



# Public Interest Disclosure Guidelines



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## 1.0 OVERVIEW

This Guideline details the procedures which the Shire of York will comply with under the *Public Interest Disclosure Act 2003*.



It provides 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 discloser as to the progress and outcome of that investigation and the action taken as a consequence.
- The confidentiality of the discloser, 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.

## 2.0 PROCEDURES

### 2.1 Organisational commitment for reporting public interest information

The Shire of York does not tolerate corrupt or other improper conduct.

The Shire of York is committed to the aims and objectives of the *Public Interest Disclosure Act 2003* (PID Act). The PID Act recognises the value and importance of reporting as a means to identify and address wrongdoing.

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

The Shire of York does not tolerate any of its elected members, employees, contractors or subcontractors taking reprisal action against anyone who makes or proposes to make a public interest disclosure.

The Shire of York will take all reasonable steps to protect employees from any detrimental action in reprisal for the making of a public interest disclosure.

The commitment to effectively manage public interest disclosures extends to a proper authority of the Shire of York. The persons responsible for receiving disclosures of public interest information designated under Section 23(1)(a) of the PID Act will abide by the [PID Code of Conduct and Integrity](#) in performing their duties.

The Shire of York is also committed to responding to the disclosure thoroughly and impartially. We will treat all people in the disclosure process fairly, including those who may be the subject of a disclosure.

The Shire of York will provide as much information as possible to people considering making a public interest disclosure. These internal procedures are accessible to all employees and contractors. Copies are available from the designated person appointed as the proper authority (PID Officer) and will be kept on the Shire's electronic records management system.

General information about public interest disclosures and how the Shire of York will manage a disclosure is available for external clients and members of the community on our website [www.york.wa.gov.au](http://www.york.wa.gov.au).

While these procedures focus on public interest disclosures, we are committed to dealing with all reports of suspected wrongdoing. We encourage people to report if they witness any such behaviour. The Shire of York will consider each matter under the appropriate reporting pathway and make every attempt to protect employees making reports from any reprisals.

### 2.2 Purpose of the internal procedures

Our Chief Executive Officer must prepare and publish these internal procedures under Section 23(1)(e) of the PID Act.

These procedures outline how we will meet our obligations under the PID Act. They cover the roles and responsibilities of the Chief Executive Officer, the person designated as the proper authority in accordance with Section 23(1)(a) and Section 5(3)(h) (referred to in this document as the PID Officer), the discloser and the subject of the disclosure.

### 2.3 Scope and application of internal procedures

These procedures apply to all people involved in the public interest disclosure process, including our Chief Executive Officer, PID Officer, employees of the Shire of York and/or any person making a public interest disclosure and any subject(s) of a disclosure.

These procedures should be read in conjunction with:

- [Public Interest Disclosure Act 2003](#)
- [Public Interest Disclosure Regulations 2003](#)
- Shire of York Code of Conduct
- Council Policy G15 - Public Interest Disclosure

The behaviour of all employees involved in the public interest disclosure process must be in accordance with our Code of Conduct at all times. A breach of the Code of Conduct may result in disciplinary action.

#### 2.4 Overview of roles and responsibilities of parties involved in the disclosure process

Person / Role	Responsibilities
Principal Executive Officer (s. 23) (in Shire of York, the Chief Executive Officer)	<ul style="list-style-type: none"> <li>• Designates the occupant of a specified position (a PID Officer) to receive public interest disclosures related to the Shire of York (s. 23(1)(a)).</li> <li>• Provides protection from detrimental action or the threat of detrimental action for any employee of the Shire of York who makes a public interest disclosure (s. 23(1)(b)).</li> <li>• Ensures the Shire of York complies with the PID Act and the Code of Conduct and Integrity established by the Public Sector Commissioner (ss. 23(1)(c) and (d)).</li> <li>• Prepares and publishes internal procedures, consistent with those prepared by the Public Sector Commission, detailing how the Shire of York will meet its obligations under the PID Act (s. 23(1)(e)).</li> <li>• Provides information (s. 23(1)(f)) to the Public Sector Commissioner on the:               <ul style="list-style-type: none"> <li>○ number of disclosures received by the Shire of York.</li> <li>○ results of any investigations conducted as a result of the disclosures.</li> <li>○ action, if any taken, as a result of each disclosure.</li> <li>○ any matters as prescribed.</li> </ul> </li> <li>• May have a role in enabling an investigation to be undertaken or taking disciplinary action against individuals under functions and powers separately from the PID Act.</li> </ul>
The Proper Authority (s.5(3), s.7 and s.18) or PID Officer (s.23(1)(a))	<ul style="list-style-type: none"> <li>• As is designated by ss. 5(3)(a-g) or by the Chief Executive Officer of the Shire of York, under s. 23(1)(a) the PID Officer is to receive disclosures related to the Shire of York.</li> <li>• Provides information to potential disclosers about their rights and responsibilities consistent with the Code of Conduct and Integrity established under s. 20(1).</li> <li>• Receives and manages public interest disclosures in accordance with the PID Act (s. 5(3)).</li> <li>• Notifies the discloser within three months of the disclosure being made about what action is planned in dealing with the disclosure (s. 10(1)).</li> <li>• Where appropriate, investigates, or causes an investigation of, the matters in the disclosures (s. 8(1)).</li> <li>• Where appropriate, provides information to subjects of a disclosure about their rights, responsibilities, duties and potential offences (s. 9(2), s. 14, s. 15, s. 16 and s. 24).</li> <li>• Where appropriate, takes such action as is necessary and reasonable within their functions and powers in accordance with s. 9.</li> </ul>

