Headquarters
2 Adelaide Terrace
EAST PERTH WA 6004

Telephone: 9222 1497
Facsimile: 9222 1520
Website: www.police.wa.gov.au

For information about proper use and management of public resources, and more generally on public authorities' accountability and performance requirements contact:

Office of the Auditor General

4th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

Telephone: 9222 7500
Facsimile: 9322 5664
Website: www.audit.wa.gov.au

On what constitutes matters of administration and what can be investigated under section 14 of the *Parliamentary Commissioner Act 1971* contact:

State Ombudsman

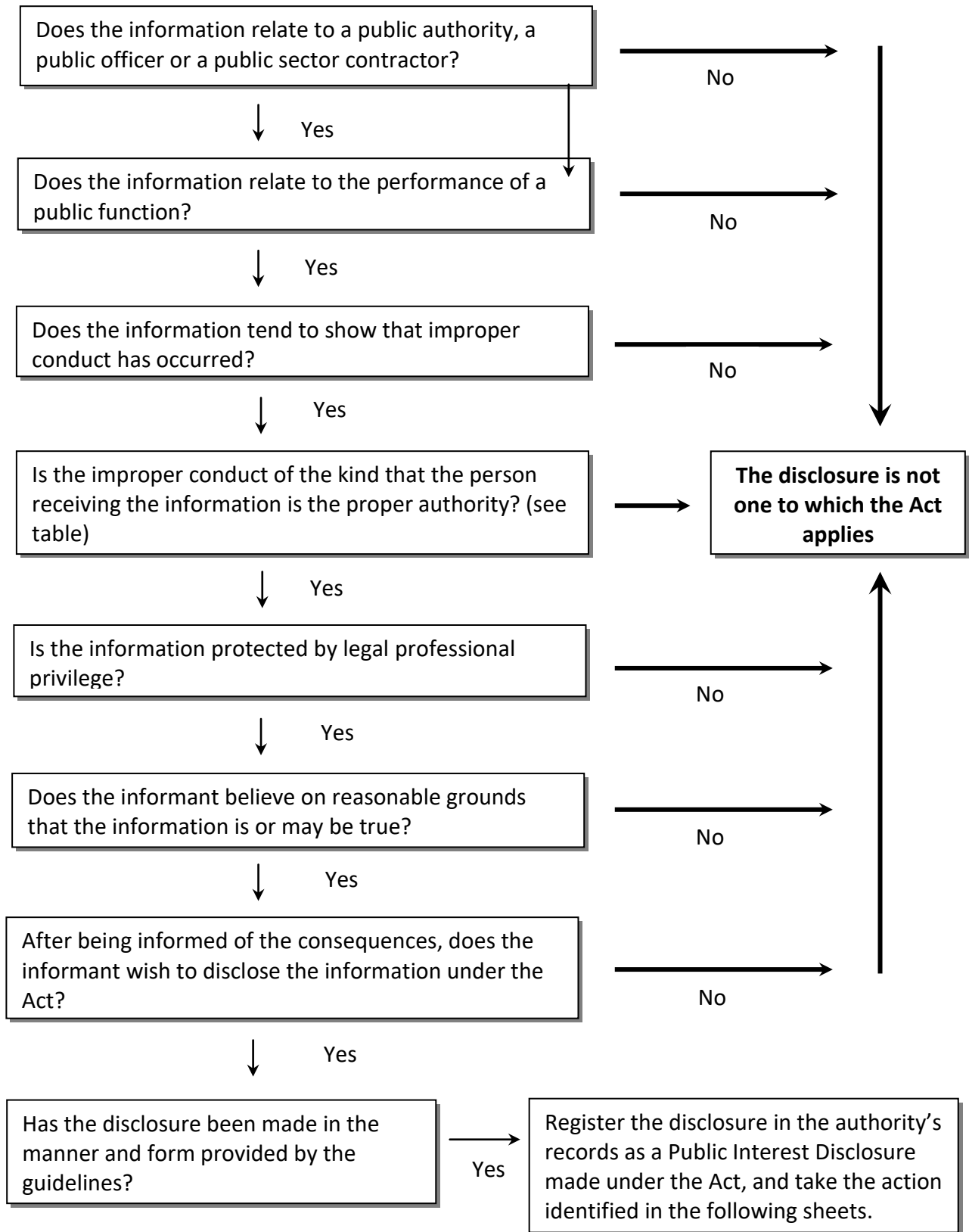
PO Box Z5386
St Georges Terrace
PERTH WA 6831

