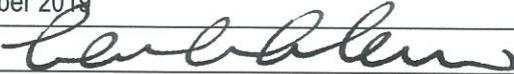




ORGANISATIONAL DIRECTIVE NO:	OD/GOV 4101
ORGANISATIONAL DIRECTIVE	Internal Procedure for Managing Public Interest Disclosures Guideline
RESPONSIBLE DIRECTORATE	Governance
RESPONSIBLE OFFICER/S	Chief Executive Officer All Employees
CEO APPROVAL	Date: 4 November 2019
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LEGISLATION	Local Government Act 1995
RELATED POLICIES	Code of Conduct Council Members, Committee Members and Employees
RELATED ORGANISATIONAL DIRECTIVES	Nil

## PURPOSE OF THESE GUIDELINES

The Public Sector Commissioner has developed these guidelines in accordance with s. 21 of the *Public Interest Disclosure Act 2003* (PID Act) to assist authorities develop their own internal procedures. Under s. 23(1)(e) and s. 23(2) principal executive officers (PEOs) of public authorities (authorities) are required to prepare and publish internal procedures relating to their obligations under the PID Act. Internal procedures must be consistent with the PID Act and these guidelines.

While these guidelines cover the requirements for an authority under the PID Act. Authorities are encouraged to adapt or enhance these procedures to best reflect their operating context. Authorities will need to add information as to how they will specifically meet the requirements of the PID Act to receive, investigate, take appropriate action and provide reports to disclosers.

When developing internal procedures, authorities will need to consider these guidelines in conjunction with:

1. the Public Interest Disclosure Act 2003
2. the Public Interest Disclosure Regulations 2003
3. Public Interest Disclosure (PID): Supporting information for Principal Executive Officers and PID Officers (proper authorities)
4. *Don't be afraid to speak up* Public Sector Commission guide to PID
5. Guide for managers.

### Important note

While information provided in these guidelines and the supporting information for principal executive officers and proper authority (PID Officer) reflects the requirements of the PID Act, there will be, from time to time, circumstances that raise complex questions of law, where there is a real possibility of litigation or where the matter is otherwise highly contentious. In these cases, further legal or other professional advice should be sought before taking action.

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# Public interest disclosure procedures for the Shire of Wyndham East Kimberley

## **A. ORGANISATIONAL COMMITMENT FOR REPORTING PUBLIC INTEREST INFORMATION**

The Shire of Wyndham East Kimberley (the Shire) does not tolerate corrupt or other improper conduct.

The Shire of Wyndham East Kimberley is committed to the aims and objectives of the *Public Interest Disclosure Act 2003* (PID Act). The PID Act recognises the value and importance of reporting as a means to identify and address wrongdoing.

We strongly support disclosures being made by employees about corrupt or other improper conduct. We also strongly support contractors and members of the community making disclosures about corrupt or improper conduct.

The Shire of Wyndham East Kimberley does not tolerate any of its employees, contractors or subcontractors taking reprisal action against anyone who makes or proposes to make a public interest disclosure.

The Shire of Wyndham East Kimberley will take all reasonable steps to protect employees from any detrimental action in reprisal for the making of a public interest disclosure.

The commitment to effectively manage public interest disclosures extends to a proper authority of Shire of Wyndham East Kimberley. The persons responsible for receiving disclosures of public interest information designated under s. 23(1)(a) of the PID Act will abide by the *PID Code of conduct and integrity* in performing their duties.

The Shire of Wyndham East Kimberley is also committed to responding to the disclosure thoroughly and impartially. We will treat all people in the disclosure process fairly, including those who may be the subject of a disclosure.

The Shire of Wyndham East Kimberley will provide as much information as possible to people considering making a public interest disclosure. These internal procedures are accessible to all employees and contractors. Copies are available from the designated person appointed as the proper authority (Public Interest Disclosure (PID) Officer) and will be kept with each officer (available electronically and in hard copy).

General information about public interest disclosures and how the Shire of Wyndham East Kimberley will manage a disclosure is available for external clients and members of the community on the Shire website [www.swek.wa.gov.au](http://www.swek.wa.gov.au)

While these procedures focus on public interest disclosures, we are committed to dealing with all reports of suspected wrongdoing. We encourage people to report if they witness any such behavior. The Shire will consider each matter under the appropriate reporting pathway and make every attempt to protect staff members making reports from any reprisals.

## **B. PURPOSE OF THE INTERNAL PROCEDURES**

Our Chief Executive Officer must prepare and publish these internal procedures under s. 23(1)(e) of the PID Act.

These procedures outline how we will meet our obligations under the PID Act. They cover the roles and responsibilities of the Chief Executive Officer, the person designated as the proper authority in accordance with s. 23(1)(a) and s. 5(3)(h) referred to in this document as the PID Officer, the discloser and the subject of the disclosure.

The procedures are to be read in conjunction with the PID Act, *Public Interest Disclosure Regulations 2003* and *Don't be afraid to speak up*.

### C. SCOPE AND APPLICATION OF INTERNAL PROCEDURES

These procedures apply to all people involved in the public interest disclosure process, including the Chief Executive Officer, PID Officer(s), employees of the Shire of Wyndham East Kimberley and/or any person making a public interest disclosure and any subject(s) of a disclosure.

These procedures should be read in conjunction with:

1. Public Interest Disclosure Act 2003
2. Public Interest Disclosure Regulations 2003
3. Local Government Act 1995
4. Local Government (Rules of Conduct) Regulations 2007
5. Shire of Wyndham East Kimberley Code of Conduct for Council Members, Committee Members and Employees.

