

Public Interest Disclosure and the management of corrupt conduct (PID) Procedure (H7)

DIVISION: Corporate Services	BUSINESS UNIT: Human Resources
APPLICATION: RTA Wide	CONTACT OFFICER: Manager, Human Resources

Purpose

This procedure provides direction to staff about how to respond to issues associated with the disclosure of information that is in the public interest.

Policy

The policy that directs and gives effect to this procedure is the Public Interest Disclosure (PID) (H7) policy. This procedure is to be read in conjunction with the Public Interest Disclosure policy.

Definitions

Criminal Conduct refers to a breach of any law or statute that may lead to a penalty. Examples include unauthorised release of official secrets, exertion of force or influence by public officials, making false claims, stealing, abuse of office and harassment or sexual harassment involving assault or physical assault.

Person making a disclosure means a public officer or person who provides information to an appropriate organisation about certain types of wrongdoing in the public sector and receives unique protection for doing so.

Investigator means an appropriate impartial person, internal or external, appointed by RTA's PID Officer to conduct the PID investigation. The investigator must not have any actual or potential conflict of interest in the matter nor should the investigator be from the business unit of the person making a disclosure or the person/s subject to the PID.

Natural Justice means the right to be given a fair hearing, the opportunity to present one's case, the right to have a decision made by an unbiased decision maker and the right to have that decision based on objective evidence.

Proper Authority means a public sector entity or a member of the Legislative Assembly.

Public Officer means an employee (e.g. RTA employee) of a public sector entity; the Minister responsible for the administration of a department is a public officer of the department; a Ministerial staff member employed in the office of a Minister is a public officer of each department administered by the Minister.

Public Sector Entity means an entity established under an Act or under State or local government authorisation for a public, State or local government purpose (e.g. RTA).

Purported PID means when the person who made the disclosure explicitly requests that their information be treated as a PID but their information does not meet the requirements of the *Public Interest Disclosure Act 2010*.

Reasonable grounds for the purposes of this policy, to determine what *reasonable grounds* are, would be done by way of an objective test, which relates to whether the reasons or basis

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on which the person who made the disclosure has formed the belief would induce a reasonable person to form that belief.

Reprisal means a situation where a person causes, attempts or conspires to cause detriment to another person because of a belief that the person or another person has made or may make a public interest disclosure. Reprisal includes any action that:

- threatens;
- causes personal injury;
- results in property damage or loss;
- intimidates or harasses;
- discriminates against or disadvantages the person's career, employment or business; and
- causes financial loss.

Action taken against an employee or person e.g. a relative, co-worker or anybody incorrectly believed to be the person who made the disclosure is a reprisal if it was taken because a PID was or will be made.

Tends to show for the purposes of this procedure, means that the disclosure must be more than a mere suspicion, there must be sufficient information that indicates or supports a view that the wrongdoing or danger has occurred or will occur.

Procedure

An RTA employee, public officer or any other person such as a member of the public may make a PID for certain types of wrongdoing or danger as described in the definitions contained within the policy (refer to Public Interest Disclosure (H7) Policy). A PID may be made about a matter that occurred before the commencement of the *Public Interest Disclosure Act 2010*.

Disclosures may be made to:

- The Chief Financial Officer (PID Officer)
Email: RTAPIDOFFICER@rta.qld.gov.au
Letter: Attn: PID Officer
Chief Financial Officer
PO Box 390
Brisbane QLD 4001
Phone: 1300 366 311 (Attn CFO)
- A public sector entity that has the power to investigate or remedy the matter (i.e. the CCC) or
- A Member of the Legislative Assembly

An employee may make a PID about the conduct of another employee of the RTA directly to any appropriate authority that is authorised to receive a PID (refer to Public Interest Disclosure (H7) Policy).

A PID can be anonymous, and may be made either in writing or verbally including over the telephone. Contact details are needed for follow up action, however they are not essential given a PID can be made anonymously. A person who has made a disclosure does not have to identify a particular person and can explicitly request that their information be treated as a PID.

An employee may make a PID directly to any appropriate authority that is authorised to receive a PID (refer to Public Interest Disclosure (H7) Policy).

