



1.2.14 PUBLIC INTEREST DISCLOSURES PROCEDURE

Relevant Council Policy

1.2.14 PID Policy

Approval Date: 14 December 2022

Appendix – PSC Code of Conduct and Integrity

Relevant CEO Directive

Nil

Review: Biennially

Objective:

For Shire of Mingenew to manage disclosures of public interest information effectively, efficiently and in accordance with the provisions of the *Public Interest Disclosure Act 2003*.

Legislation:

Public Interest Disclosure Act 2003 (PID Act)

Procedures:

Managing Public Interest Disclosures

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

Overarching requirements of the Public Interest Disclosure Act 2003

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

What is 'public interest information'?

The PID Act only applies to disclosures of public interest information (defined in s. 3). Public interest information means information that:

1. Relates to the performance of a public function by a public authority, public officer or public sector contractor (either before or after the commencement of the PID Act); and
2. Shows or tends to show that a public authority, a public officer, or a public sector contractor is, has been or proposes to be involved in:
 - a) improper conduct; or
 - b) an act or omission that constitutes an offence under a written (State) law; or
 - c) substantial unauthorised or irregular use of, or substantial mismanagement of, public resources; or
 - d) an act done or omission that involves a substantial and specific risk of:
 - i. injury to public health; or
 - ii. prejudice to public safety; or
 - iii. harm to the environment; or
 - e) a matter of administration that can be investigated under section 14 of the Parliamentary Commissioner Act 1971 by the Parliamentary Commissioner (Ombudsman Western Australia).



Confidentiality

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

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

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

Throughout the disclosure process and after its completion, the PID Act provides for the discloser's identity, and the identity of any person that is the subject of the disclosure to be kept confidential except in certain circumstances. Disclosing information which might identify, or tend to identify, the discloser (s. 16(1)) or any person that is the subject(s) (s. 16(3)) of your disclosure, except in accordance with the PID Act, is an offence punishable with a penalty of a \$24 000 fine or imprisonment for two years.

Confidentiality regarding the discloser

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

If the discloser consents to having their identity revealed to assist us in dealing with the disclosure, our PID Officer will record this using the Consent to Disclosure of Identifying Information form.

Sometimes we may need to identify the discloser without the discloser's consent (s. 16(1) (b)-(f)) but only where:

1. It is necessary to do so having regard to the rules of natural justice;
2. It is necessary to do so to enable the matter to be investigated effectively;
3. We are ordered to do so by a court or any other person or body having authority to hear, receive or examine evidence; or
4. We are required to do so by ss.152 or 153 of the Corruption, Crime and Misconduct Act 2003.

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

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

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



Confidentiality Plan

If your confidentiality cannot be maintained, we will develop a plan to support and protect you from any potential risks of detrimental action. You will be involved in developing this plan.

Confidentiality regarding the person that is the subject of the disclosure

The subject of a disclosure may consent to having their identity revealed to assist with the disclosure process s. 16(3)(a). Our PID Officer will use the Consent to Disclosure of Identifying Information form to record this.

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

1. It is necessary to do so to enable the matter to be investigated effectively;
2. It is necessary to do so in the course of taking action under s. 9;
3. There are reasonable grounds to believe that it is necessary to prevent or minimise the risk of injury to any person or damage to any property;
4. We are ordered to do so by a court or any other person or body having authority to hear, receive or examine evidence; or
5. We are required to do so by ss. 152 or 153 of the Corruption, Crime and Misconduct Act 2003.

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

Protections

The PID Act provides a range of protections for disclosers (Part 3). It also requires that our Chief Executive Officer provides protection for any employees who make disclosures (s. 23(1)(b)).

[*Don't be Afraid to Speak Up*](#) (a publication issued by the Public Sector Commission) contains general information about the protections provided by the PID Act.

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

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

Notification requirements

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

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

1. Within three months of making a disclosure, the action taken, or proposed to be taken, in relation to the disclosure (s. 10(1)); and



2. When the disclosure process has concluded, the outcome of the investigation and the reasons for taking any action following the investigation (s. 10(4)).

Our PID Officer may also provide a progress report during any investigation, either on their initiative or upon your request (ss. 10(2) and (3)).

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

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

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

Record keeping

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

PID Register

To assist with annual reporting to the Public Sector Commissioner we will maintain a public interest disclosure register. We will assign a unique register number to each disclosure and record key information about your disclosure, any investigation and the outcome in the public interest disclosure register. This register (paper and/or electronic) is kept strictly confidential and maintained in a secure location.

