

PUBLIC INTEREST DISCLOSURE PROCEDURES

Made pursuant to section 59, Public Interest Disclosure Act 2013 (Cth)

1. Document Control

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2. Objectives and Scope

To provide background about the public interest disclosure scheme established by the PID Act and set out IBA's procedures for facilitating and dealing with public interest disclosures made or allocated to IBA.

3. Definitions

PID Act Role	Position
Authorised Officer	General Counsel and CEO
Disclosable Conduct ¹	Conduct that: (a) contravenes a law or perverts the course of justice or involves corruption (b) constitutes maladministration, is an abuse of public trust or results in the wastage of public funds (c) unreasonably endangers the health or safety of a person or endangers the environment (d) involves a public official abusing their position or could give reasonable grounds for disciplinary action against the individual if proved.
PID	Public Interest Disclosure
PID Act	Public Interest Disclosure Act 2013
Principal Officer	CEO
Public Interest Disclosure	A disclosure that is: (a) made by a public official or a former public official (b) which contains information that tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of Disclosable Conduct by a Public Official (c) made to an appropriate person ² , usually a Supervisor or an Authorised Person
Public Officials ³	Includes the CEO, members of the IBA Board and IBA employees. Also includes an individual or body corporate that provides goods or services under a Commonwealth contract and their officers or employees (i.e. consultants and contractors)
Supervisor	Any IBA staff member who supervises staff

¹ Sections 29-33 PID Act

² Section 34 PID Act

³ Section 69 PID Act

4. Background

The PID Act is often referred to as “whistleblower” legislation. It provides a framework for the proper investigation and handling of disclosures about wrongdoing and misuse of public resources by Public Officials, including by ensuring that Public Officials who make disclosures receive support and protection from adverse actions. IBA is committed to the aims of the PID Act and to fostering a culture that encourages the reporting of inefficiency and wrongdoing.

A disclosure will only be dealt with under these procedures if it meets the definition of a Public Interest Disclosure.

5. Responsibilities

5.1 Principal Officer

The Principal Officer has a duty to investigate PIDs that are referred to IBA. The Principal Officer may delegate all or some of their Principal Officer functions to another public official within IBA.⁴ Further details of the Principal Officer’s responsibilities are set out in section 6.3.

5.2 Authorised Officers

A PID can be made to an Authorised Officer of IBA if the PID relates to IBA, or if the person making the disclosure is or was an employee or contractor of IBA. The Authorised Officer’s responsibilities in relation to any such disclosure are set out in sections 6.1 and 6.2.

5.3 Supervisor

If a Public Official discloses information to a Supervisor and the Supervisor has reasonable grounds to believe that the information concerns, or could concern, Disclosable Conduct, the Supervisor must give the information to an Authorised Officer as soon as reasonably practicable.

5.4 Confidentiality

The Authorised Officer and the Principal Officer will take all reasonable steps to protect the identity of a public official who has made a PID from the time the disclosure is made. Only individuals directly involved in dealing with the PID (such as the Authorised Officer and the Principal Officer) may be advised of the details of the PID. These individuals must not disclose the identity of the discloser or any information which is likely to reveal the identity of the discloser without the consent of the discloser.

It is an offence for a Public Official to disclose information that is likely to enable the identification of a person as a person who has made a PID other than in accordance with the PID Act⁵.

If a person discloses information to another person or uses information otherwise than in accordance with the PID Act, the person commits an offence if the information was obtained by the person in the course of conducting a disclosure investigation or in connection with the performance of a function or the exercise of power by the person under the PID Act⁶.

⁴ Section 77(1) PID Act

⁵ Section 20 PID Act

⁶ Section 65 PID Act

5.4 Reprisals

Taking reprisal action against a discloser is an offence against the PID Act, with criminal sanctions⁷.

A reprisal occurs when a person causes, by an act or omission, any detriment to another person because they believe or suspect that person, or anyone else, may have made or intends to make a public interest disclosure.

Detriment includes any disadvantage to a person, including dismissal, injury in their employment, discrimination between them and other employees or alteration of their position to their disadvantage. It could also include a physical or psychological injury, intimidation, harassment, damage to property or disadvantage to a person's career.

6. Procedures

A flow chart outlining the processing of a PID is set out at **Attachment E**.

6.1 Stage 1 – Initial consideration and allocation

A flow chart setting out the procedure to be followed for Stages 1 and 2 is set out at **Attachment F**.

Step 1: Consider whether a disclosure meets the requirements for a PID

When an Authorised Officer receives a disclosure of information, he or she must assess whether or not it meets the definition of a PID.