Level 17, 44 St Georges Terrace
PERTH WA 6000

Telephone: 9220 7555
Outside Metro: 1800 117 000
Facsimile: 9325 1107
Website: www.ombudsman.wa.gov.au

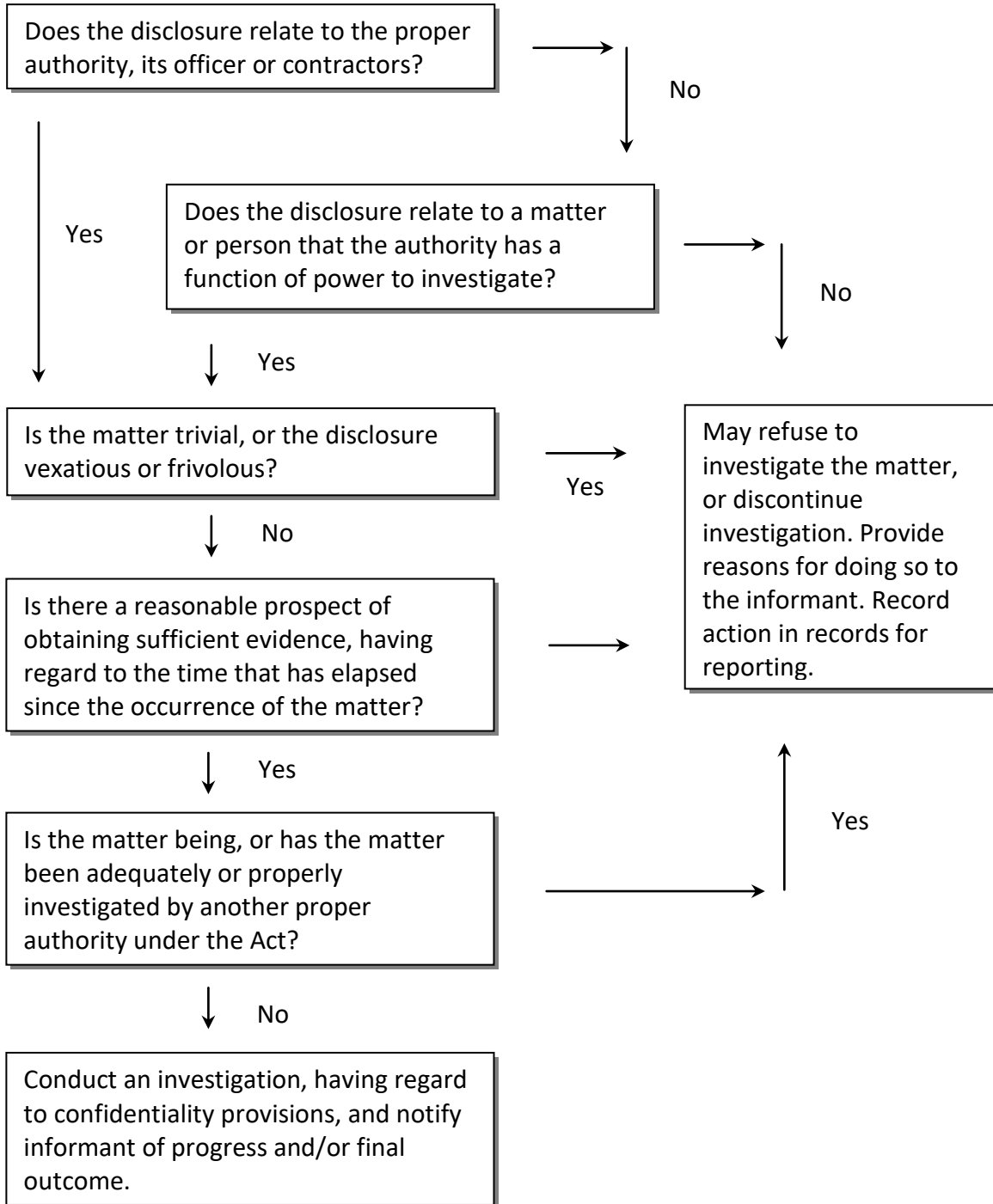
PUBLIC INTEREST DISCLOSURE – APPENDIX TWO

