

Public Interest Disclosures

Policy

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1. Policy statement

The *Public Interest Disclosure Act* 1994 (the PID Act) deals with the disclosure of serious matters involving public administration. The Greater Cities Commission (the Commission) is committed to the objectives of the PID Act.

The Commission does not tolerate corrupt conduct, maladministration, serious and substantial waste of public money, government information contravention or local government pecuniary interest contravention (see **Definitions** for explanation).

The Commission recognises the value and importance of the contributions of public officials to enhance administrative and management practices. The Commission will support public interest disclosures being made by public officials regarding these matters. All reasonable steps will be taken to provide protection to public officials who make such disclosures, from any detrimental action in reprisal for the making of the disclosure.

The Commission will deal with reports thoroughly and impartially and will take appropriate action to rectify any wrongdoing found.

The purpose of this Public Interest Disclosures Policy (Policy) is to:

- outline the Commission’s commitment to the objectives of the *PID Act*
- encourage disclosure of corrupt conduct, maladministration, serious and substantial waste of public money, government information contravention and local government pecuniary interest contravention; and
- inform the Commission’s public officials of their rights and responsibilities in connection with public interest disclosures.

This Policy should be read in conjunction with the Commission’s Public Interest Disclosure Procedure, which outlines the process for receiving and managing a public interest disclosure under the *PID Act*

2. Who does this Policy apply to?

This Policy and the Procedure cover public interest disclosures made by a “public official” (as defined under s 4A of the PID Act), this applies to all staff including:

- permanent staff;
- temporary staff;
- casual staff;
- other Government sector employees who are on secondment or assigned to the Commission;
- contractors;
- consultants;
- volunteers; and
- employees of organisations who provide services under contract to the Commission.

For the purposes of this Policy, “Public Official” refers to all people to whom this Policy applies.

In this Policy, a reference to a senior executive manager means:

- Chief Executive Officer;
- Executive Director; and
- Director.

3. Definitions

<p>Corrupt conduct</p>	<p>is defined in ss <u>7</u>, <u>8</u> and <u>9</u> of the <u>Independent Commission Against Corruption Act 1988 (ICAC Act)</u>.</p> <p>Corrupt conduct includes the dishonest or impartial exercise of official functions by a public official.</p> <p>Corrupt conduct may include, but is not limited to:</p> <ul style="list-style-type: none"> • taking or offering bribes; • public officials dishonestly using influence; • blackmail; • fraud; • theft; • election bribery; • collusive tendering; • defrauding the public revenue; or • fraudulently obtaining or retaining employment or appointment as a public official. <p>For a full definition and description, refer to the <i>ICAC Act</i></p>
<p>Detrimental action</p>	<p>is defined under s <u>20</u> of the <i>PID Act</i> as an action causing, comprising or involving any of the following:</p> <ul style="list-style-type: none"> • injury, damage or loss; • intimidation or harassment; • discrimination, disadvantage or adverse treatment in relation to employment; • dismissal from, or prejudice in, employment; or • disciplinary proceedings.
<p>Maladministration</p>	<p>is defined under s <u>11</u> of the <i>PID Act</i> as conduct that involves action or inaction of a serious nature that is:</p> <ul style="list-style-type: none"> • contrary to law; or • unreasonable, unjust, oppressive or improperly discriminatory; or • based wholly or partly on improper motives.
<p>Public Interest Disclosure</p>	<p>is a report made by a public official of wrongdoing or misconduct that is a matter of public interest – namely corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention by the Commission or any of its officers, or by another public authority or any of its officers. It is commonly known as whistleblowing.</p>
<p>Serious and substantial waste of public money</p>	<p>means uneconomical, inefficient or ineffective use of public resources or public money of a serious and substantial nature.</p>

Government information contravention	is defined under s 4 of the <i>PID Act</i> as conduct of a kind that constitutes a failure to exercise functions in accordance with any provision of the <i>Government Information (Public Access) Act 2009 (GIPA Act)</i> .
Local government pecuniary interest contravention	is defined under section 4 of the <i>PID Act</i> as the breach of an obligation imposed by the <i>Local Government Act 1993</i> in connection with a pecuniary interest.