If the RTA's PID Officer is the subject of the PID, the PID may be made to:

- the CEO directly, or
- a public sector entity that has the power to investigate or remedy the matter (i.e. the CCC) or
- A Member of the Legislative Assembly.

PIDs made by employees, public officers or other persons

Providing relevant information will enable the matter to be dealt with expediently, and will enable the PID to be assessed and investigated. An employee making a PID does not need proof, as long as they have information about the disclosure that could, if proved, be determined as wrongdoing or dangerous. Providing information in support of the PID is therefore important.

If the information provided turns out to be incorrect or unable to be substantiated the PID is protected by the *Public Interest Disclosure Act 2010*, provided the person who made the disclosure honestly believes on reasonable grounds that the information tends to show the wrongdoing or danger concerned.

Written

A person making a disclosure is urged, however is not obliged, to outline their concerns in writing in a clear, concise and factual manner, explaining what happened and providing as much relevant information as possible, such as:

- specifically stating whether they are making a PID;
- the name, job title and workplace address of the person who is subject to the disclosure;
- the nature of the conduct or danger, i.e. file notes about relevant events, dates and places;
- whether they did anything in response to the conduct or danger;
- the names of any people who witnessed the conduct or danger who may be able to verify the allegations or events;
- their contact details for follow up action (not essential given a PID can be made anonymously); and
- any evidence that supports the claim, i.e. correspondence or other supporting documents.

Verbal

If the disclosure is verbal, including over the telephone, the person to whom the PID is being made is required to document details of the conversation, including date and time. In addition, the person is to obtain as much relevant information as possible, including the dot points as mentioned above.

If an employee is speaking with a person and they advise they want to make a PID, the employee is to encourage the person to make the PID in writing, providing as much information as possible. However, the person is not obliged to. If the person requests the employee to verbally accept a PID or purported PID, the employee is to document details of the conversation, including date and time. The employee is to obtain the following information:

- on what grounds the person is making a PID providing as much relevant information as possible;

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- specifically state whether they are making a PID;
- the name, job title and workplace address of the person who is subject to the disclosure;
- the names of any people who witnessed the conduct or danger who may be able to verify the allegations or events; and
- any evidence that supports the claim, i.e. correspondence or other supporting documents.

When a PID is made to an employee other than RTA's PID Officer or the Chief Executive Officer, the employee must immediately notify their Team Leader/Executive Manager. The employee receiving the verbal PID or purported PID must not gather evidence as this may prematurely alert the person who is the subject of the PID and it may compromise any investigation.

The PID, either written or verbal (once documented), is to be placed in a sealed envelope marked 'private and confidential' and is to be forwarded to the RTA PID Officer (or CEO if required) or external public sector entity as described in the procedure.

What if I am the subject of the PID

Section 65 of the *Public Interest Disclosure Act 2010* protects the identity of the person(s) whom a PID is made against and the contents of the PID. The *Public Interest Disclosure Act 2010* requires that those who may be the subject of a PID be afforded natural justice. If a PID is made about you, you have the right to:

- know about the reasons for the PID;
- be given a reasonable opportunity to address the allegations; and
- have the investigator act fairly and without bias.

The RTA will treat all PIDs as allegations, until evidence collected shows otherwise. However, affording natural justice does not mean that you have the right to know who made the PID, unless this information is essential **and** it is unlikely that a reprisal will be taken against the discloser.

Deliberately providing false or misleading information, intending that it be acted on as a PID, is a criminal offence.

Confidentiality

Strict confidentiality is to be maintained at all times in relation to the reporting of, and the investigation of wrongdoing or danger. Confidentiality protects the person who made the disclosure from reprisal, other employees or persons affected by the PID and, protection of the rights of persons against whom allegations have been made.

An employee receiving a PID must not disclose or discuss the matter which is the subject of the disclosure to, or with any other employee or person. However, if the PID exposes a risk to the health or safety of any person, the person receiving the PID must immediately take all necessary and appropriate steps to protect the health and safety of the person at risk.

Confidential information may be disclosed, or recorded, if:

- the person cannot reasonably obtain the consent of the person to whom the confidential information relates; and
- disclosing the information is unlikely to harm the interests of the person to whom the confidential information relates; and
- the disclosure is reasonable in all the circumstances.