This will involve an assessment of whether the disclosure contains information that tends to show, or the discloser believes on reasonable grounds that the information tends to show one or more instances of Disclosable Conduct.

The Authorised Officer must use his or her best endeavours to decide the allocation within 14 days after the disclosure is made.

If the Authorised Officer **is satisfied** that the disclosure is a PID:

- The Authorised Officer does not gather evidence or investigate the matter at this stage.
- The Authorised Officer must allocate the disclosure to one or more agencies for further handling and investigation in accordance with the process outlined at Step 2.

If the Authorised Officer **is not satisfied** that the disclosure is a PID:

The Authorised Officer will not allocate the disclosure and:

- if contacting the discloser is reasonably practicable, the Authorised Officer must inform the discloser in writing of:
 - the reasons why the disclosure will not be allocated to an agency; and
 - any other course of action that might be available to the discloser under other laws of the Commonwealth; and
- if the disclosure relates to conduct that may need to be addressed under IBA's:
 - Fraud Control Plan;
 - Code of Conduct;
 - Work Health and Safety Management Arrangements; or
 - any other of IBA's policies or procedures;

⁷ Section 19 PID Act

the Authorised Officer may refer the matter to be dealt with in accordance with the relevant policy or procedure, provided they comply with their confidentiality obligations under the PID Act.

Step 2: Allocate the disclosure to the relevant agency

IBA is generally the most appropriate agency to deal with disclosures about IBA. IBA should not deal with disclosures about other agencies.

The Authorised Officer must not allocate a disclosure to another agency unless an Authorised Officer of that other agency has consented to the allocation.

When the Authorised Officer allocates the handling of a disclosure to an agency (including IBA), the Authorised Officer will inform the Principal Officer of that agency of:

- the allocation to the agency;
- the information that was disclosed to the Authorised Officer;
- the suspected Disclosable Conduct; and
- if the discloser's name and contact details are known to the Authorised Officer, and the discloser consents to the Principal Officer being informed – the discloser's name and contact details.

Note that disclosure of the name and contact details of the discloser without the discloser's consent is an offence against the PID Act, with criminal sanctions.⁸

The Authorised Officer has an obligation to make a written record of the allocation decision (including reasons for the decision and if an allocation is being made to an agency other than IBA, a copy of that agency's consent). These records should be filed in TRIM with restricted access.

IBA Legal holds a template allocation memorandum.

Step 3: Inform the discloser of the allocation decision

If contacting the discloser is reasonably practicable, the Authorised Officer must also inform the discloser in writing of the allocation and the information that has been provided to the Principal Officer of that agency.

This notification must be made as soon as reasonably practicable after the allocation has occurred.

The Authorised Officer has an obligation to make a written record of informing the discloser of the allocation decision (including the day and time the discloser was notified, the means of notification and the content of the notification). These records should be filed in TRIM with restricted access.

Step 4: Inform the Ombudsman of the allocation decision

If the Authorised Officer allocates a disclosure to IBA or any another agency (other than the Ombudsman, the IGIS or an intelligence agency) the Authorised Officer must inform the Ombudsman of this in writing. The form of the notification can be found on the Commonwealth Ombudsman website.⁹

If the disclosure is allocated to an intelligence agency, the Authorised Officer must inform the IGIS of this in writing (the legal team can advise on the form of such a notification).

6.2 Stage 2 – Risk assessment

Step 1: Conduct a risk assessment

The Authorised Officer should, as soon as possible after receipt of a PID, assess the risk that reprisals will be taken against the discloser.

⁸ Section 20, PID Act

⁹ <http://www.ombudsman.gov.au/about/making-a-disclosure/pid-resources>

In assessing the risk of reprisals, the Authorised Officer may use the risk matrix set out at **Attachment A**, but should also consider whether any additional risks apart from those listed in the matrix should be considered.

Step 2: Develop a risk mitigation strategy if necessary

Where the risk level is assessed as anything greater than low, the Authorised Officer will develop a risk management strategy for mitigating the risk of reprisals being taken against the discloser.

This strategy may include some or all of the support measures for disclosers which are set out in **Attachment B**.

In appropriate circumstances, could include reminding staff that taking or threatening to take a reprisal against a discloser is a criminal offence.

Attachment C sets out support measures that may be implemented for persons who are the subject of a disclosure.

Step 3: Monitor and review risks

The Authorised Officer should monitor and review the risk assessment as necessary throughout the investigation process.

6.3 Stage 3 – Consideration and investigation by Principal Officer

Step 1: Provide initial information to disclosers

Within **14 days** of IBA being allocated a PID, the Principal Officer must provide the discloser with the following information about his or her powers to:

- decide not to investigate the disclosure;
- decide not to investigate the disclosure further; or
- decide to investigate the disclosure under a separate investigative power.