Person / Role	Responsibilities
	<ul style="list-style-type: none"> <li>• Maintains confidentiality of the identity of the discloser and subject(s) of disclosures in accordance with the requirements of the PID Act (s. 11 and s. 16).</li> <li>• Provides progress reports where requested and a final report to the discloser in accordance with s. 10.</li> <li>• Creates and maintains proper and secure records in relation to the disclosures in accordance with the Code of Conduct and Integrity established under s. 20(1) and the <i>State Records Act 2000</i>.</li> <li>• Completes a PID Register for each disclosure lodged (s. 23(1)(f)).</li> <li>• Acts in accordance with the rules of natural justice (s. 9(2) and s. 16(1)(b)).</li> <li>• Acts in accordance with the Code of Conduct and Integrity established by the Public Sector Commissioner (s. 20(1)) and any authority-specific Code of Conduct established separately from the PID Act.</li> </ul>
The discloser	<ul style="list-style-type: none"> <li>• Makes a public interest disclosure to a proper authority or our PID Officer if the matter relates to the Shire of York (s. 5(1)).</li> <li>• Believes on reasonable grounds the information in their disclosure is, or may be, true (s. 5(2)).</li> <li>• Does not disclose information subject to legal professional privilege (s. 5(6)).</li> <li>• Does not knowingly and recklessly make a false or misleading disclosure (s. 24(1)).</li> <li>• Maintains confidentiality of the information disclosed and the identity of the person(s) to whom the information relates, in accordance with the requirements of the PID Act (s. 16 and s. 17(1)(b)).</li> <li>• Assists any person investigating the matter to which the disclosure relates by supplying the person with any information requested (s. 17(1)(a)).</li> </ul>
The subject of the disclosure (person about whom disclosure is made):	<ul style="list-style-type: none"> <li>• Is afforded the opportunity to make a submission, either orally or in writing, in relation to the matter before preventative or disciplinary action is taken (s. 9(2)).</li> <li>• Maintains confidentiality of the identity of the discloser in accordance with the requirements of the PID Act (s. 16(1)).</li> <li>• Is to be treated in accordance with the rules of natural justice (s. 16(1)(b)).</li> <li>• Does not take or threaten to take detrimental action (defined in s. 3) against a person because they have made or intend to make a disclosure (s. 14(1)).</li> <li>• Does not incite another person to take detrimental action against another because they have made or intend to make a disclosure (s. 14(2)).</li> <li>• Does not commit an act of victimisation by taking or threatening to take detrimental action against the person making or intending to make a disclosure (s. 15(1)).</li> </ul>
An investigating officer:	<ul style="list-style-type: none"> <li>• May investigate matters of public interest information on behalf of a proper authority of the Shire of York, in accordance with the terms of reference given to them.</li> <li>• Maintains confidentiality of the identity of the disclosure and any person(s) subject to the disclosure, in accordance with s. 16.</li> <li>• Makes, and keeps secure, comprehensive records of any investigation undertaken.</li> </ul>

\* All references to Sections (that is, 's' and 'ss.') in this table relate to the PID Act, unless stated otherwise.

## 2.5 What is public interest information?

The PID Act only applies to disclosures of public interest information as defined in Section 3. Public interest information must tend to show the involvement of a person or public authority in:

- Improper conduct.
- An act or omission that constitutes an offence against State law.
- Substantial unauthorised or irregular use of public resources.
- 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.
- A matter of administration that can be investigated under Section 14 of the *Parliamentary Commissioner Act 1971* by the Parliamentary Commissioner (Ombudsman Western Australia).

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 PID Act will apply.

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

### Differences between a grievance 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, i.e. 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 discloser 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

## 2.6 Managing public interest disclosures

The following procedures describe how the Shire of York will manage the public interest disclosure process.

### 1. Overarching requirements of the PID Act

The PID Act has some overarching requirements for handling disclosures. These requirements separate the public interest disclosure process from other reporting or complaint handling processes. The PID Act does not, however, displace the notification or reporting requirements of the *Corruption, Crime and Misconduct Act 2003*, which are paramount. The following section outlines how we will meet these requirements, as well as expectations of you, as a discloser, and any subject(s) of your disclosure.

### 2. Confidentiality

Maintaining confidentiality is an important part of managing a disclosure. The confidentiality requirements of the PID Act (Section 16) not only protects the discloser, but also any other people affected by the disclosure.



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

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

Throughout the disclosure process, and after its completion, the PID Act provides for the discloser's identity, and the identity of any persons that is the subject of a disclosure, to be kept confidential, except in certain circumstances. Disclosing information which might identify, or tend to identify, the disclosers or any person that is the subject of a disclosure, except in accordance with the PID Act, is an offence in accordance with Sections 16(1) and 16(3) of the PID Act.