FLOWCHART FOR RECEIVING DISCLOSURES



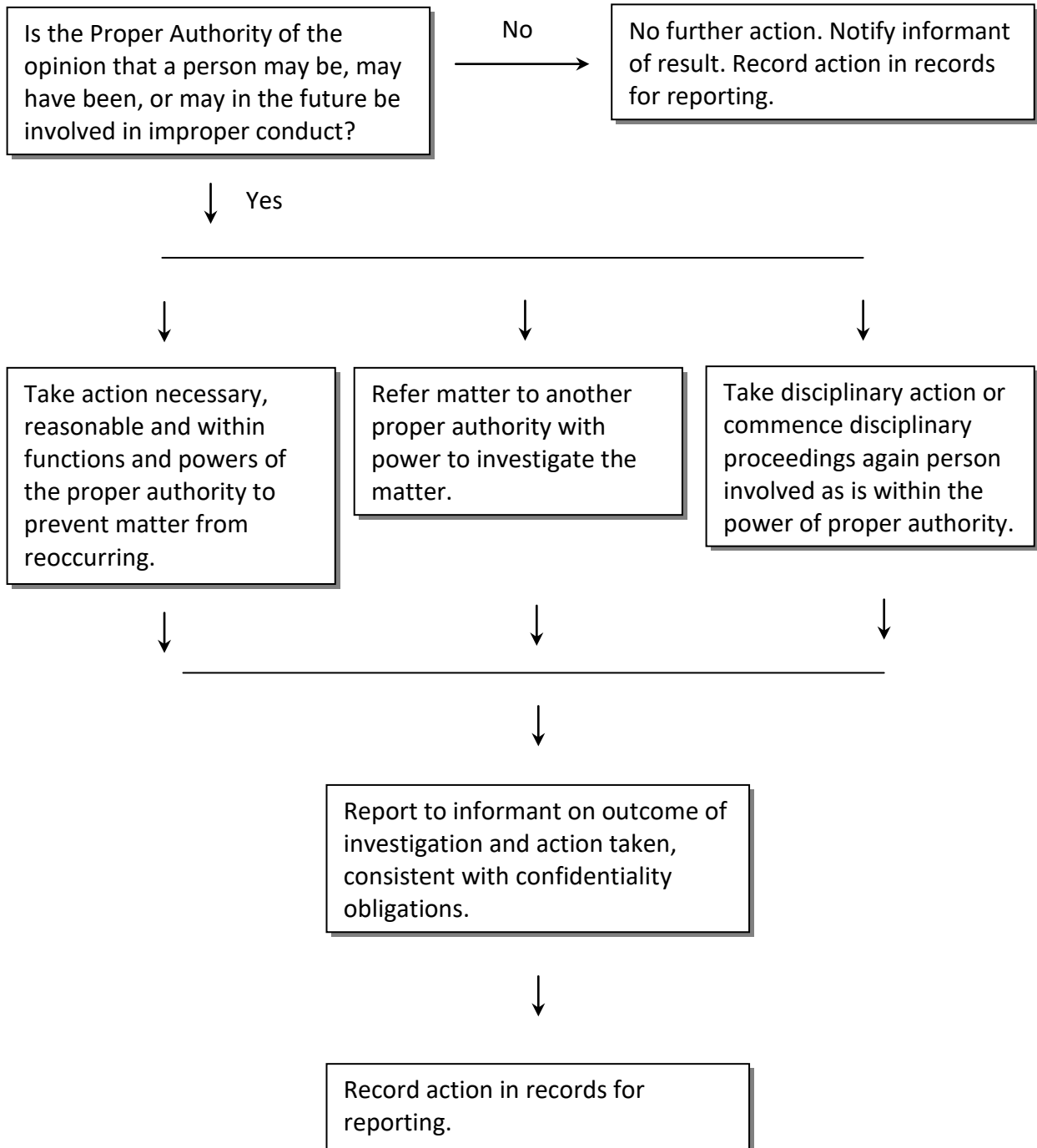
PUBLIC INTEREST DISCLOSURE – APPENDIX THREE

FLOWCHART FOR INVESTIGATING INFORMATION DISCLOSED



PUBLIC INTEREST DISCLOSURE – APPENDIX FOUR

FLOWCHART FOR TAKING ACTION AFTER INVESTIGATION



PUBLIC INTEREST DISCLOSURE – APPENDIX FIVE

PUBLIC INTEREST DISCLOSURE REGISTER

• **Disclosure Number:** _____

• **Disclosure Code (Unique Register No)** _____

• **Person Making the Disclosure (Informant)**

Name of informant: _____

Gender of informant: _____

Name of public authority employing the informant (if applicable) _____

Relationship of informant to public authority about which disclosure is made _____