IBA Legal has a template letter for providing this information.

Step 2: Consider whether to investigate the disclosure

If a PID is allocated to IBA, the Principal Officer **must** investigate the PID unless he or she considers that:

- the discloser is not and has not been a Public Official;
- the information does not, to any extent, concern serious Disclosable Conduct;
- the disclosure is frivolous or vexatious;
- the information is the same or substantially the same as Disclosable Conduct that has been or is currently being investigated as part of another disclosure investigation;
- the information concerns Disclosable Conduct that is the same or substantially the same as disclosable conduct that is being investigated under a law of the Commonwealth or the executive power of the Commonwealth and:
 - it would be inappropriate to conduct another investigation at the same time; or
 - the Principal Officer is reasonably satisfied that there are no further matters concerning the disclosure that warrant investigation;
- the discloser has informed the Principal Officer that the discloser does not wish for the investigation of the disclosure to be pursued and the Principal Officer is reasonably satisfied that there are no matters concerning the disclosure that warrant investigation;
- it is impracticable for the disclosure to be investigated because:
 - the discloser's name and contact details have not been disclosed;
 - the discloser fails or is unable to give such information or assistance as the person who is or will be investigating asks the discloser to give; or
 - the age of the information makes this the case.

Step 3: Notify the discloser and Ombudsman

If the Principal Officer has **decided not to investigate** the disclosure

If the Principal Officer decides not to investigate a disclosure, he or she will:

- if reasonably practicable to contact the discloser, inform the discloser that the Principal Officer has decided not to investigate the disclosure, identifying:
 - the reasons for the decision not to investigate (other than those reasons that would be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*¹⁰, have or be required to have a national security or other protective security classification or contain intelligence information); and
 - any courses of action that might be available to the discloser under other laws of the Commonwealth; and
- inform the Ombudsman of the decision not to investigate and the reasons for that decision (the form of the notification can be found on the Commonwealth Ombudsman website).¹¹

If the Principal Officer has **decided to investigate** the disclosure

If the Principal Officer decides to investigate the disclosure, he or she must, as soon as reasonably practicable, inform the discloser:

- that he or she is required to investigate the disclosure; and
- of the estimated length of the investigation¹².

Step 4: Conduct an investigation

If the Principal Officer decides that the matter will be investigated, the Principal Officer will investigate the matter to determine whether there are one or more instances of disclosable conduct.

The Principal Officer may delegate in writing the conduct of an investigation (or any other obligation set out in these procedures) to a Public Official (an employee or contractor of IBA)¹³.

General principles

The following general principles apply to the conduct of investigations and must be applied by the Principal Officer:

- maintaining the confidentiality of the identity of the discloser is paramount when conducting the investigation;
- the investigation process must be consistent with the principles of procedural fairness;
- the investigation must be carried out with as little formality as a proper consideration of the matter allows;
- a decision whether evidence is sufficient to prove a fact will be determined on the balance of probabilities;¹⁴ and
- a person who is the subject of the investigation must be provided with an opportunity to respond and provide evidence in relation to the allegations.

The Principal Officer is free to conduct the investigation as he or she sees fit. The way in which the investigation is conducted may vary depending on the alleged conduct which is being investigated.

If at any point during the investigation, the investigator forms the view that any of the reasons for deciding not to investigate a disclosure apply (set out at Step 2 of this part 6.3), then the investigator may stop investigating and must follow the procedure that applies if the Principal Officer has decided not to investigate the disclosure (set out at Step 3 of this part 6.3).

¹⁰ A summary of the exemptions in Part IV of the Freedom of Information Act is at Attachment G

¹¹ <http://www.ombudsman.gov.au/about/making-a-disclosure/pid-resources>

¹² Sections 50(1) and 50(1A) PID Act

¹³ Section 77(1) PID Act

¹⁴ Section 11 Public Interest Disclosure Standard 2013

Rights and responsibilities of disclosers and persons to whom disclosures relate

The rights and responsibilities of disclosers and persons to whom disclosures relate are set out at **Attachment B** and **Attachment C** respectively.

Conduct of investigation

Instances of Disclosable Conduct may relate to information that is disclosed or information obtained in the course of an investigation rather than information provided in the initial disclosure.

During the investigation, the investigator may, for the purposes of the investigation, obtain information from such persons and make such inquiries as he or she sees fit.