Duty to Disclose

The PID Officer has the delegated duty to refer to the CCC all complaints, information or matters which the PID Officer suspects involves or may involve corrupt conduct. This duty is an obligation and is not discretionary, irrespective of any provision to the contrary in any other legislation or any obligation to maintain confidentiality. Reports of actual or suspected criminal conduct will be reported to the Queensland Police and the CCC.

False or misleading information

It is an offence for an employee to intentionally provide false or misleading information intending that it be treated as a PID. An employee or a person intentionally making a false or misleading statement, knowing it to be untrue, may be prosecuted under the *Crime and Corruption Act 2001* and the *Public Interest Disclosure Act 2010*.

Natural justice

Principles of natural justice apply to all PID investigations. The RTA is committed to managing the PID appropriately and making the process fair for both the person who made the disclosure, and the person who is the subject of the disclosure. The rights of any person who is the subject of, or is in some way associated with a disclosure, are important and, as a person against whom a PID is made, you are entitled to procedural fairness.

PID investigation

The RTA has responsibility for determining if the matter is a PID. A person who made the disclosure cannot request that their information not be treated as a PID, nor does the RTA have such discretion. If the person who made the disclosure is concerned about reprisals, they are to speak with RTA's PID Contact Officer.

If the disclosure is about actual or suspected instances of corrupt conduct, the PID must be referred to the CCC for investigation. The CCC may request another agency i.e. Queensland Police, to undertake an investigation or enquiries. In these instances, the CCC monitors the investigation to ensure it is being carried out appropriately.

With the exception of disclosures that must be referred directly to the CCC, The PID Officer will appoint an appropriate independent person (internal or external) or may request another agency to conduct the PID investigation. The investigator will determine if:

- the person making the disclosure is able to receive the protection under the *Public Interest Disclosure Act 2010*;
- the disclosure concerns a matter about which a PID can be made;
- the disclosure has been made to an individual or entity who may receive a PID; and
- the disclosure has been made in accordance with RTA's policy and procedure.

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If doubt exists over whether a disclosure is a PID, the investigator is to treat the disclosure as a PID. Therefore, the employee or person making the PID is protected under the *Public Interest Disclosure Act 2010*. The investigator must concentrate on the allegation, the information and the evidence provided, if any, and not the identity of the discloser or the motive for disclosing the information.

When commencing the investigation, the investigator is to ensure the person who made the disclosure understands:

- that the investigator has been appointed by the RTA's PID Officer to conduct the investigation;
- that information provided is a PID and what this means;
- how the investigation will be conducted;
- the likely timeframes;
- that the person making the disclosures involvement in the process, i.e. providing any additional information or material to the investigator;
- the protections that will apply;
- their responsibilities, i.e. maintaining confidentiality and work performance;
- that the RTA will keep their identity confidential except in certain circumstances;
- how they will be updated on progress and the outcome(s) of the investigation; and
- who to contact if they want further information or support or are concerned about reprisal.

If facts that reveal possible corrupt conduct are uncovered during the PID investigation, these must be referred at that time to the CCC.

PID records

Details about the PID including the investigation and the outcome must be comprehensively documented and kept in a secure place. Full and accurate records are to be made and kept about PIDs including all PID conversations and follow-up conversations. PID records are to include date and time and:

- the identity of the discloser, if known;
- the information disclosed;
- how the PID was made and to whom;
- any notes the persona making the disclosure has made or documentary evidence that supports the allegation;
- the nature of the PID and its background;
- whether confidentiality was requested/explained;
- whether the risk of reprisal was considered and any steps taken to prevent reprisal;
- details of information provided to the persona making the disclosure and the person who is the subject of the PID, and any response, including dates;
- action taken in response to the PID, including any investigation; and
- any support provided or offered to the person making the disclosure and the person who is the subject of the PID.

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All records must be factual and free from unnecessary statements such as observations, sentiment or personal opinions. If the PID was made verbally, the investigator must ensure that the written version of the PID is accepted as accurate by the person who made the disclosure.

All PID's or suspected PIDs must be recorded by the RTA's PID co-ordinator in the PID Database

PID support program – for disclosers and the person who is the subject of a PID

An employee, who makes a PID or is the subject of a PID, may seek assistance from the union and may utilise the services of RTA's Employee Assistance Program (EAP).