• **First Public Authority about which the Disclosure is made**

Name of public authority _____

Individuals named in the disclosure _____

• **Second Public Authority about which the Disclosure is made**

Name of public authority _____

Individuals named in the disclosure _____

• **Nature of Disclosure**

Type of disclosure _____

Brief description of nature of disclosure _____

• **Investigation Process and Action Taken**

Investigation undertaken Yes No

Reason if no investigation or investigation discontinued _____

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Outcome of investigation _____

Brief description of results of Investigation _____

Brief description of action taken if investigation has substance _____

• **Key Dates**

Date lodged _____

Date of decision on whether to investigate _____

Date Investigation completed or discontinued _____

Date of decision on action to be taken _____

• **Communication with Informant**

Total number of written progress reports to informant _____

	Yes/No	Date
First advice to informant of action taken or proposed within 3 months		
Reasons given if no investigation or Investigation discontinued		
Final report requested by informant		
Final report provided to informant		

• **Disclosure of Identity of Informant**

	Yes/No	Date
Informant's identity disclosed		
Informant advised of reasons for disclosure		
Claim of unlawful disclosure made		
Reason for disclosure of identity		

• **Disclosure of Identity of Persons Named in the Disclosure**

	Yes/No	Date
Person's identity disclosed		
Person advised of reasons for disclosure		
Claim of unlawful disclosure made		
Reason for disclosure of identity		

• **Unlawful Disclosure of Informant's Identity**

Outcome of investigation _____

Brief description of results of investigation _____

Brief description of action taken if claim has substance _____

• **Unlawful Disclosure of Identity of Person Named in Disclosure**

Outcome of investigation _____

Brief description of results of investigation _____

Brief description of action taken if claim has substance _____

• **Claim of Victimization**

Claim of victimisation made Yes No Date

Brief description of nature of claim of victimisation _____

Internal or Equal Opportunity Commission Investigation _____

- **Internal Handling of Victimisation Claim (if applicable)**

Outcome of investigation _____

Brief description of results of investigation _____

Brief description of action taken if claim has substance _____

- **Victimisation Claims Lodged with Equal Opportunity Commission (if applicable)**

Outcome of investigation _____

Brief description of results of investigation _____

Brief description of action taken if claim has substance _____

All information required for the annual report to the Commissioner for Public Sector Standards will be extracted from this register.

The register, both in electronic and hardcopy forms, is to be kept strictly confidential and in a secure place.

PUBLIC INTEREST DISCLOSURE – APPENDIX SIX

STAFF INFORMATION

What Is A Public Interest Disclosure?

The Public Interest Disclosure Act came into effect on 1 July 2003. The Act facilitates the disclosure of public interest information by providing protection for those who make disclosures and those who are the subject of disclosures.

The Town of Cottesloe is committed to the aims and objectives of the Public Interest Disclosure Act 2003. It recognises the value and importance of contributions of staff to enhance administrative and management practices and strongly supports disclosures being made by staff regarding corrupt or other improper conduct.

What do I need to know before making a Disclosure?

The Act deals with disclosures by anyone (not just government employees) but the information must be specific to the following areas:

- | | |
|---|--|
| <input type="checkbox"/> Improper conduct | <input type="checkbox"/> Irregular or unauthorised use of public resources |
| <input type="checkbox"/> An offence under State law, including corruption | <input type="checkbox"/> Substantial unauthorised or irregular use of, or substantial mismanagement of, public resources |
| <input type="checkbox"/> Administration matter(s) affecting you | <input type="checkbox"/> Conduct involving a substantial and specific risk of injury to public health, prejudice to public safety or harm to the environment |

If your information falls outside the above areas then you may still be able to make a complaint, but this will not be a public interest disclosure under the Act.

Before making a disclosure it is important that you are aware of the rights and responsibilities imposed on informants and others under the Act. Three issues are worth highlighting:

- It is an offence to make a disclosure if you know, or are reckless about, it being false and misleading.
- With some exceptions, the public authority will investigate your information and in doing so you will be expected to cooperate.
- You will have to keep your information confidential – or else you may lose protection under the Act and may commit an offence under the Act.

The Act only confers protection where a disclosure is made to an appropriate proper authority. The identity of the appropriate proper authority will vary according to the kind of information to be disclosed.

The Public Interest Disclosure Officer of the Town of Cottesloe is the Manager of Corporate Services, 109 Broome Street, Cottesloe. E-mail council@cottesloe.wa.gov.au
Phone 9285 5060. Fax 9285 5001.

The Manager of Corporate Services is responsible for receiving disclosures of public interest information relating to matters falling within the sphere of responsibility of the Town of Cottesloe.