When interviewing any person as part of an investigation, the investigator must inform the interviewee of the following:

- the identity and function of each individual conducting the interview;
- the process of conducting an investigation;
- the authority of the Principal Officer under the PID Act and supporting delegations to conduct the investigation; and
- the protections provided to witnesses under section 57 of the PID Act (protections from criminal and civil liability in certain circumstances).¹⁵

The investigator must ensure:

- an audio or visual recording of the interview is not made without the interviewee's knowledge;
- when the interview ends, the interviewee is given an opportunity to make a final statement or comment or express a position; and
- any final statement, comment or position by the interviewee is included in the record of the interview.¹⁶

In conducting the investigation, the investigator may adopt findings set out in reports of investigations or inquiries under other Commonwealth laws or executive powers, or other investigations under the PID Act.

Referral of information to police and others

If, during the course of the investigation, the investigator suspects on reasonable grounds that some of the information disclosed or obtained in the course of the investigation is evidence of the commission of an offence against a law, the investigator may disclose the information to a member of an Australian police force. If the information relates to an offence that is punishable for a period of at least two years, the investigator must disclose the information to a member of an Australian police force.

The investigation may also include consideration of whether a different or further investigation should be conducted by the agency or another body under another law of the Commonwealth.

Time limit for investigation

If a disclosure is allocated to IBA and is investigated, the investigation **must be completed within 90 days of the allocation** of the disclosure to IBA, unless an extension is granted by the Ombudsman.¹⁷

Step 5: Prepare investigation report

Once the Principal Officer has completed the investigation, he or she must prepare a report of the investigation.

The Principal Officer must complete the investigation report within 90 days after the disclosure was allocated to IBA, unless this period is extended by the Ombudsman. If the period is extended, the Principal Officer must inform the discloser of the progress of the investigation as soon as reasonably practicable after the extension is granted.

¹⁵ Section 10(1) Public Interest Disclosure Standard 2013

¹⁶ Section 10(2) Public Interest Disclosure Standard 2013

¹⁷ Section 52 PID Act

The form of the request for an extension to the Ombudsman can be found on the Commonwealth Ombudsman website.¹⁸

Content of report

The report must set out:

- the matters considered in the course of the investigation;
- the duration of the investigation;
- the findings of the investigation (if any);
- any regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates;
- the action (if any) that has been, is being or is recommended to be taken;
- to the extent relevant:
 - the steps taken to gather evidence;
 - a summary of the evidence; and
- any claims made about and any evidence of detrimental action taken against the discloser, and the agency's response to those claims and that evidence¹⁹.

Additional procedures required in particular circumstances

If a disclosure relates to conduct that would require IBA to take steps under IBA's:

- Fraud Control Plan;
- CEI 20 (Code of Conduct);
- CEI 13 (Workplace Bullying);
- CEI 16 (Complaints)
- any other of IBA's policies or procedures,

the processes set out in those procedures and policies should be complied with in the conduct of an investigation under these procedures, taking into account the confidentiality obligations imposed by the PID Act.

If the Principal Officer considers that information disclosed in the course of a PID may be appropriately dealt with under another procedure or policy of IBA, he or she may recommend in the investigation report that this occur and refer the matter to the relevant part of IBA.

Step 6: Provide report to discloser

If it is reasonably practicable to contact the discloser, the Principal Officer must provide the discloser with a copy of the report within a reasonable time after preparing the report.

However, the Principal Officer may delete from the copy of the report given to the discloser any material that:

- is likely to enable the identification of the discloser or another person; or
- would be exempt for the purposes of Part IV of the *Freedom of Information Act 1982*²⁰, would require a national security or other protective security clearance, contains intelligence information or contravenes a designated publication restriction as defined in the PID Act.²¹

¹⁸ <http://www.ombudsman.gov.au/about/making-a-disclosure/pid-resources>

¹⁹ Section 51 PID Act, Section 13 Public Interest Disclosure Standard 2013

²⁰ A summary of the exemptions in Part IV of the Freedom of Information Act is at **Attachment D**

²¹ The restrictions specified in the PID Act are: restrictions on publication imposed by the Family Law Act 1975, Migration Act 1958, Child Support (Registration and Collection Act) 1988, non-publication or suppression orders imposed by any courts, court orders imposed under the National Security Information (Criminal and Civil Proceedings) Act 2004 or the Witness Protection Act 1994, orders or directions under the Administrative Appeals Tribunal Act 1975, and restrictions imposed by or orders or directions made under the Australian Crime Commission Act 2002 or the Law Enforcement Integrity Commissioner Act. If you have any concerns, you should seek legal advice before making any disclosure.