4. Key responsibilities

Chief Executive Officer

The Chief Executive Officer has specific responsibilities as the ‘principal officer’ under ss 6C, 6CA and 6E of the *PID Act* to ensure:

- the Commission has a policy that provides for procedures for receiving, assessing and dealing with public interest disclosures;
- the Commission’s compliance with the policy and the Commission’s obligations under the *PID Act*;
- employees are aware of the contents of the policy and protections provided under the *PID Act*;
- the policy designates at least one officer of the Commission as being responsible for receiving public interest disclosures on behalf of the Commission; and
- information is provided to the NSW Ombudsman in compliance with the *PID Act*; and

The Chief Executive Officer is also responsible (or may delegate someone to perform this function on their behalf) for the reporting of actual or suspected corrupt conduct to the ICAC, and to NSW Police Force in the case of potential criminal offences.

The Chief Executive Officer may seek advice from experts within and outside of the Commission in relation to any of these responsibilities.

Public Interest Disclosure Coordinator

The Chief Executive Officer has nominated a Public Interest Disclosure Coordinator (PID Coordinator) to perform key reporting functions in compliance with the *PID Act*.

The PID Coordinator:

- receives and assesses a public interest disclosure report from the Commission’s PID Officers;
- refers the public interest disclosure report to relevant employees within the Commission who can deal with them appropriately;
- coordinates the Commission’s response to the report;
- provides a six-monthly report to the NSW Ombudsman for the period ending 30 June and 31 December each year; and
- also exercises the functions of a PID Officer.

The PID Coordinator may seek advice from experts within and outside of the Commission in relation to any of these responsibilities.

Public Interest Disclosure Officers

The Chief Executive Officer has nominated Public Interest Disclosure Officers (PID Officers) as points of contact for managing public interest disclosures in the Commission.

PID Officers are responsible for:

- receiving initial reports from staff and performing a preliminary assessment before forwarding reports to the PID Coordinator for full assessment.
- providing advice about this Policy and the accompanying Procedure to staff;
- responding to and assessing disclosure reports impartially and with sensitivity;
- complying with the confidentiality obligations in the Confidentiality section of this Policy;
- discussing any concerns the reporter may have, including about reprisals; and
- where the reporter of wrongdoing does not submit a written report:
 - assist in documenting a written copy of any verbal reports of a public interest disclosure; and
 - ensure the document signed and dated by the reporter.

PID Officers may seek advice from experts within and outside the Commission in relation to any of these responsibilities after consulting with the PID coordinator.

Senior Executive Managers and Managers

Senior Executive Managers and Managers play an important role in managing the immediate workplace of those involved in or affected by the public interest disclosure reporting process.

Managers have a responsibility to:

- ensure that all staff, are aware of their roles and responsibilities in relation to public interest disclosures;
- encourage staff to report known or suspected wrongdoing and support employees who make a report;
- identify reports made to them in the course of their work which could be a public interest disclosure, and assist the staff member to make the report to a PID Officer;
- support staff who make public interest disclosures and take all reasonable steps to protect them from detrimental action, victimisation, harassment or any other form of reprisal as well as ensure such staff are provided with professional support make appropriate referrals as necessary;
- notify the PID Coordinator or Chief Executive Officer immediately if they believe a staff member is being subjected to detrimental action, victimisation, harassment or any other form of reprisal as a result of reporting wrongdoing and
- act fairly in relation to any officer who is the subject of a disclosure which is under consideration or investigation.

All Staff

All Staff have a responsibility to:

- be aware of this Policy and the Commission's Public Interest Disclosure Procedure;
- report incidences of corrupt conduct, maladministration, serious and substantial waste of public money, government information contravention and local government pecuniary interest contravention in accordance with the *PID Act*;
- assist those dealing with a report, including supplying information on request and cooperating with any investigation;
- treat any staff member or person dealing with a report of wrongdoing with courtesy and respect;
- support those who have made public interest disclosures, including abstaining from any activity that is or could be perceived to be victimisation or harassment of those who make disclosures; and
- maintain the confidentiality of staff they know or suspect to have made a public interest disclosure, and the content or handling of this disclosure.

5. Protections for persons making Public Interest Disclosures

Protections for Commission staff are provided under pt 2 of the *PID Act*. The Commission is committed to providing appropriate protections for staff who make public interest disclosures.

5.1. What are the protections?

Protection against reprisals

The *PID Act* provides protection for a public official who makes a public interest disclosure by imposing penalties on anyone who takes detrimental action against the public official substantially in reprisal for that person making the disclosure.

Under the *PID Act*, it is an offence to take detrimental action that is substantially in reprisal for a public official making a public interest disclosure.