Proper Authorities for Receiving Disclosures of Public Interest Information

When the disclosure relates to ...	the proper authority is ...
The sphere of responsibility of a proper authority (matters about the public authority or its officers, or which the public authority has the function of investigating).	The Public Interest Disclosure Officer (PID Officer) of the public authority.
Offences under State law.	A police officer or the Anti-Corruption Commission.
Substantial unauthorised or irregular use of, or substantial mismanagement of, public resources.	The PID Officer of the public authority concerned, or the Auditor General.
Matters of administration affecting someone in their personal capacity falling within the jurisdiction of the Ombudsman	The PID Officer of the public authority concerned or the Ombudsman.
A police officer.	The Commissioner of Police or the Ombudsman.
A Member of the Legislative Council.	The President of the Legislative Council.
A Member of the Legislative Assembly.	The Speaker of the Legislative Assembly.
A judicial officer.	The Chief Justice.
A public officer who is not a member of Parliament, a Minister, a Judicial Officer or a Commissioned or other officer specified in schedule 1 of the <i>Parliamentary Commissioner Act 1971</i> .	The PID Officer of the public authority concerned, the Ombudsman or the Commissioner for Public Sector Standards.
A person or a matter of a prescribed class.	A person declared by the regulations to be a proper authority.

Note: In addition, the information disclosed must be public interest information as defined in the Act. Not all proper authorities to which a disclosure may be made will be required or have the power to investigate the information disclosed. In some cases it may be necessary for the informant or information to be referred to another proper authority with power to investigate the information.

What you should ask yourself

Making a disclosure is a serious matter and needs to be fully considered. You should ask yourself:

- Whether you have reasonable grounds to believe the information you are thinking of disclosing is or may be true?
- If the information is something that you think is important to be disclosed because it is in the public interest? The information should not be tied to any personal agenda.
- If you have sought proper advice?
- If you fully understand your responsibilities under the Act if you make a disclosure?

I have made a Disclosure – what next?

After assessing your information the public authority will have to investigate unless it considers:

- the matter to be trivial
- the disclosure to be vexatious or frivolous
- there is no reasonable prospect of obtaining sufficient evidence, due to the lapse of time
- the matter is being, or has already been, adequately or properly investigated by a proper authority under the Act
- the information does not relate to the proper authority, an officer or contractor of the authority or a matter that the proper authority has the function or power to investigate

Will I be kept Informed?

Yes – the public authority must inform you within three months of making the disclosure of what they intend to do about your disclosure.

Where the information is under investigation you will be able to request a progress report.

You are entitled to a report on the outcome and any action taken when the investigation is complete.

What about Confidentiality and my Protection?

As the disclosure is about a public interest matter rather than a specific complaint, the Act requires confidentiality to be maintained on:

- The identity of the person making the disclosure
- The identity of any person named in the disclosure

There are exceptions to these rules and anyone thinking of making a disclosure should seek advice from OPSSC on these prior to making a disclosure.

A person making a disclosure is provided with protection under the Act for:

- any reprisals
- civil and criminal liability in the event of making a disclosure
- dismissal or having services dispensed with
- breach of confidentiality or secrecy agreements

A person alleging victimisation as a result of a disclosure can complain to the Equal Opportunity Commission or may be able to take civil action. (the Equal Opportunity Commission is at Level 2 Westralia Square 141 St Georges Terrace. Telephone (08) 9216-3900 or via its Website eoc@equalopportunity.wa.gov.au).

After the Investigation

After making a disclosure you will not normally be required to do anything else other than cooperate with an investigation. If you are unhappy with the public authority's response to your disclosure there is no right of appeal under the Act to challenge the public authority's actions. You may, however, be able to make another disclosure to a different proper authority.

Victimisation and Reprisals

The Town of Cottesloe will take all reasonable steps to provide protection to staff who make such disclosures from any detrimental action in reprisal for the making of a disclosure.

The Town of Cottesloe does not tolerate any of its officers, employees or contractors engaging in acts of victimisation or reprisal against those who make public interest disclosures. These acts should be reported immediately to the Public Interest Disclosure Officer or the CEO.

Named Proper Authorities

When a public authority deals with a relevant disclosure it is referred to in the Act as a proper authority. There are some public authorities that are named as proper authorities in the Act that may be able to offer you assistance. These are listed below.