The secrecy provisions in the *Aboriginal and Torres Strait Islander Act 2001* **do not apply** to the disclosure, use or recording of information if the following criteria are satisfied²²:

- the disclosure, recording or use is:
 - done by a person in connection with the conduct of a disclosure investigation
 - done by a person for the purposes of or in connection with the exercise of their functions and powers under the PID Act to allocate a PID, conduct an investigation or disclose to a member of the an Australian police force;
 - done by a supervisor for the purposes of or in connection with the exercise of their functions and power to report a PID to the Authorised Officer; and
- the restrictions on publication set out at footnote 20 do not apply.

Legal advice should be sought prior to releasing a report to the discloser.

²² Section 75 PID Act

Attachment A: Example Risk Matrix

	Identified risk event	Likelihood (High/Medium/Low)	Consequence (Minor/Moderate/ Major/Extreme)	Action to mitigate
1	Assault			
2	Verbal assault			
3	Stalking			
4	Cyber-bullying			
5	Silent treatment in workplace			
6	Interference to personal items in workplace			
7	Excluded from legitimate access to information			
8	Excluded from promotion			
9	Excluded from workplace sanctioned social events			
10	Unjustified change to duties/hours of work			
11	Dismissal			
12	Unjustified refusal of leave			
13	Onerous/unjustified audit of access to ICT/ Time sheets			
14	Onerous/unjustified audit of expenditure of Commonwealth money / Cab charge use			
15	Disadvantage to career via provision of reference to prospective employers			
16	Bullying in local community through common peers			
17	Other [insert]			

Examples of seriousness of reprisals

- Minor: Occasional or one-off action that is likely to have a relatively minor adverse effect on the person (for example, occasional exclusion of the person from a social activity).
- Moderate: Repeated action which is likely to have an adverse effect on the person (for example, routinely failing to "CC" the person on work-related emails).
- Major: Sustained or one-off action which has a significant impact on the person (for example, consistently excluding the person from team discussions or imposing a negative performance assessment on the person).

- Extreme: Action which is likely to have a very severe impact on the person (for example, physical violence or the denial of a promotion opportunity).

Criteria for assessing likelihood of potential reprisals

When considering the likelihood of a reprisal being taken against a discloser, the Principal Officer should take into account all relevant factors, including to the extent relevant:

- the likelihood of the discloser being identified, which may involve a consideration of:
 - the size of the work area in which the discloser is located; and
 - the number of people who are aware of the information leading to the disclosure;
- the number of people implicated in disclosure;
- the subject matter of the disclosure;
- the number of people who are aware of the disclosure or are likely to become aware of the disclosure (for example, through participation in the investigation as witnesses);
- the culture of the workplace;
- whether any specific threats against the discloser have been received;
- whether there are circumstances that will make it difficult for the discloser not to discuss the disclosure in the workplace;
- whether there are allegations about individuals in the disclosure;
- whether there is a history of conflict between the discloser and the subject of the disclosure; and
- whether the disclosure can be investigated while maintaining confidentiality.

Criteria for assessing likely seriousness of potential reprisals

In considering the likely seriousness of any potential reprisal against a discloser, the Principal Officer should take into account all relevant factors, including, to the extent relevant:

- the significance of the issue being disclosed;
- the likely outcome if the conduct disclosed is substantiated;
- the subject matter of the disclosure;
- whether the discloser is isolated;
- whether the discloser is employed on a full-time, part-time or casual basis;
- whether the alleged wrongdoing that is the subject of the disclosure was directed at the discloser; and
- the relative positions of the discloser and the person whose alleged wrongdoing is the subject of the disclosure.

When conducting the risk assessment, where consistent with protecting the discloser's confidentiality, the Authorised Officer may ask the discloser why they are reporting the wrongdoing and who they might fear a reprisal from, and may also speak to the discloser's supervisor or manager.

Attachment B: Summary of support for and rights and responsibilities of disclosers

Support for disclosers

Regardless of the outcome of the risk assessment, the Principal Officer must take all reasonable steps to protect disclosers from detriment or threats of detriment relating to a PID.

This may include taking any of the following actions:

- appointing a support person to assist the discloser, who is responsible for checking on the wellbeing of the discloser regularly
- informing the discloser of the progress of the investigation
- advising the discloser of the availability of the Employee Assistance Program
- where there are any concerns about the health and wellbeing of the discloser, liaising with officers responsible for work health and safety in IBA (noting the confidentiality obligations imposed in relation to PIDs)
- transferring the discloser to a different area within the workplace

Rights of disclosers

A discloser has a right to the protections set out in the PID Act, including protection from reprisals, from civil and criminal liability, and from the disclosure of his or her identity where the disclosure is made anonymously. However, a disclosure does not protect the discloser from the consequences of their own wrongdoing, including where they have been involved in the misconduct that they are reporting.

