

## Confidentiality and its practical alternatives

This fact sheet provides guidance on assessing the likelihood of confidentiality being maintained when a public interest disclosure is made, and then implementing strategies in response to this. It should be read together with our public interest disclosures *Guideline C7: Confidentiality*.

Under the *Public Interest Disclosures Act 1994* (PID Act) organisations are required to keep the identities of internal reporters of wrongdoing confidential – where this is practical and appropriate. To do this, as well as to facilitate investigation, it may be important to keep both the fact that a public interest disclosure has been made and the substance of the allegations confidential.

### When wrongdoing is reported you need to manage the risk of confidentiality not being maintained

Identify at the outset what processes there are for maintaining confidentiality by:

- Obtaining information from the staff member reporting wrongdoing about the likelihood of their identity being known.
- Conducting a risk assessment to assess the likelihood of confidentiality being lost throughout the course of the investigation and any adverse effects arising from that loss of confidentiality.

Questions to consider:

- Has the staff member reported the issue before or said that they would do so?
- Can the issues identified be readily attributed to the internal reporter?
- Can the issues be investigated without identifying the internal reporter?
- Will the process of gathering evidence alert staff to the fact that a report has been made?
- What is the risk of the subject of the report guessing who made it?
- What is the risk that the subject of the report will threaten or take reprisal action if they guess who made it or once they know a report has been made?
- What is the risk of the internal reporter suffering reprisal from elsewhere within the organisation if their identity is disclosed?

Refer over the page for the steps that you should take depending on the likelihood of maintaining confidentiality.

### Are any exceptions to maintaining confidentiality under the PID Act relevant?

If you answer yes to any of the following, then confidentiality does not have to be maintained:

- Has the internal reporter consented in writing to the disclosure of the identifying information?
- Is it generally known that the internal reporter has made the public interest disclosure?<sup>1</sup>
- Is it essential for the identifying information to be disclosed to satisfy the requirements of procedural fairness?
- Does the identifying information need to be disclosed for the matter to be effectively investigated?
- Is it otherwise in the public interest for the identifying information to be disclosed?

Refer over the page for the steps that should be taken if a confidential approach is not required.

<sup>1</sup> See *Guideline C7: Confidentiality* for advice about the meaning of the term 'generally known'.

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If the internal reporter's identity is **likely** to remain confidential, adopt an approach that ensures confidentiality is maintained:

## Maintaining confidentiality

Organisations should:

- Limit the number of people who are aware of the identity of the internal reporter or information that would tend to identify them.
- Remind each person who has the information that there is a statutory obligation to keep it confidential.
- Assess whether anyone who is aware of the internal reporter's identity may have a motive to take reprisals against them or impede the progress of the investigation.
- Put in place procedures to make sure that the internal reporter can communicate with support people or investigators without alerting others.

## Appropriate investigation techniques

Investigators should use approaches that are least likely to result in the internal reporter being identified.

For example:

- Arrange for a 'routine' internal audit of an area or activity that covers but is not focussed solely on the issues disclosed.
- Don't identify a trigger or reason for an audit or investigation, or alternatively allude to a range of triggers without confirming a specific one.
- Ensure that the internal reporter is interviewed if it is expected that everyone in the workplace would be interviewed.

If the internal reporter's identity is **unlikely** to remain confidential, adopt a proactive approach:

## Support and protect the internal reporter

The supervisors and line managers of the internal reporter should be advised that they are responsible for:

- providing support to the reporter
- protecting them from harassment or any other form of reprisal.

## Advice and training

Relevant staff, including the colleagues of the internal reporter and the subject of the report, should be given advice or training about the:

- importance of reporting wrongdoing
- relevant provisions of the organisation's internal reporting policy.

## Relocation and transfer

If there are concerns about the internal reporter's safety or well being, or other factors that would make it impossible for them to remain in their current workplace, you should consider whether it is practical to move them to:

- another part of the organisation
- an equivalent position in a new organisation
- alternative employment.

In some circumstances it may be appropriate to relocate the subject of the report.

## Proactive management intervention

Tell the colleagues of the internal reporter and the subject of the report:

- that the report has been made
- the general substance of the allegations made
- the identity of the reporter.

Senior managers should make it clear that it is important staff feel able to make public interest disclosures and that the internal reporter has acted appropriately in bringing their genuine concerns to light. They should also make it clear to the subject they understand it may be stressful for them that colleagues know about the allegations and that they will be provided with appropriate support.

Senior managers should point out that the protections in the PID Act are likely to apply and provide all parties with a copy of the organisation's internal reporting policy, outlining the consequences of taking or threatening detrimental action or breaching confidentiality.

## Contact us for more information

Our business hours are: Monday to Friday, 9am–5pm (*Inquiries section closes at 4pm*)

If you wish to visit us, we prefer you make an appointment. Please call us first to ensure your complaint is within our jurisdiction and our staff are available to see you.

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Telephone Interpreter Service (TIS): 131 450  
We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.