- The Anti-Corruption Commission will be able to provide advice on corruption. Telephone (08) 9213-4300 Website: www.acc.wa.gov.au
- The Ombudsman will be able to provide advice on matters of administration. Telephone (08) 9220-7555 Website: www.ombudsman.wa.gov.au
- The Office of the Auditor General will be able to provide advice on proper use and management of public resources and more generally public authorities' accountability and performance requirements.
Telephone (08) 9222-7500 Website: www.audit.wa.gov.au
- The Police Service will be able to provide advice on offences under a State law.
Telephone (08) 9222-1111 Website www.police.wa.gov.au
- The Office of the Public Sector Standards Commissioner will be able to provide assistance to public authorities and public officers to comply with the Code of Conduct and Integrity, and with the Act. Telephone (08) 9260-6600 Website www.wa.gov.au/opssc/

PUBLIC INTEREST DISCLOSURE – APPENDIX SEVEN

FORMS

Form One Public Interest Disclosure Officer’s Declaration

Form Two Assessment Form for Public Interest Disclosure

Part One – Receiving the Disclosure – Assessment of Whether Information is a Valid Disclosure

Form Two Assessment Form for Public Interest Disclosure

Part Two – Internal Quality Control

Form Two Assessment Form for Public Interest Disclosure

Part Three – Assessment of Whether the Disclosure Should be Investigated

Form Two Assessment Form for Public Interest Disclosure

Part Four – Investigation

Form Two Assessment Form for Public Interest Disclosure

Part Five – Further Action

Form Three Public Interest Disclosure Lodgement Form

Form Four Consent to Disclosure of Identifying Information

Form Five Notification of Disclosure of Identifying Information

PUBLIC INTEREST DISCLOSURE – FORM ONE

PUBLIC INTEREST DISCLOSURE OFFICER’S DECLARATION

To: The Office of The Public Sector Standards Commissioner
17th Floor St Martins Tower
44 St Georges Terrace
Perth WA 6000
Facsimile: (08) 9260 6611
Email: pssc@opssc.wa.gov.au

Name of PID Officer: _____

Position of PID Officer in Public Authority: Manager of Corporate Services

Name of Public Authority: Town of Cottesloe

Address: 109 Broome Street, Cottesloe WA 6011

Telephone: 9285 5060

Facsimile: 9285 5001

Email: _____

Date of Commencement as PID Officer: _____

I declare that I understand my obligations as a PID Officer for the Town of Cottesloe.
In particular, I am aware that it is an offence to make a disclosure of information that might identify or tend to identify anyone:

- as a person who has made a public interest disclosure under the Act, or
- as a person in respect of whom such a disclosure has been made,

except in accordance with the Act.

Signed: _____

Date: _____

PUBLIC INTEREST DISCLOSURE – FORM TWO

ASSESSMENT FORM FOR PUBLIC INTEREST DISCLOSURE – PART ONE

Receiving the Disclosure – Assessment of Whether Information is a Valid Disclosure

	Tick Box	Notes
Does the disclosure relate to a public authority, a public officer or a public sector contractor?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Does the information relate to the performance of a public function?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Does the information tend to show matters which public information can relate?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Does the information tend to show public interest information for which the person receiving the information is the proper authority?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Does the informant believe on reasonable grounds that the information is or may be true?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
After being informed of the consequences, does the informant wish to disclose the information under the Act?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

If any of the 'No' boxes have been ticked then the disclosure is unlikely to be one that the Public Interest Disclosure Act applies to. The PID officer should ensure a proper record is made of the reasons for the 'No' response and should provide his or her response to the informant.

Matter to which public interest information can relate:

- Improper conduct.
- An offence against State law.
- An unauthorised or irregular use of public resources.
- A substantial mismanagement of public resources.
- Conduct involving a substantial and specific risk of injury to public health, prejudice to public safety or harm to the environment.
- Conduct relating to a matter of administration affecting someone in their personal capacity that falls within the jurisdiction of the Ombudsman.

PUBLIC INTEREST DISCLOSURE – FORM TWO

ASSESSMENT FORM FOR PUBLIC INTEREST DISCLOSURE – PART TWO

Internal Quality Control

Does the disclosure meet the manner and form required by the Internal Procedures of the Town of Cottesloe?	<input type="checkbox"/> Yes <input type="checkbox"/> No	If no, explain why
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Signature

I, the Public Interest Disclosure Officer for the Town of Cottesloe confirm that the disclosure made to me on the _____ day of _____ 20____ by _____ (informant's name) is registered as a disclosure under the *Public Interest Disclosure Act 2003* in the Public Interest Disclosure Register of the Town of Cottesloe.