During the PID Act process, a discloser will be:

- advised of the following:
 - any decision that a disclosure is not a disclosure within the meaning of the PID Act;
 - the allocation of their disclosure;
 - the decision of IBA to investigate their disclosure;
 - the estimated duration of the investigation into their disclosure;
 - if IBA decides not to investigate their disclosure, the reasons for that decision and any action that may be available to the discloser under other Commonwealth laws;
 - if an investigation is conducted under the PID Act and an extension of time is granted by the Ombudsman or IGIS, the progress of the investigation; and
 - the outcome of the investigation (including provision of a copy of the investigation report except to the extent that it would be exempt for the purposes of Part IV of the Freedom of Information Act 1982, would require a national security or other protective security clearance, contains intelligence information or contravenes a designated publication restriction as defined in the PID Act).
- given support in accordance with paragraph 4.6 of the procedures.
- able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

Responsibilities of disclosers

A discloser must:

- comply with the PID Act requirements and the procedures set out in this document when making a PID;
- use his or her best endeavours to assist the Principal Officer of any agency in the conduct of an investigation;
- use his or her best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act; and

- use his or her best endeavours to assist the IGIS in the performance of the IGIS's functions under the PID Act;
- report to the Authorised Officer any detriment the discloser believes he or she has been subjected to as a result of making the disclosure; and
- cooperate with actions proposed by the Authorised Officer to protect the discloser from reprisals or the threat of reprisals or address work health and safety risks. In particular, although a discloser will be consulted regarding any actions proposed to be taken, such actions may be taken without the consent of the discloser.

Attachment C: Summary of support for and rights and responsibilities of persons the subject of a disclosure

Support for persons the subject of a disclosure

The decision to investigate a disclosure is not a decision that the disclosure is substantiated or that any wrongdoing has occurred. Accordingly, where appropriate in the context of the investigation, the Principal Officer should take steps to support any employee who is the subject of a PID.

This may include taking any of the following actions:

- advising the employee of his or her rights and obligations under the PID Act and about IBA's investigation procedures, including the employee's rights to procedural fairness
- informing the employee of the progress of the investigation
- advising the employee of the availability of the Employee Assistance Program
- ensuring that the identity of the employee is kept confidential as far as reasonably practicable
- where there are any concerns about the health and wellbeing of the employee, liaising with officers responsible for work health and safety in IBA
- transferring the employee to a different area within the workplace

Rights of persons the subject of a disclosure

An IBA employee who is the subject of a disclosure will be:

- given support in accordance with paragraph 4.7 of the procedures; and
- able to seek assistance from the Ombudsman in relation to the operation of the PID Act.

Responsibilities of persons the subject of a disclosure

An IBA employee who is the subject of a disclosure must:

- use his or her best endeavours to assist the Principal Officer of any agency in the conduct of an investigation;
- use his or her best endeavours to assist the Ombudsman in the performance of the Ombudsman's functions under the PID Act;
- use his or her best endeavours to assist the IGIS in the performance of the IGIS's functions under the PID Act;

comply with action taken by IBA to address risks or concerns in relation to the PID.

An employee who is the subject of a disclosure should also be aware that:

- the outcome of an investigation under the Procedures set out in this document may result in another, different investigation (for example, a Code of Conduct investigation) taking place; and
- IBA may decide to take action in relation to the employee, for example temporarily transferring the employee to another work area without the employee's consent, in order to discharge its obligations including under the PID Act and work health and safety legislation.

Attachment D: Summary of FOI exemptions (extract from Commonwealth Office of the Information Commissioner fact sheet)²³

The right to access documents held by government is subject to certain limitations that ensure that sensitive information, including personal, secret or national security information, is properly protected. If you request a document from an Australian Government agency or minister under the *Freedom of Information Act 1982* (the FOI Act), you may not be given access to the document if it falls within one of the categories of exemptions under the FOI Act. There are two types of exemptions: documents which are exempt, and documents which are conditionally exempt and will not be released if their disclosure would be contrary to the public interest. If an agency or minister decides not to provide a document to you because the document falls within one of the exempt or conditionally exempt categories, they must explain their reasons in the notice of decision they give you. If exempt information can be deleted from part of a document, an edited copy of the document can be provided. If you do not agree with the agency's or minister's decision, you can ask for the decision to be reviewed by the agency or the Australian Information Commissioner.

Exemptions

There are nine categories of exemptions under the FOI Act. If a document meets the criteria for one of these categories, an agency or minister can refuse to release it. The categories are:

- documents affecting national security, defence or international relations
- Cabinet documents
- documents affecting enforcement of law and protection of public safety
- documents to which secrecy provisions in other legislation apply
- documents subject to legal professional privilege
- documents containing material obtained in confidence
- documents whose disclosure would be in contempt of Parliament or in contempt of court
- documents disclosing trade secrets or commercially valuable information
- electoral rolls and related documents.