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

### **3. Confidentiality regarding the discloser**

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

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

Sometimes we may need to identify the discloser without the discloser's consent in accordance with Section 16(1)(b)-(f) of the PID Act, but only 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.
- We are ordered by a court or any other person or body having authority to hear, receive or examine evidence.
- We are required by Subsections 152 or 153 of the *Corruption, Crime and Misconduct Act 2003*.

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

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

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

### **4. Confidentiality regarding the person that is the subject of the disclosure**

The subject of a disclosure may consent to having their identity revealed to assist with the disclosure process in accordance with Section 16(3)(a). Our PID Officer will use the [Consent to Disclosure of Identifying Information Form](#) to record this.

Additionally, we may need to reveal identifying information about the subject(s) of a disclosure without their consent in accordance with Section 16(3)(b)-(g) where:

- It is necessary to do so to enable the matter to be investigated effectively.
- It is necessary to do so in the course of taking action under Section 9.
- There are reasonable grounds to believe that it is necessary to prevent or minimise the risk of injury to any person or damage to any property.

- We are ordered by a court or any other person or body having authority to hear, receive or examine evidence.
- We are required by Subsections 152 or 153 of the *Corruption, Crime and Misconduct Act 2003*.

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

## 5. Protections and immunity

Part 3 of the PID Act provides a range of protections for disclosers 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 discloser, subject to exceptions.
- Requiring public authorities to provide protection from detrimental action for disclosers who are their employees.

It also requires that our Chief Executive Officer provides protection for any employees who make disclosures in accordance with Section 23(1)(b).

Additionally, making an appropriate disclosure of public interest information to a proper authority does not result in a discloser:

- 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.

[Don't be afraid to speak up](#) contains general information about the protections provided by the PID Act.

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 PID Act. This is an 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.**

We are committed to ensuring that no detrimental action, including reprisals by Councillors, managers or other employees occurs as a result of a person making a disclosure. If any of the above does occur, tell the PID Officer immediately so that we can take action to protect them.

The PID Act also provides that the discloser may lose the protections provided in Section 13 in some circumstances, including where they on-disclose information or fail, without reasonable excuse, to assist any person investigating the matters of the disclosure.

## **6. Remedies available to a discloser 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 *Equal 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 PID 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.

## **7. Notification requirements**

The PID Officer will ensure that we complete all reporting in accordance with the legislative and administrative requirements of the PID Act.

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

- Within three months of making a disclosure, the action taken, or proposed to take, in relation to the disclosure in accordance with Section 10(1).
- When the disclosure process has concluded, the outcome of the investigation and the reasons for taking any action following the investigation in accordance with Section 10(4).

Our PID Officer may also provide a progress report during any investigation, either on their initiative or upon your request in accordance with Section 10(2)&(3).

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

- Any person's safety in accordance with Section (1)(a).
- The investigation of an offence or possible offences in accordance with Section (1)(b).
- Confidentiality as to the existence or identity of any other person who made a public interest disclosure in accordance with Section (1)(c).

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

## **8. Recordkeeping**

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

## **9. PID Register**

To assist with annual reporting to the Public Sector Commissioner we will maintain a Public Interest Disclosure Register (the Register). We will assign a unique register number to each disclosure and record key information

about the disclosure, any investigation and the outcome in the Register. The Register (paper and/or electronic) is kept strictly confidential and maintained in a secure location.

## 2.7 How to make a public interest disclosure

### 1. Before you make a disclosure

We strongly encourage anyone thinking about making a public interest disclosure to seek advice from our PID Officer ('proper authority') before they do. A disclosure must be made to a proper authority for it to be covered by the PID Act.

A number of other requirements apply to the discloser, so it is important to understand the rights and responsibilities in the process. This information is outlined generally in [Don't be afraid to speak up](#), available from the Public Sector Commission website at [www.publicsector.wa.gov.au](http://www.publicsector.wa.gov.au).

At the Shire of York the occupant of the following designated position is specified with the authority as the person responsible for receiving disclosures of public interest information in accordance with Section 23(1)(a).

For the purposes of this procedure, a PID Officer is the proper authority designated under Section 5(3)(h) for dealing with information that falls within the sphere of responsibility for the Shire of York.

Their name and contact details are:

Position	Name of PID Officer	Contact details
Council & Executive Support Officer	Vanessa Green	P: 08 9641 0500 E: <a href="mailto:vanessa.green@york.wa.gov.au">vanessa.green@york.wa.gov.au</a>

Initial discussions between the discloser and the PID Officer should be general in nature and should not discuss the specific details of the disclosure until the discloser understands their rights and responsibilities under the PID Act. Our PID Officer will also let the discloser know that they need to make the disclosure voluntarily and consciously – we will never force a person to make a disclosure. This is because they cannot withdraw the disclosure once it is made. Once we receive a disclosure, our PID Officer is obliged to take action and we may continue to look into the matters within the disclosure, irrespective of the discloser's continued approval.