Signed: _____
(PID Officer)

Date: _____

PUBLIC INTEREST DISCLOSURE – FORM TWO

ASSESSMENT FORM FOR PUBLIC INTEREST DISCLOSURE – PART THREE

Assessment of Whether the Disclosure Should be Investigated

	Tick Box	Notes
Does the disclosure relate to the proper authority, its officers or contractors?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Does the disclosure relate to a matter or person that the authority has a function or power to investigate?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Note: If any of the 'No' boxes have been ticked then the disclosure is unlikely to be one that the Public Interest Disclosure Act requires be investigated. The PID officer should ensure a proper record is made of the reasons for the 'No' response and should provide his or her response to the informant.

	Tick Box	Notes
Is the matter trivial?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is the disclosure vexatious?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is the disclosure frivolous?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Note: If any of the 'Yes' boxes have been ticked then the disclosure is unlikely to be one that the Public Interest Disclosure Act requires be investigated. The PID officer should ensure a proper record is made of the reasons for the 'Yes' response and should provide his or her response to the informant.

	Tick Box	Notes
Is there a reasonable prospect of obtaining sufficient evidence, having regard to the time that has elapsed since the occurrence of the matter?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Note: If the 'No' box has been ticked then the disclosure is unlikely to be one that the Public Interest Disclosure Act requires be investigated. The PID officer should ensure a proper record is made of the reasons for the 'No' response and should provide his or her response to the informant.

TOWN OF COTTESLOE POLICY

	Tick Box	Notes
Is the matter being, or has the matter been, adequately or properly investigated by another proper authority under the Act?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Note: If the 'Yes' box has been ticked then the disclosure is unlikely to be one that the Public Interest Disclosure Act requires be investigated. The PID officer should ensure a proper record is made of the reasons for the 'Yes' response and should provide his or her response to the informant.

Signature

I, the Public Interest Disclosure Officer for the Town of Cottesloe confirm that the public interest disclosure made to me on the _____ day of _____ 20__ by _____ (informant's name) in my opinion meets/does not meet (delete one) the requirements for a public interest disclosure to be investigated.

I also confirm that I have recorded this opinion in the Public Interest Disclosure Register of the Town of Cottesloe.

Signed: _____
(PID Officer)

Date: _____

PUBLIC INTEREST DISCLOSURE – FORM TWO

ASSESSMENT FORM FOR PUBLIC INTEREST DISCLOSURE – PART FOUR

Investigation

Investigating Officer's Name: _____

Normal Designation of Investigating Officer: Manager of Corporate Services

Address: 109 Broome Street, Cottesloe WA 6011

Telephone: 9285 5060

Facsimile: 9285 5001

Email: _____

Date Investigation Authorised by the Proper Authority: _____

Details of Authorisation: _____

Review of the Investigation Process

	Tick Box	Notes
Has the documentation used in the assessment of the disclosure been reviewed?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Was an investigation plan developed?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Were terms of reference developed?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Were people interviewed?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Was confidentiality maintained - of the informant's identity? - of the information disclosed? - of the identity of the subject(s) of the disclosure?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Were natural justice rules followed?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Was a report prepared?		

Note: The investigation process is not prescribed under the Public Interest Disclosure Act, but the above serves as a useful checklist for a proper investigation.

Recommendation

It is recommended that the proper authority form the opinion that:

Signature

I, the investigating officer appointed by Town of Cottesloe to investigate the public interest disclosure No _____ (file reference number) confirm that the above is a summary of my investigation undertaken as a result of a disclosure made in accordance with the *Public Interest Disclosure Act 2003*.

Signed: _____
(Investigating Officer for the Town of Cottesloe)

Date: _____

PUBLIC INTEREST DISCLOSURE – FORM TWO

ASSESSMENT FORM FOR PUBLIC INTEREST DISCLOSURE – PART FOUR

Further Action

	Tick Box	Notes
Does the proper authority accept the recommendation contained in Part Four?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Note: If the 'yes' box has been ticked, please indicate action to be taken by proper authority.

Action Taken by the Proper Authority

	Tick Box	Notes
Take action necessary, reasonable and within functions and powers of proper authority to prevent matter continuing or occurring	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Refer matter to another body with power to investigate the matter	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Take disciplinary action, or commence disciplinary proceedings, against person involved, within power of proper authority	<input type="checkbox"/> Yes <input type="checkbox"/> No	

Note: Report to informant on outcome of investigation and action taken, or to be taken consistent with confidentiality obligations. Record action(s) in records for reporting.

Signature

I, the Public Interest Disclosure Officer for the Town of Cottesloe confirm that the above action was taken or will be taken following the public interest disclosure made by _____ (informant's name) and that I have recorded the outcome of the investigation and the action taken or to be taken in the Public Interest Disclosure Register of the Town of Cottesloe.