Conditional exemptions

Another eight categories of document are conditionally exempt under the FOI Act. They are documents relating to:

- Commonwealth-State relations
- deliberative processes relating to agencies' or ministers' functions
- the Commonwealth's financial and property interests
- certain operations of agencies (such as audits, examinations and personnel management)
- personal privacy
- business affairs
- research (by the CSIRO or the Australian National University)
- Australia's economy.

If a document meets the criteria for one of the conditional exemptions, a further step applies in deciding whether to release the document. The decision maker must consider whether in the circumstances giving access to the document would be contrary to the public interest. Access cannot be refused simply because the document falls within one of the conditional exemption categories: release must also be contrary to the public interest.

²³ Office of the Information Commissioner, FOI Fact Sheet 8: Freedom of information – exemptions (2010), available at <https://www.oaic.gov.au/resources/freedom-of-information/foi-resources/foi-fact-sheets/foi-fact-sheet-8-exemptions.pdf>

The public interest test

In deciding where on balance the public interest lies, the decision maker must weigh factors favouring access and those favouring non-disclosure.

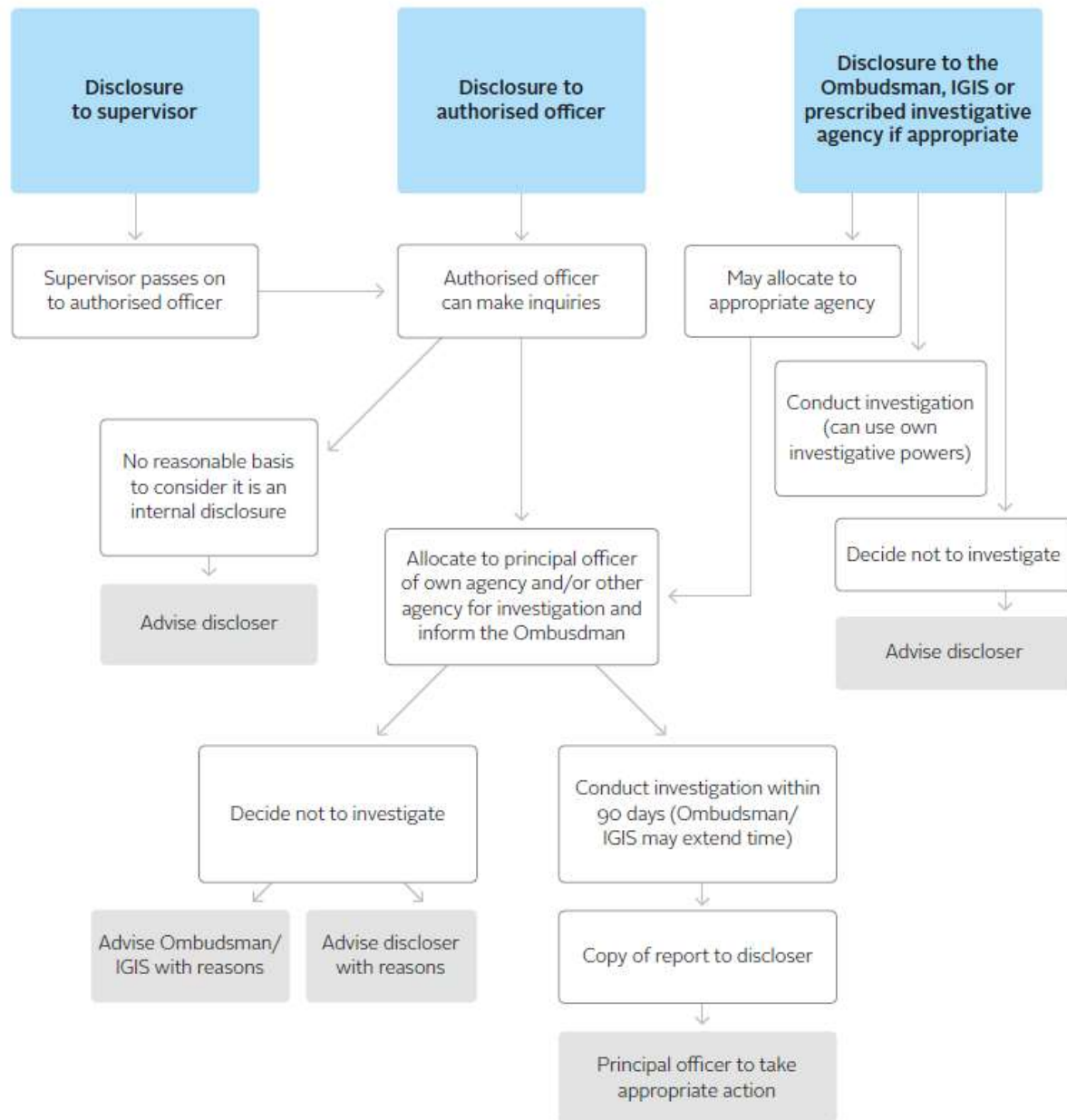
The FOI Act sets out some factors that favour giving access when applying the public interest test. These factors include whether giving access would promote the objects of the Act, including scrutiny of government activity and promoting public participation in government decision making.