Further, an employee who is the subject of a PID may also engage their own private legal representation. In certain circumstances the Crown will accept responsibility for claims against employees who have diligently and conscientiously endeavoured to carry out their duties.

Protection from reprisals

The *Public Interest Disclosure Act 2010* protects all public sector employees who make a PID to a proper entity about specific types of wrongdoing or danger as described in the definitions contained within this policy. The *Public Interest Disclosure Act 2010* also protects persons other than public sector employees in certain circumstances involving matters of public interest.

A PID Risk Assessment is to be conducted by the PID Officer upon receipt of the information from the discloser to identify the risk of reprisal.

A PID risk assessment is attached at Attachment A

A discloser will be afforded reasonable protection from reprisal action. In the event of a reprisal being alleged or suspected, the RTA will act in the interest of the person making a disclosure by:

- attending to the safety of the person making a disclosure(s) or affected third parties as a matter of priority;
- determining what, if any, protective measures are needed; and
- managing any allegation of a reprisal as a PID in its own right.

Under section 73 (2) (f) of the *Industrial Relations Act 1999*, it constitutes an unfair dismissal if an employee is dismissed on the basis of making a PID or because of a belief that an employee has made or may make a PID. In accordance with section 41 of the *Public Interest Disclosure Act 2010*, reprisal action is an indictable offence that may attract a term of imprisonment or fine.

Disclosure to a Journalist

The *Public Interest Disclosure Act 2010* provides that a person making a disclosure may make a PID to a journalist if they have already made essentially the same disclosure to a public sector entity that is a 'proper authority' and:

- the entity has decided not to investigate or deal with the disclosure, or
- the entity investigated the disclosure but did not recommend taking any action, or
- the disclosure was not notified within six months of making the disclosure whether or not the disclosure was to be investigated or dealt with.

Immunity from liability

An employee, who makes a PID in accordance with this procedure and its associated policy, will not be subject to any civil or criminal liability, including disciplinary action, for a disclosure that is appropriately made. Disclosures not protected by the *Public Interest Disclosure Act 2010* include:

- disclosures made to the media, except in special circumstances outlined in part 4, section 20 of the *Public Interest Disclosure Act 2010*;
- those made frivolously or vexatiously;
- those which primarily question the relative merits of RTA policy and/or government policy;
- those that are made substantially to avoid disciplinary action.

PID outcome

On completion of the investigation, the PID Officer is provided with a report from the CCC, the investigator, or the agency appointed to investigate the matter.

The PID Officer will inform the person making a disclosure and the person who is the subject of the PID, separately in writing about the outcome of the investigation. Where disciplinary action is warranted, the Chief Executive Officer is responsible for instigating the appropriate process to commence such action.

If the person making a disclosure or the person, who is the subject of the PID, is unhappy with the PID outcome, they may lodge a complaint as per RTA's HRM policy Managing Employee Complaints (H2).

Finalisation of the PID

On completion of all action taken in relation to the PID, the PID Coordinator is to ensure that the PID database is accurate and complete.

The PID Officer should consider any improvements to policy, or procedure as a result of the PID assessment, investigation and outcomes and advise the CEO.

Agreed recommendations should then be reviewed and implemented if approved.

Responsibilities

PID Officer (CFO)

- Receiving a PID on behalf of the RTA.
- Ensuring public interest disclosures made to the RTA are properly assessed, investigated and managed according to legislative provisions.
- Notifying the Crime and Corruption Commission (CCC) of disclosures, or information which the CEO reasonably believes involves, or may involve, corrupt conduct
- Appointing investigators and oversee/coordinate investigations as required
- Establishing and maintaining confidential recordkeeping
- Co-ordinating and providing support to the person who made the disclosure
- Undertaking appropriate action (including disciplinary action), in relation to any proven wrongdoing that is the subject of a public interest disclosure made to the RTA.

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- Ensuring all staff adhere to this procedure and its associated policy,
- Informing the person making a disclosure about support and reasonable protection offered.