How to Make a Public Interest Disclosure

Before you make a disclosure

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

A number of other requirements apply to the discloser, so it is important to understand the rights and responsibilities in the process. This information is outlined generally in *Don't be Afraid to Speak Up*, available from the Public Sector Commission website and the Shire of Mingenew website.

At the Shire of Mingenew, the Chief Executive Officer is the designated person responsible for receiving disclosures of public interest information in accordance with s. 23(1)(a). For the purposes of this procedure a PID Officer(s) is the proper authority designated under s. 5(3)(h) for dealing with information that falls within the sphere of responsibility for the Shire of Mingenew.



Their names and contact details are:

Name	Position	Contact Details
Matt Fanning	Chief Executive Officer	(08)9928 1102 0419 647 661 ceo@mingenew.wa.gov.au
Erin Greaves	Governance & Community Manager	(08)9928 1102 0477 287 144 governance@mingenew.wa.gov.au

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

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

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

What is 'sphere of responsibility'?

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

1. Matters that relate to the Shire of Mingenew; or
2. A public officer or public sector contractor of the Shire of Mingenew; or
3. A matter or person that the Shire of Mingenew has a function or power to investigate.

The proper authority to which you need to make the disclosure depends on the type of disclosure information. Where the information is outside of our PID Officer's sphere of responsibility, it may need to be made to another proper authority for it to be considered as a public interest disclosure and for the discloser to receive the protections of the PID Act. A list of proper authorities and the information they can receive is covered in [Don't be Afraid to Speak Up](#).

Making the disclosure

A discloser needs to clearly identify that they are making a public interest disclosure. For the purposes of accountability and certainty, persons wishing to make a disclosure of public interest information under the PID Act are encouraged to do so in writing. As we expect that most disclosures will be made in writing,



the Shire of Mingenew has developed a form which can be used for the purpose of making such a disclosure which is available from the [Shire's website](#). There is no requirement to use the form, but it will help to define the details of the disclosure. It may be completed by the discloser, or our PID Officer may complete the form if they are speaking with the discloser and then have them sign the form to acknowledge they are making a disclosure voluntarily and consciously.

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

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

Determining whether your matter is an appropriate disclosure

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

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

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

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

Determining whether your public interest disclosure will be investigated

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

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

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





Referring public interest matters

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

Investigating the Disclosure

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

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

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

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

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

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

To ensure the disclosure is adequately and properly investigated our PID Officer, or other investigator, will be guided by the procedures below. Internal investigation procedures In conducting an investigation, typical steps may include:

1. Drawing up terms of reference, identifying the key issues in the disclosure;
2. Ensuring the objectives of the investigation include collecting and collating information relating to the disclosure, considering the information collected and drawing conclusions objectively and impartially;
3. Specifying a date by which the investigation should be completed and a report provided to the discloser about the final outcome;
4. Informing the subject of the disclosure about their rights and obligations under the PID Act, the Shire's Code of Conduct and the law;



5. Maintaining procedural fairness for the person who is the subject of the disclosure;
6. The investigator making contemporaneous notes of discussions and interviews and, where practical and appropriate, recording discussions and interviews as an audio or video record; and
7. Ensuring strict security to maintain the confidentiality requirements of the PID Act.

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

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

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

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

1. You consent to your identity being disclosed;
2. It is necessary to enable the matter to be investigated effectively;
3. It is necessary to do so in taking action within s. 9;
4. There are reasonable grounds to believe that it is necessary to prevent or minimise the risk of injury to any person or damage to any property;
5. A direction to disclose your identity is made in accordance with a court order or other body having authority to hear evidence;
6. Disclosure is required in accordance with ss. 152 or 153 of the corruption, Crime and Misconduct Act 2003.

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

1. Be informed of the substance of the allegations; and
2. Make a submission either verbally or in writing in relation to the matter.

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

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



Taking Action

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

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

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

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

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

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

Confidentiality and record keeping when taking action

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

Our PID Officer will keep appropriate records about any action taken, as well as recording a summary of this action [in the public interest disclosure register].

After the Public Interest Disclosure Process has been Finalised

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

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

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

Making a Disclosure to a Journalist

The PID Act provides for certain circumstances where a discloser may be able to make a protected disclosure to a journalist (s. 7A(d)). These circumstances apply where the discloser has first made a



disclosure to the PID Officer or another proper authority named in the PID Act (outlined in How to Make a Public Interest Disclosure (above) or [*Don't be Afraid to Speak Up*](#)).

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

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

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

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

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