The Commission will not tolerate any reprisals against public officials who make a public interest disclosure. The criminal penalties that can be imposed include imprisonment or fines. Detrimental action is also misconduct that justifies disciplinary action. People who take detrimental action against someone who has made a public interest disclosure can also be required to pay damages for any loss suffered by the person.

If a public official believes that detrimental action has been or is being taken against them or someone else who has reported wrongdoing in reprisal for making a report, they should tell their supervisor, a PID Officer, the PID Coordinator, or the Chief Executive Officer of the Commission immediately.

Reasonable management actions, such as performance management, that are unrelated to a public interest disclosure report, are not reprisal actions, even where a public interest disclosure report may have been made by the affected employee. Making a public interest disclosure report does not put the person who reported above or outside the law.

All Managers must report to a PID Officer, the PID Coordinator or the Chief Executive Officer about any suspicions they hold that detrimental action in reprisal against a public official reporting wrongdoing is occurring.

The Commission will ensure that any evidence of detrimental action taken against a public official that is substantially in reprisal for the person making a public interest disclosure is referred to the NSW Police Force, the Independent Commission Against Corruption, or (if in relation to the NSW Police Force) to the Law Enforcement Conduct Commission.

Public officials who report reprisal action will be kept informed of the progress of any investigation and the outcome.

Public officials who have reported wrongdoing and feel that any reprisal action is not being dealt with effectively should contact the NSW Ombudsman or the ICAC, depending on the type of wrongdoing reported. Refer to Contact Details of Investigating Authorities at the end of this Policy for more information.

Protection against legal action

A public official who makes a disclosure in accordance with the *PID Act*, will not be subject to any liability and no action, claim or demand can be taken for making the disclosure. No confidentiality or secrecy obligations will have been breached and the defence of absolute privilege in defamation will be available.

Confidentiality

The identity of a public official who discloses wrongdoing in accordance with the PID Act will be kept confidential except where disclosure is permitted by the PID Act.

A person to whom a public interest disclosure is made or referred is not to disclose information that might identify or tend to identify the person who has made the disclosure unless:

- a) the person consents in writing to the disclosure of that information, or it is generally known that the person had made the public interest disclosure (otherwise than by making the public interest disclosure) as a result of that person having voluntarily identified themselves as the person who made the disclosure; or
- b) it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to a person whom the information provided by the disclosure may concern; or
- c) the Chief Executive Officer is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.

The staff member who made the public interest disclosure will be informed if it becomes necessary to disclose their identity in accordance with paragraph b. or c. above.

Any person who breaches these confidentiality obligations may be subject to disciplinary action.

Under the GIPA Act, information is exempt from release if it might identify or tend to identify a person who has made a public interest disclosure.

A person who makes a public interest disclosure should maintain the confidentiality of their disclosure. In its acknowledgement of receipt of a public interest disclosure, the Commission will notify the person of the need to maintain confidentiality.

5.2. When do protections apply?

A disclosure made in accordance with this Policy will be protected under the PID Act as a public interest disclosure if it:

- a) is made by a staff member (public official); and
 - i. is made **to the following persons** who are nominated officers under this Policy:
 - ii. The Chief Executive Officer; or
 - iii. The PID Coordinator; or
 - iv. The Commission's nominated PID Officers; and
- b) is a disclosure of information that the person making the **disclosure honestly believes**, on reasonable grounds, shows or tends to show **corrupt conduct, maladministration, serious and substantial waste of public money or government information** contravention by the Commission or any of its officers.

There is an assumption that the public official making the disclosure has an honest belief, in the absence of evidence to the contrary.

It is a criminal offence under the PID Act for a person to wilfully make a false statement, mislead, or attempt to mislead an investigating authority, public authority or public official when making a disclosure to them.

Protection is not available for disclosures which:

- principally question the merits of government policy;
- are made solely or substantially with the motive of avoiding dismissal or other disciplinary action;
- or

- are identified primarily as a complaint or grievance about workplace issues such as bullying, harassment, discrimination or practices that endanger health or safety. These complaints and grievances are managed under the Commission's Grievance Resolution Policy and the Prevention of Bullying and Harassment in the Workplace Policy.

6. Rights of the person subject to a public interest disclosure report

The Commission is committed to ensuring public officials who are the subject of a report of wrongdoing are treated fairly and reasonably. This includes keeping their identity confidential, where this is practical and appropriate.