Investigator

- Applying consistent and appropriate assessment procedures to determine which complaints meet the requirements of the *Public Interest Disclosure Act 2010*, including the risks of reprisal.
- Undertaking the PID investigation.
- Monitoring for any signs of reprisal.
- Informing the person making a disclosure of reasonable information.
- Making recommendations to the Chief Executive Officer including how issues raised as a result of a PID can be used to make improvements to RTA business processes.
- Comprehensively documenting the PID investigation including the outcome and records are kept in a secure place.

RTA PID Coordinator (Senior Organisational Development and HR Consultant)

- Maintaining the PID database (hosted by Workforce Analysis and Collection Application)
- Provide the Queensland Ombudsmen (the oversight agency) with information as agreed by the Queensland Ombudsmen about PIDS in an electronic form via the PID Reporting Database
- Ongoing training relating to the *Public Interest Disclosure Act 2010*
- Providing advice to the Chief Executive Officer and Chief Financial Officer on Public Interest Disclosure matters

Chief Information Officer / Executive Managers / Managers / Team Leaders

- Ensuring employees are aware of their responsibilities regarding the reporting of instances of corrupt conduct and wrongdoing and making a public interest disclosure
- Ensuring the person/s who made the disclosure can work in a safe environment, free from reprisals.
- Providing clear guidance to staff and people about how to make a PID.

Employees

- Understanding of the procedure to be followed if a person wishes to make a PID or provide information which may constitute a PID.

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Release Notice

RELEASE NOTICE – Public Interest Disclosure and the management of corrupt conduct (PID) Procedure (H7)			
Version	Amendment Details	Author	Date
1.0 - 1.3	Initial Release and updates	See HR for copies	3/11/11
2.0	Final Draft and Release	Al Chisholm	16/11/15

Approved By:

Name: Darren Barlow

Title: Chief Executive Officer

Signature: _____ **Approval & Release Date:** 20.11.2015

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Attachment 1

PID Risk Assessment

Disclosure	<i>Case Number / name</i>
Purpose / timing	<i>Where in process is this being undertaken? e.g. PID received and preliminary assessment indicate investigation is likely to be warranted</i>
Consultation	<i>Was the person making the disclosure consulted? If so, when? If not, why not? Were others consulted?</i>
Assessor	<i>Who is conducting the assessment – when? Who reviews / approves the assessment</i>

1. Risk identification

What might prevent or impact on the objectives of providing protection from reprisal?

Risk in relation to this disclosure	Points to consider
	<p>Disclosure</p> <p><i>How serious is the reported wrongdoing</i></p> <p>Disclosure</p> <p><i>How vulnerable is the internal reporter? e.g. reporting and employment arrangements.</i></p> <p><i>Will confidentiality be maintained during the investigation</i></p> <p>Subject Officer</p> <p><i>Subject officer's power or influence?</i></p> <p><i>One or many subject officers?</i></p> <p><i>Have there been threats or past experiences to indicate concerns?</i></p>

	<p>Organisational environment</p> <p><i>Is close monitoring of the disclosure’s workplace possible? Is it a supportive environment?</i></p> <p>Any other relevant factors</p>
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2. Risk factors

Identify factors that affect consequences and likelihood of reprisal.
 Consider the effectiveness of contrail measures in place

Given what is known	Points to consider
What forms of detriments may occur?	<p><i>Detriment includes:</i></p> <ul style="list-style-type: none"> • <i>A physical or psychological injury</i> • <i>Loss or damage to property</i> • <i>Intimidation or harassment</i> • <i>Discrimination or disadvantage to career, employment or business</i> • <i>Financial loss</i> • <i>Damage to reputation</i>
How Likely is reprisal	<p><i>Given the identified risk factors, what is the combined effect? What factors make reprisal more likely or less likely?</i></p>
Consequences of reprisal?	<p><i>May be more than one consequence of reprisal (e.g. could depend on type/severity of detriment).</i></p>

<p>What control measures are already in place? How effective are they likely to be?</p>	<p><i>What protections are already in place?</i> <i>Are they sufficient to address the risks identified? If not why not – what else needs to be addressed.</i></p>

3. Risk Evaluation

<p>Evaluation comments and recommendation for action</p>
<p><i>What is the overall assessment of the level of risk?</i> <i>Are existing controls adequate or is additional action needed?</i> <i>Do any risks require special consideration and action?</i> <i>What risk treatment/actions are recommended?</i></p>