These initial discussions with our PID Officer may help in deciding whether to make a public interest disclosure and also enable the PID Officer to ascertain if the information would be covered by the PID Act. If the information appears not to be the type covered by the PID Act, our PID Officer will discuss other mechanisms through which issues may be made, for example, our general complaints or grievance resolution process.

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

You can also contact the Public Sector Commission Advisory Line on (08) 6552 8888 (or 1800 676 607 for country callers) for general information about the disclosure process.

### What is 'sphere of responsibility'?

Under Section 5(3)(h) the PID Officer for an authority can receive information relating to a matter which falls within the 'sphere of responsibility' for their public authority. 'Sphere of responsibility' is not defined in the PID Act but may include:

- Matters that relate to the Shire of York.
- A public officer or public sector contractor of the Shire of York.
- A matter or person that the Shire of York has a function or power to investigate.

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

the protections of the PID Act. A list of proper authorities and the information they can receive is covered in [Don't be afraid to speak up](#).

## **2. Making the disclosure**

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

However, a discloser needs to clearly identify that they are making a public interest disclosure. For the purposes of accountability and certainty, persons wishing to make a disclosure of public interest information under the PID Act are encouraged to do so in writing. As it is reasonable to assume that most disclosures will be made in writing, the Shire of York has developed a [Public Interest Disclosure Lodgement Form](#) which can be used for the purpose of making such a disclosure, although there is no requirement to use the form. The form will help to define the details of the disclosure. A discloser may fill out the form them self or our PID Officer may complete the form if they are speaking with the discloser and then have the discloser sign the form to acknowledge they are making a disclosure voluntarily and consciously.

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

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

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

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

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

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

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

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

After assessing the disclosure as one to which the PID Act applies, our PID Officer will consider whether it will be investigated, guided by the requirements in Section 8. The reasons a PID Officer may not investigate the disclosure include:

- The matter is trivial.
- The disclosure is vexatious or frivolous.
- There is no reasonable prospect of obtaining sufficient evidence due to the time that has elapsed since the matter(s) occurred.
- The matter is being, or has been, adequately or properly investigated by another proper authority in accordance with Section 5(3).

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

## **5. Referring public interest matters**

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

## **6. Investigating the disclosure**

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

If causing the disclosure to be investigated, our PID Officer will ensure that the person undertaking the investigation understands the requirements of the PID Act, in particular the confidentiality requirements and protections for disclosers. Our PID Officer will only provide the name of the discloser and that of the subject of the disclosure to the investigator in accordance with Section 16 of the PID Act.

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

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

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

Our PID Officer may also decide to discontinue an investigation in accordance with Section 8(2). If this happens, they will give the discloser the reasons for their decision in accordance with Section 8(3), unless the discloser made an anonymous disclosure. The PID Officer may also notify any subject(s) of the disclosure if they discontinue the investigation.

To ensure the disclosure is adequately and properly investigated our PID Officer, or other investigator, will be guided by the procedures contained in this Guideline.

### **Internal investigative procedures**

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

In conducting an investigation relevant to the Shire of York, the following investigative procedures will apply:

- 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 and a report provided to the discloser about the final outcome.
- Ensuring the objectives of the investigation, include collecting and collating information relating to the disclosure, considering the information collected and drawing conclusions, is carried out 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 PID Act, the Shire of York Code of Conduct and PID Code of Conduct and Integrity 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 PID Act.

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

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

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

The PID Act provides the person with some rights and obligations as a person subject to a disclosure. Firstly, the subject has a right to have their identity kept confidential under Section 16(3), unless one of the following conditions apply:

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

We will also provide appropriate natural justice. This means that before we take any disciplinary or other action against the person under Section 9, we will give you the opportunity to:

- Be informed of the substance of the allegation(s).
- Make a submission, either verbally or in writing, in relation to the matter.

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

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

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

### **7. Taking action**

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

Action our PID Officer may take under Section 9 includes, but is not limited to:

- Preventing the matter disclosed from continuing or occurring.
- Referring the matter to the Western Australia Police or other appropriate body.
- Taking disciplinary action against a person responsible for the matter.

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

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

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

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

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

Our PID Officer will keep appropriate records about any action taken, as well as recording a summary of this action in the Public Interest Disclosure Register.

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

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

The PID Act does not provide for you to appeal the outcome of the disclosure process. You may be able to make another disclosure to another proper authority, if the information relates to their functions or sphere of responsibility in accordance with Section 5. See [Don't be afraid to speak up](#) for the correct proper authority for your disclosure.

However, this 'new' proper authority may be able to decline to investigate the disclosure under Section 8, if they consider the matter(s) has already been properly or adequately investigated (as a public interest disclosure).

#### **9. Making a disclosure to a journalist**

The PID Act provides for certain circumstances where a discloser may be able to make a protected disclosure to a journalist in accordance with Section 7A(d). These circumstances apply where the discloser has first made a disclosure to the PID Officer or another proper authority named in the PID Act (as outlined in Section 5 or [Don't be afraid to speak up](#)).