A public official who is the subject of a public interest disclosure report will be afforded procedural fairness, and will be:

- advised of sufficient details of the allegation;
- advised of their rights and obligations under relevant Policies;
- kept informed about the progress of any investigation;
- given a reasonable opportunity to respond to allegations made against them;
- told of the outcome of the investigation including any decision made about whether or not further action will be taken against them.

Where the reported allegations against a public official are clearly wrong, or have been investigated and unsubstantiated, the public official will be supported by the Commission.

7. How to report wrongdoing – making a public interest disclosure

7.1. Internal reporting in the Commission

Internal disclosures must be made to nominated officers. These include the Chief Executive Officer, the PID Coordinator or a PID Officer listed on the Commission's Public Interest Disclosure page on Netropolis.

The steps on how to report, receive and manage public interest disclosures are in the Public Interest Disclosure Procedure.

Any supervisor who receives a disclosure that they believe may be a public interest disclosure must refer the public official making the disclosure to one of the Commission's nominated PID Officers listed on Netropolis. These are the only people who can receive a public interest disclosure in the Commission. This will ensure the person making the report will be protected under the PID Act.

A Public Interest Disclosure can be lodged using the following email address:
PIDreport@gsc.nsw.gov.au

7.2. External reporting

A public interest disclosure can also be made to an "investigating authority". This can be done first or at any stage after the initial disclosure to the Commission. If the disclosure is about the Chief Executive Officer then it should be made to an investigating authority at the outset.

Disclosures can also be made to a Member of Parliament or a journalist, but only in limited circumstances, explained in the below section.

Investigating Authorities

Under the *PID Act*, some of the investigating authorities that public officials can make public interest disclosures to, and the categories of wrongdoing each authority can deal with, are:

- the Auditor-General — for serious and substantial waste of public money;
- the Independent Commission Against Corruption (ICAC) — for corrupt conduct;
- the NSW Ombudsman — for maladministration;
- the Chief Executive, Office of Local Government – for corrupt conduct, maladministration, serious and substantial waste of local government money, government information contravention or local government pecuniary interest contravention;
- the ICAC Inspector — for disclosures about the ICAC, ICAC’s staff or the staff of the ICAC Inspector;
- the Information Commissioner — concerning a failure to exercise functions properly in accordance with the *GIPA Act*.

The relevant authority should be contacted for advice about how to make a public interest disclosure to it.

Refer to Contact Details of Investigating Authorities at the end of this Policy for more information.

Public officials should be aware that it is very likely the investigating authority will discuss the case with the Commission. The Commission will assist and cooperate with the investigating authority and will provide appropriate support and assistance to the Commission’s public officials who report wrongdoing to an investigating authority.

Members of Parliament or Journalists

In accordance with s 19 of the *PID Act*, to have the protections of the *PID Act* public officials reporting wrongdoing to a Member of Parliament or a journalist must:

- a) have already made substantially the same disclosure either to:
 - the Chief Executive Officer;
 - a PID coordinator/officer;
 - a public authority;
 - an officer of a public authority, or
 - an investigating authority in accordance with the *PID Act*; and
- b) the Commission, public authority, officer of a public authority or investigating authority that the received the disclosure must have either:
 - decided not to investigate the matter; or
 - decided to investigate the matter but not completed the investigation within six months of the original disclosure being made; or
 - investigated the matter but not recommended any action in respect of the matter; or
 - not notified the person who made the report, within six months of the report being made, whether or not the matter is to be investigated.

The public official must have reasonable grounds for believing the disclosure is substantially true and must be able to prove the disclosure is in fact substantially true.

A disclosure to a person or an organisation not listed above or not listed in the *PID Act* will not be protected under the *PID Act*.

8. Agency Reports to the Ombudsman

The Commission will provide an annual report on the Commission's obligations under the *PID Act* to the NSW Ombudsman.

The Commission will provide six monthly reports to the NSW Ombudsman. The reporting period is every six months ending on 30 June and 31 December in any year and the report is to be provided within 30 days after the end of the six-month period.

Reports are to provide statistical information on compliance with the Commission's obligations under the *PID Act* and the *Public Interest Disclosures Regulation 2011*.

9. Support

The Commission will provide support to public officials who report wrongdoing, regardless of whether their report is assessed as a public interest disclosure. This may include stress management, counselling services, and career or other advice.

A public official who wishes to be offered support should discuss it with the person who is handling their matter. The People and Culture Manager can also provide advice.