The FOI Act also sets out some factors which must not be taken into account. They include embarrassment to or a loss of confidence in the government, misunderstanding, confusion or unnecessary debate, and the seniority of the document's author.

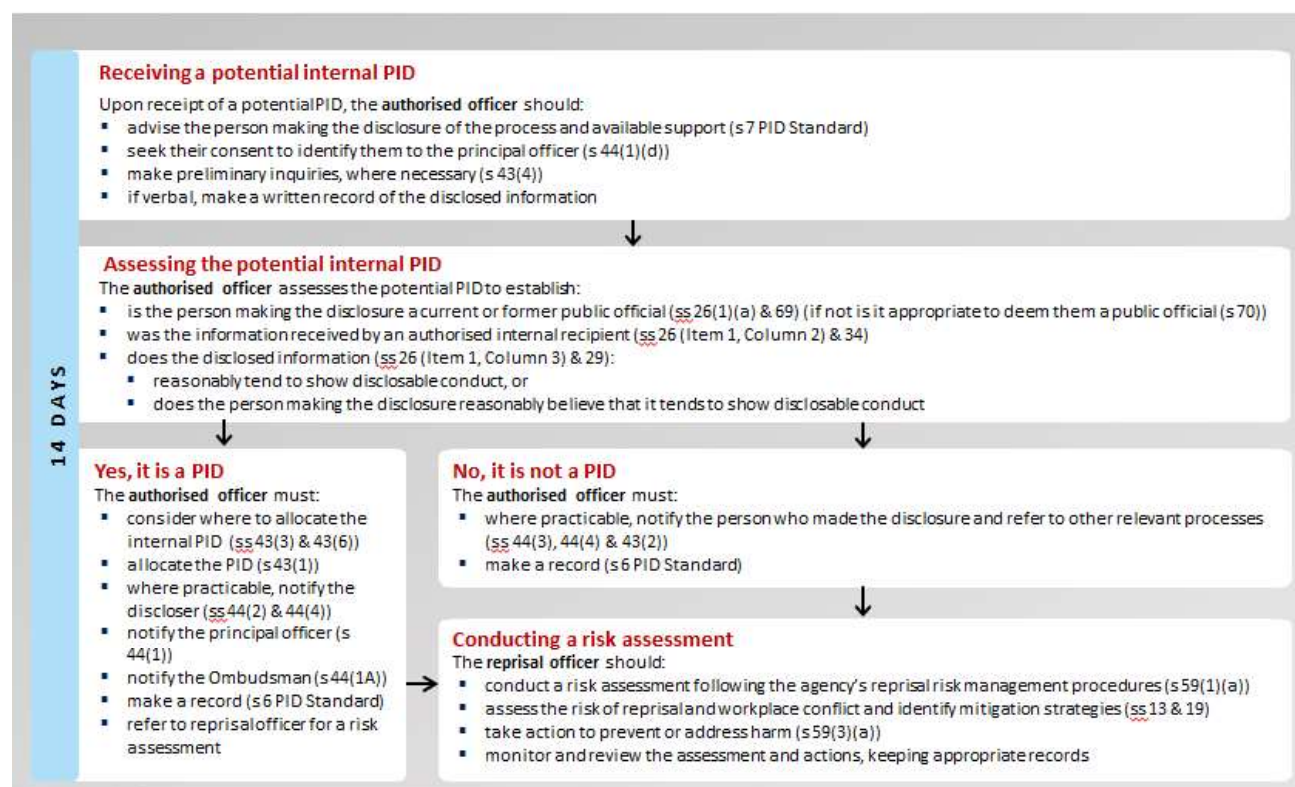
The public interest factors will differ from case to case and will be influenced by the criteria in the conditional exemption that applies.

Attachment E: Procedure Flow Chart – Internal Disclosures

Dealing with an internal disclosure



Attachment F: Procedures Flow Chart – Stage 1 and 2



Attachment G: Procedures Flow Chart – Stage 3