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

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

We are committed to ensuring that we provide the notifications required under the PID Act and that the discloser understands the reasons for our decisions and actions. If a discloser is considering making a disclosure to a journalist because they believe their circumstances meet one or more of the requirements outlined above, we would encourage the discloser to discuss this with the PID Officer prior to disclosure to a journalist.

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



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

#### **10. Contact details and further information**

For further information you may:

- contact the Shire's PID Officer on (08) 9641 0500.
- visit the Shire's website at [www.york.wa.gov.au](http://www.york.wa.gov.au).
- visit the Public Sector Commission's website at [www.publicsector.wa.gov.au](http://www.publicsector.wa.gov.au) or contact their Advisory Line on (08) 6552 8888 or (for country callers) 1800 676 607.

### **3.0 LEGISLATION AND OTHER REFERENCES**

Shire of York Code of Conduct

Council Policy G15 - Public Interest Disclosure

[Public Interest Disclosure Act 2003](#)

[Public Interest Disclosure Regulations 2003](#)

[State Records Act 2000](#)

[Don't be afraid to speak up](#) – Public Sector Commission Publication

[Guidelines](#) – Public Sector Commission

APPENDIX 1

PID CODE OF CONDUCT AND INTEGRITY

## Code of Conduct and Integrity

Established by the Public Sector Commissioner under Section 20 of the *Public Interest Disclosure Act 2003* (PID Act) the Code operates from 1 July 2003 and is to be complied with by any person to whom a disclosure is made under the PID Act.

### The Code

The Code uses as its ethical base the principles of personal integrity, relationships with others and accountability as referred to in the Western Australian Public Sector Code of Ethics.

Consistent with those principles, to meet the minimum standards of conduct and integrity, persons receiving disclosures, must:

- be professional and courteous to those involved in a disclosure, and give prompt attention to all their lawful requirements;
- not use any circumstance or information connected to a disclosure for personal profit or gain;
- take all reasonable steps to seek to ensure informants who make a public interest disclosure are protected in accordance with the provisions specified in the PID Act;
- take all reasonable steps to seek to ensure that persons who are the subject of a disclosure are also provided with appropriate safeguards and protections as specified in the PID Act;
- maintain records that ensure all action taken about the receipt and processing of a disclosure is reviewable;
- declare to an appropriate person, in writing, any interests that may conflict with their obligations to impartially receive and process disclosures;
- immediately report corrupt behaviour that has been, or may be occurring, to an appropriate authority; and
- provide information to the informant about their rights and responsibilities and the possible implications of lodging a public interest disclosure.

Source: Public Sector Commission

## APPENDIX 2

### CONSENT TO DISCLOSURE OF IDENTIFYING INFORMATION FORM



### Consent to Disclosure of Identifying Information Form

*Public Interest Disclosure Act 2003*

Personal details		
Family name		
Given name		
Disclosure No.		(to be completed by proper authority/Public Interest Disclosure (PID) Officer)

Consent	
Consent to disclosure of identifying information by discloser 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 Section 16(1)(a) of the <i>Public Interest Disclosure Act 2003</i> .	<input type="checkbox"/>
Consent to disclosure of identifying information by subject 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 (subject) under Section 16(3)(a) of the <i>Public Interest Disclosure Act 2003</i> .	<input type="checkbox"/>

Limitations on consent	
This consent only applies to disclosures made to the following persons	
This consent only applies to the following information	

Authorisation	
Signature of discloser/subject: <i>(delete as appropriate)</i>	
Date	
Signature of property authority/PID Officer	
Date	

**APPENDIX 3**

**NOTIFICATION OF DISCLOSURE OF IDENTIFYING INFORMATION FORM**



**Notification of Disclosure of Identifying Information Form**

*Public Interest Disclosure Act 2003*

To					
Title	<input type="checkbox"/> Mr	<input type="checkbox"/> Ms	<input type="checkbox"/> Mrs	<input type="checkbox"/> Dr	<input type="checkbox"/> Other:
Given name					
Family name					
Provided by	<input type="checkbox"/> email <input type="checkbox"/> mail <input type="checkbox"/> in person				

**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 section 16 of the *Public Interest Disclosure Act 2003*.**

**The disclosure of this information**

Is necessary, having regard to the rules of natural justice (Section 16(1)(b))	<input type="checkbox"/>
Is necessary to enable the matter to be investigated effectively (Section 16(1)(c))	<input type="checkbox"/>
The reason(s) why the disclosure of this information is necessary is ( <i>specify reason(s)</i> )	
Important: A person making an identifying disclosure for these reasons must take all reasonable steps to provide this information to the discloser within a reasonable time before making the disclosure in accordance with Section 16(2).	