10. Breaches of the Public Interest Disclosures Policy

Breaches of the Public Interest Disclosures Policy should be reported. Employees should first discuss the issue with a senior executive manager. The *Government Sector Employment Act 2013* and the *Government Sector Employment Rules* (in particular pt 8) establish procedures for dealing with allegations of misconduct and actions that may be taken. These actions may range from a caution to termination of employment.

Investigation of reports of behaviour contrary to the Public Interest Disclosures Policy will be undertaken by appropriately senior staff, in accordance with legal requirements and procedural fairness.

11. Further information and resources

11.1. Internal Policies

- Public Interest Disclosures Procedure
- Code of Ethics and Conduct – Staff
- Acceptable Use of Official Resources – ICT Policy
- Conflict of Interest Policy
- Conflict of Interest Procedure
- Engaging with Lobbyists and Business Contacts Policy
- Engaging with Lobbyists and Business Contacts Procedure
- External Complaints Handling Policy

- Fraud and Corruption Control Policy
- Gifts, Benefits and Hospitality Policy
- Gifts, Benefits and Hospitality Procedure
- Grievance Resolution Policy
- Prevention of Bullying and Harassment in the Workplace Policy
- Privacy Management Plan
- Procurement Policy
- Records Management Policy
- Risk Management Policy

11.2. Legislation

Commonwealth

- *Fair Work Act 2009*

NSW

- *Crimes Act 1900*
- *Crown Employees (Planning Officers) 2016*
- *Crown Employees (Public Service Conditions of Employment) Award 2009*
- *Government Information (Public Access) Act 2009*
- *Government Sector Employment (General) Rules 2014*
- *Government Sector Employment Act 2013*
- *Government Sector Employment Regulation 2014*
- *Government Sector Finance Act 2018*
- *Independent Commission Against Corruption Act 1988*
- *Ombudsman Act 1974*
- *Privacy and Personal Information Protection Act 1998*
- *Public Finance and Audit Act 1983*
- *Public Interest Disclosures Act 1994*
- *State Records Act 1998*

11.3. Further resources

To make a Public Interest Disclosure using internal channels, please use the following email address: publicinterestdisclosures@gcc.nsw.gov.au

For disclosures about corrupt conduct:

Independent Commission Against Corruption (ICAC)

Phone: 02 8281 5999

Toll Free: 1800 463 909

Tel. typewriter (TTY): 02 8281 5773

Facsimile: 02 9264 5364

Email: icac@icac.nsw.gov.au

Web: www.icac.nsw.gov.au

Address: Level 7, 255 Elizabeth Street, SYDNEY, 2000

Postal Address: GPO Box 500, Sydney, 2001

For disclosures about maladministration:

NSW Ombudsman

Phone: 02 9286 1000

Toll Free: 1800 451 524

Translating and Interpreter Service (TIS): 131 450

National Relay Service (NRS): 1300 555 727

Facsimile: 02 9283 2911

Email: nswombo@ombo.nsw.gov.au

Web: www.ombo.nsw.gov.au

Address: Level 24, 580 George Street, Sydney, 2000

For disclosures about serious and substantial waste:

Auditor-General of the NSW Audit Office

Phone: 02 9275 7100

Email: mail@audit.nsw.gov.au

Web: www.audit.nsw.gov.au

Address: Level 19, Tower 2 Darling Park, 201 Sussex St, Sydney NSW 2000

Postal Address: Audit Office of NSW, Enquiries, GPO Box 12, Sydney NSW 2001

For disclosures about breaches of the GIPA Act:

Information Commissioner

Phone: 1800 472 679

National Relay Service (NRS): 133 677

Translating and Interpreting Service (TIS): 131 450

Fax: 02 6446 9518

Email: ipcinfo@ipc.nsw.gov.au

Web: www.ipc.nsw.gov.au

Address: Level 15, McKell Building, 2-24 Rawson Place, Haymarket NSW 2000

Postal Address: GPO Box 7011, Sydney, 2001

For disclosures about local government:

Office of Local Government

Phone: 02 4428 4100

Email: olg@olg.nsw.gov.au

Web: www.olg.nsw.gov.au

Address: 5 O'Keefe Avenue, Nowra, 2541

12. Document management

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Author	Manager, Governance & Legal
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**Greater Cities
Commission**

Level 11, 6 PSQ,
10 Darcy Street
Parramatta NSW
2150

PO Box 257
Parramatta NSW
2124

Office hours:
Monday to Friday
9.00am – 5.00pm

T: (02) 8289 6200
W: greatercities.au