Signed: _____
(PID Officer)

Date: _____

PUBLIC INTEREST DISCLOSURE – FORM THREE

PUBLIC INTEREST DISCLOSURE LODGEMENT FORM

This is an official lodgement form for a disclosure made under the *Public Interest Disclosure Act 2003*. An informant should ensure that they fully understand the rights and responsibilities required under this legislation before the form is completed and signed. Appropriate advice should be gained before any disclosure is made.

1. Personal Details

Family Name: _____

Given Name: _____

Gender :(please circle) M F Title: (please circle) Mr Ms Mrs Miss

Date of Birth: _____

Home Telephone No: _____

Work Telephone No: _____

Mobile: _____

Email: _____

2. Disclosure Details

Name of the public authority/ public authorities the disclosure relates to:

Do you work for a public authority?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If Yes, which public authority and what is your position title?	
Does the disclosure relate to one or more individuals?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please provide names and positions held by person(s) in the public authority	

TOWN OF COTTESLOE POLICY

Please tick boxes on the area relevant to your disclosure:

- Improper conduct
- An offence under State law, including corruption
- Administration matter(s) affecting you
- Irregular or unauthorised use of public resources
- Substantial unauthorised or irregular use of, or substantial mismanagement of, public resources
- Conduct involving a substantial and specific risk of injury to public health, prejudice to public safety or harm to the environment

When did the alleged events occur? _____

Summary of disclosure:

Description of any documentation provided or names of witnesses

Have you reported this information to any other person or agency?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please provide details	

You should read the following information and sign at the end of this form

3. Acknowledgment

I acknowledge that I believe on reasonable grounds that the information contained in this disclosure is or may be true.

I have been informed and am aware that:

1. I will commit an offence if I know that the information contained in this disclosure is false or misleading in a material particular, or am reckless as to whether it is false or misleading in a material particular.

Penalty: \$12,000 or imprisonment for one (1) year

2. I will forfeit protection provided by the Public Interest Disclosure Act 2003 if I fail, without reasonable excuse, to assist a person investigating the matter by supplying requested information.
3. I will forfeit the protection provided by the Public Interest Disclosure Act 2003 if I subsequently disclose this information to any person other than a proper authority under the Act.
4. I will commit an offence if I subsequently make a disclosure of information that might identify or tend to identify anyone as a person in respect of whom this disclosure has been made under the Public Interest Disclosure Act 2003, except in accordance with section 16(3) of that Act.

Penalty: \$24,000 or imprisonment for two (2) years

Signed: _____

Date: _____

For Office Use Only:

Register Number: _____

PUBLIC INTEREST DISCLOSURE – FORM FOUR

CONSENT TO DISCLOSURE OF IDENTIFYING INFORMATION

Family Name: _____

Given Name: _____

Gender :(please circle) M F **Title:** (please circle) Mr Ms Mrs Miss

Date of Birth: _____

Home Telephone No: _____

Work Telephone No: _____

Mobile: _____

Email: _____

Please tick relevant boxes:

Consent to disclosure of identifying information by Informant

- I consent to the disclosure of information that might identify or tend to identify me as a person who has made an appropriate disclosure of public interest information under the *Public Interest Disclosure Act 2003*.

Consent to disclosure of identifying information by person in respect of whom a public interest disclosure has been made

- I consent to the disclosure of information that might identify or tend to identify me as a person in respect of whom a disclosure of public interest information has been made under the *Public Interest Disclosure Act 2003*.

Limitations on consent (optional)

- This consent only applies to disclosures made to the following persons:

- This consent only applies to the following information:

Signed: _____

Date: _____

PUBLIC INTEREST DISCLOSURE – FORM FIVE

NOTIFICATION OF DISCLOSURE OF IDENTIFYING INFORMATION

To:

Title: (please circle) Mr Ms Mrs Miss **Gender :**(please circle) M F

Name (in full): _____

Address: _____

I intend to make a disclosure of information that might identify or tend to identify you as a person who has made an appropriate disclosure of public interest information under the *Public Interest Disclosure Act 2003*.

The disclosure of this information:

Please tick relevant boxes

- Is necessary, having regard to the rules of natural justice.

- Is necessary to enable the matter to be investigated effectively.

The reason(s) why the disclosure of this information is necessary for these purposes / this purpose is that (specify reason):

Important: A person making an identifying disclosure for these reasons must take all reasonable steps to provide this information to the informant a reasonable time before making the disclosure

Signed: _____
(person proposing to make disclosure)

Date: _____

Name: _____

Position: _____

Date: _____

Contact details: _____