**Authorisation**

Signature of person proposing to make disclosure	
Name	
Position	
Contact details	
Date	

## APPENDIX 4

### PUBLIC INTEREST DISCLOSURE LODGEMENT FORM



### Public Interest Disclosure Lodgement Form

*Public Interest Disclosure Act 2003*

The Shire of York strongly encourages anyone thinking about making a public interest disclosure to seek out a nominated proper authority to discuss their issues first. Our proper authority Public Interest Disclosure (PID) Officer is:

Position	
Name of PID Officer	
Contact details	
<p>Ensure you understand your rights and responsibilities under the <i>Public Interest Disclosure Act 2003</i> (PID Act) before you sign this lodgement form. You may wish to seek external legal advice about those rights and responsibilities. Lodge your public interest disclosure form with the Shire of York's PID Officer, not the Public Sector Commission.</p>	

#### Personal details

Family name					
Given name					
Title	<input type="checkbox"/> Mr	<input type="checkbox"/> Ms	<input type="checkbox"/> Mrs	<input type="checkbox"/> Dr	<input type="checkbox"/> Other
Address					
Work phone					
Mobile					
Email					
<input type="checkbox"/>	<p><i>Tick this box only if the following statement applies:</i></p> <p>I wish to make an anonymous public interest disclosure. I understand that:</p> <ul style="list-style-type: none"> <li>• I will not receive any information about what happens to this disclosure;</li> <li>• it may be more difficult for the proper authority to look into the matter(s) as they cannot come back to me for further information;</li> <li>• it may be more difficult for the proper authority/public authority to protect me; and</li> <li>• this anonymous disclosure may not prevent me from being identified during any investigation or when action is being taken.</li> </ul>				

#### Categories of public interest information

#### Tick relevant box(es)

Improper conduct	<input type="checkbox"/>
An offence under written State law	<input type="checkbox"/>
Substantial unauthorised or irregular use of, or substantial mismanagement of, public resources	<input type="checkbox"/>

Conduct involving a substantial and specific risk of injury to public health, or prejudice to public safety or harm to the environment	<input type="checkbox"/>
Administration matter(s) affecting you personally	<input type="checkbox"/>

Disclosure details	
Name of the public authority(ies) 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, provide name(s) and position(s) held by person(s) in the public authority
When did the alleged events occur?	
Summary of the matters to disclose	

Additional information	
Description of any documents 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, did you report this information as a Public Interest Disclosure matter?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please provide details

You should read the following information and sign this form prior to lodgement.

### Acknowledgement

I believe on reasonable grounds that the information contained in this disclosure is or may be true. I have been informed and I am aware that:

1. I will commit an offence under Section 24 of the PID Act if I know that the information contained in this disclosure is false or misleading in a material particular, or I 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 the protection provided by Section 13 of the PID Act if I fail, without reasonable excuse, to assist a person investigating the matter by supplying requested information (Section 17).
3. I will forfeit the protection provided by Section 13 of the PID Act if I subsequently disclose this information to any person other than a proper authority under the PID Act (Section 17).

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 PID Act, except in accordance with Section 16(3) of the PID Act.

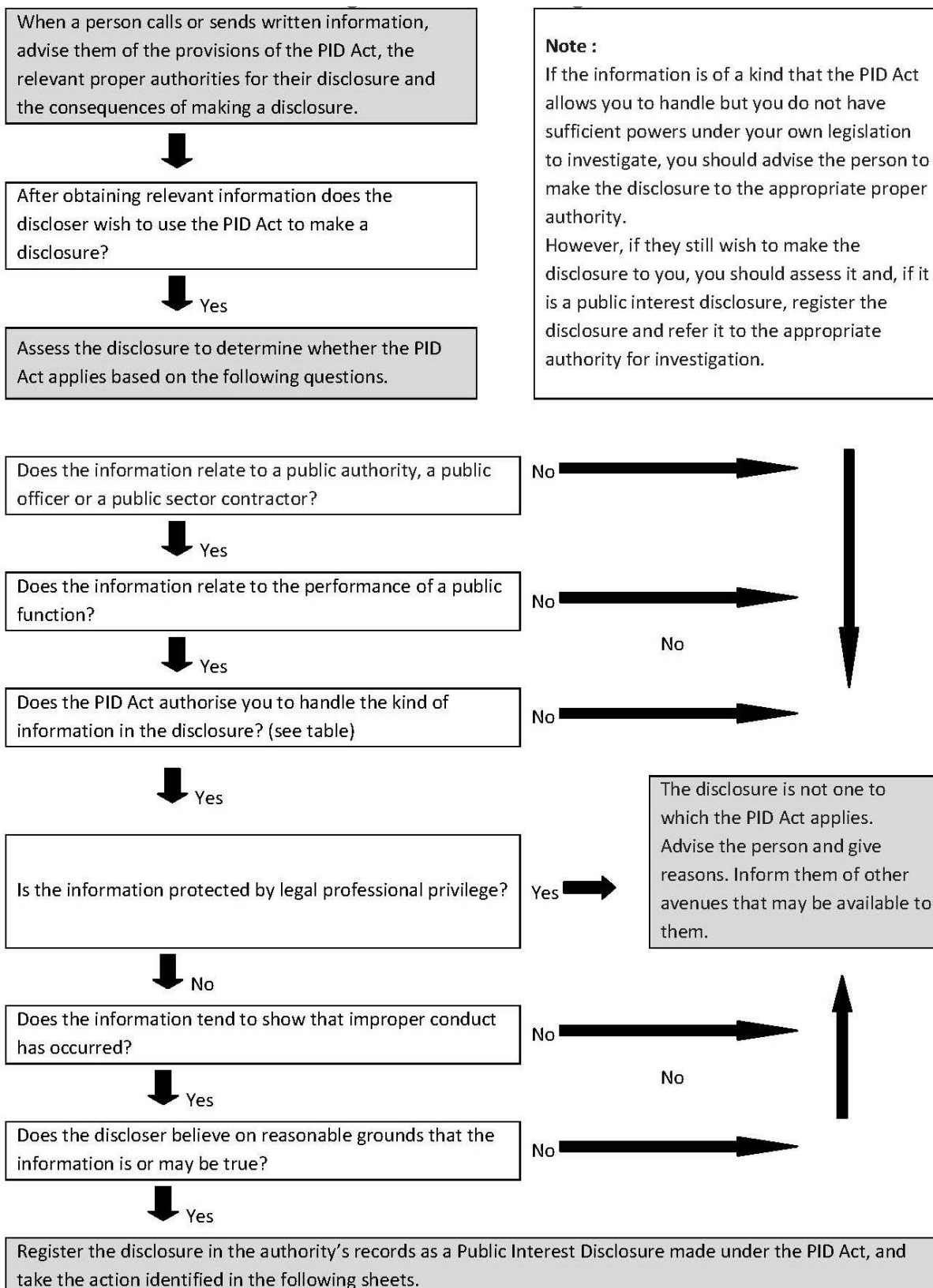
**Penalty: \$24,000 or imprisonment for two (2) years.**

5. I cannot withdraw my disclosure after I have made it.

Authorisation	
Discloser's signature	
Date	

## APPENDIX 5

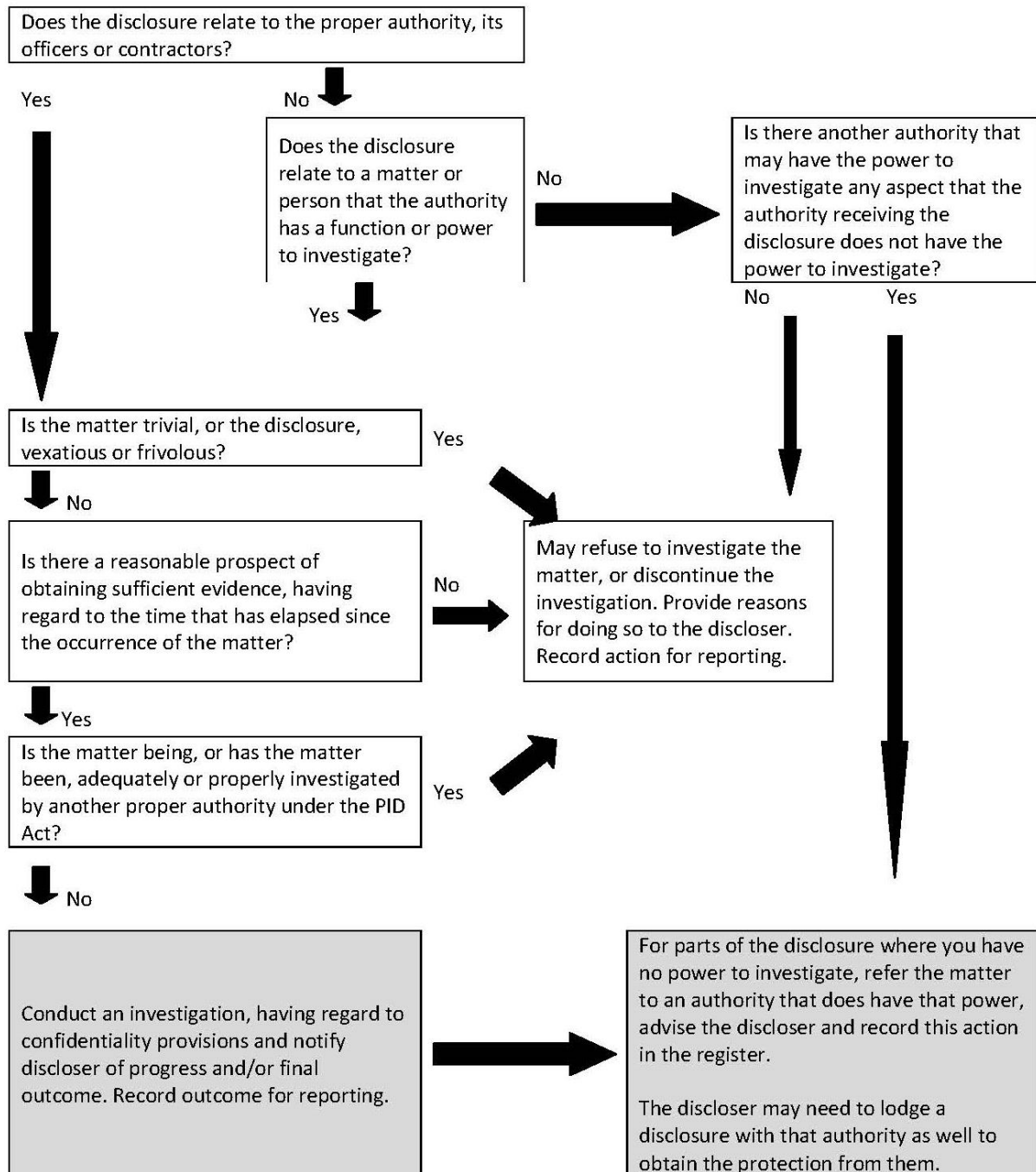
### FLOWCHART FOR RECEIVING AND ASSESSING DISCLOSURES





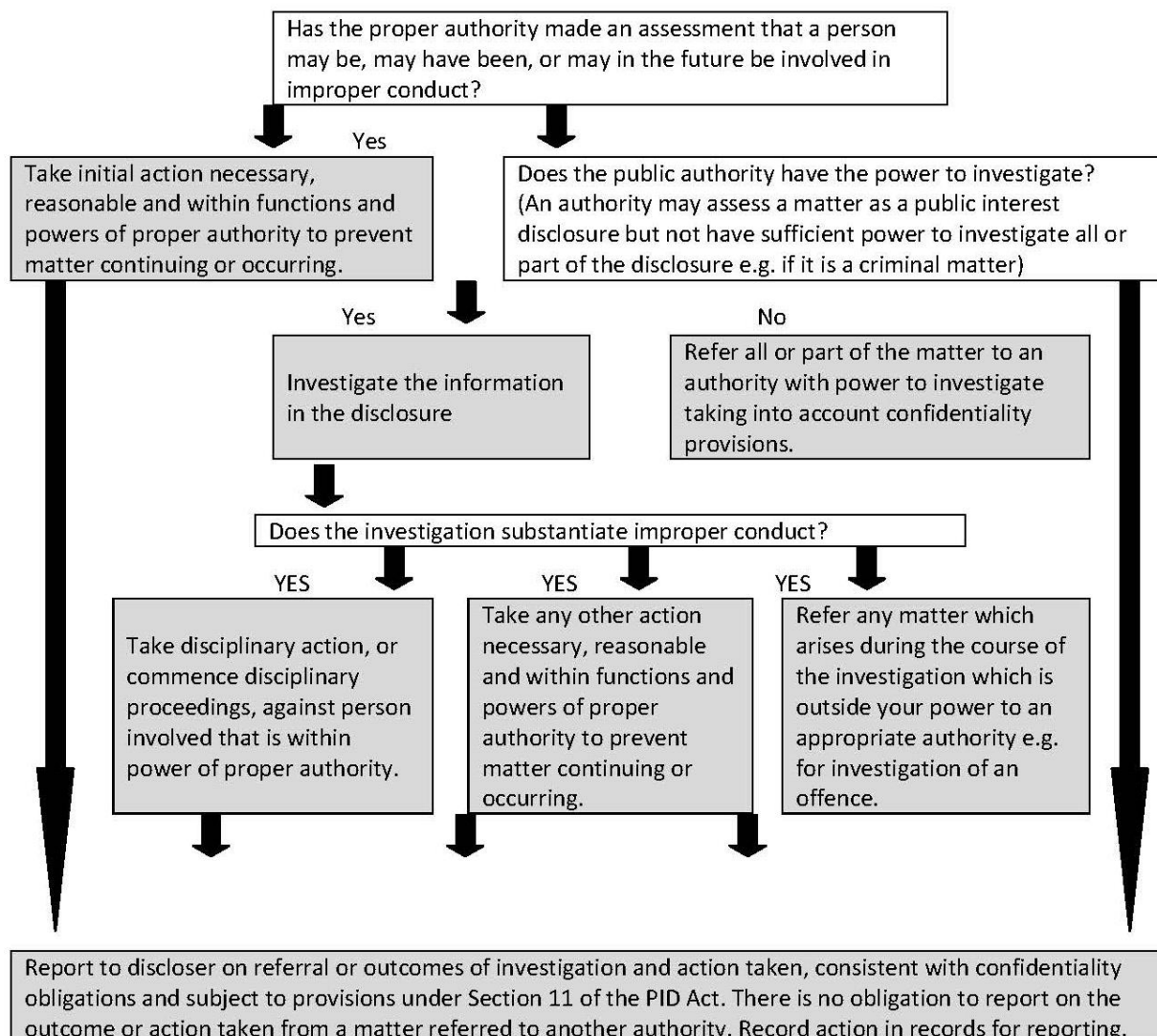
## APPENDIX 6

### FLOWCHART FOR INVESTIGATING INFORMATION DISCLOSED



## APPENDIX 7

### FLOWCHART FOR TAKING ACTION



#### Note on referrals

The confidentiality provisions apply when you refer a matter and the authority to whom the matter is referred is bound by the confidentiality provisions of the PID Act. However, they will treat it in accordance with their own powers and are not required to treat the matter as a PID for the purposes of reporting the outcome to the discloser.

Nothing precludes the discloser from lodging the matter as a PID in the new authority if they wish to extend the legal protections available to them under the PID Act and receive reports from the new authority on the outcome and action taken.