The behavior of all employees involved in the public interest disclosure process must accord with our Code of conduct at all times. A breach of the Code of Conduct may result in disciplinary action.

### D. OVERVIEW OF ROLES AND RESPONSIBILITIES

Person / role	Responsibilities
Principal executive officer (s. 23) in Shire of Wyndham East Kimberley, the Chief Executive Officer:	<ol style="list-style-type: none"> <li>1. Designates the occupant of a specified position (a PID Officer) to receive public interest disclosures related to the Shire of Wyndham East Kimberley (s. 23(1)(a)).</li> <li>2. Provides protection from detrimental action or the threat of detrimental action for any employee of the Shire of Wyndham East Kimberley who makes a public interest disclosure (s. 23(1)(b)).</li> <li>3. Ensures the Shire of Wyndham East Kimberley complies with the PID Act and the code of conduct and integrity established by the Public Sector Commissioner (ss. 23(1)(c) and (d)).</li> <li>4. Prepares and publishes internal procedures, consistent with those prepared by the Public Sector Commission detailing how the Shire of Wyndham East Kimberley will meet its obligations under the PID Act (s. 23(1)(e)).</li> <li>5. Provides information (s. 23(1)(f)) to the Public Sector Commissioner on the:               <ol style="list-style-type: none"> <li>a. the number of disclosures received by the Shire of Wyndham East Kimberley;</li> <li>b. results of any investigations conducted as a result of the disclosures;</li> <li>c. action, if any taken, as a result of each disclosure; and</li> <li>d. any matters as prescribed.</li> </ol> </li> </ol>

6. May have a role in enabling an investigation to be undertaken or taking disciplinary action against individuals under functions and powers separately from the PID Act.

The Proper Authority (s. 5(3),  
s. 7 and s. 18)

or

PID Officer(s 23(1)(a)):

1. As is designated by ss. 5(3)(a-g) or by the Chief Executive Officer of the Shire of Wyndham East Kimberley, under s. 23(1)(a) the PID Officer is to receive disclosures related to the Shire of Wyndham East Kimberley.
2. Provides information to potential disclosers about their rights and responsibilities consistent with the Code of Conduct and integrity established under s. 20(1).
3. Receives and manages public interest disclosures in accordance with the PID Act (s. 5(3)).
4. Notifies the discloser within three months of the disclosure being made about what action is planned in dealing with the disclosure (s. 10(1)).
5. Where appropriate, investigates, or causes an investigation of, the matters in the disclosures (s. 8(1)).
6. Where appropriate, provides information to subjects of a disclosure about their rights, responsibilities, duties and potential offences (s. 9(2), s. 14, s. 15, s. 16 and s. 24).
7. Where appropriate, takes such action as is necessary and reasonable, within their functions and powers in accordance with s. 9.
8. Maintains confidentiality of the identity of the discloser and subject(s) of disclosures, in accordance with the requirements of the PID Act (s. 11 and s. 16).
9. Provides progress reports where requested and a final report to the discloser in accordance with s. 10.
10. Creates and maintains proper and secure records in relation to the disclosures in accordance with the Code of conduct and integrity established under s. 20(1) and the *State Records Act 2000*.
11. Completes a PID Register for each disclosure lodged (s. 23(1)(f)).
12. Acts in accordance with the rules of natural justice (s. 9(2) and s. 16(1)(b)).
13. Acts in accordance with the code of conduct and integrity established by the Public Sector Commissioner (s. 20(1)) and any authority-specific code of conduct established separately from the PID Act.

The discloser:

1. Makes a public interest disclosure to a proper authority or our PID Officer if the matter relates to the Shire of Wyndham East Kimberley (s. 5(1)).
2. Believes on reasonable grounds the information in their disclosure is, or may be, true (s. 5(2)).
3. Does not disclose information subject to legal professional privilege (s. 5(6)).
4. Does not knowingly and recklessly make a false or misleading disclosure (s. 24(1)).
5. Maintains confidentiality of the information disclosed and the identity of the person(s) to whom the information relates, in accordance with the requirements of the PID Act (s. 16 and s. 17(1)(b)).
6. Assists any person investigating the matter to which the disclosure relates by supplying the person with any information requested (s. 17(1)(a)).

The subject of the disclosure (person about whom disclosure is made):

1. Is afforded the opportunity to make a submission, either orally or in writing, in relation to the matter before preventative or disciplinary action is taken (s. 9(2)).
2. Maintains confidentiality of the identity of the discloser, in accordance with the requirements of the PID Act (s. 16(1)).
3. Is to be treated in accordance with the rules of natural justice (s. 16(1)(b)).
4. Does not take or threaten to take detrimental action (defined in s. 3) against a person because they have made or intend to make a disclosure (s. 14(1)).
5. Does not incite another person to take detrimental action against another because they have made or intend to make a disclosure (s. 14(2)).
6. Does not commit an act of victimisation by taking or threatening to take detrimental action against the person making or intending to make a disclosure (s. 15(1)).

An investigating officer:

1. May investigate matters of public interest information on behalf of a proper authority of Shire of Wyndham East Kimberley, in accordance with the terms of reference given to them.
2. Maintains confidentiality of the identity of the disclosure and any persons subject to the disclosure, in accordance with s. 16.
3. Makes, and keeps secure, comprehensive records of any investigation undertaken.

## E. MANAGING PUBLIC INTEREST DISCLOSURES

The following procedures describe how the Shire of Wyndham East Kimberley 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:

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 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 injury to public health or
  - i. prejudice to public safety or
  - ii. harm to the environment or
  - iii. 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 protects 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
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 persons, that is, any 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 available on the Public Sector Commission Website*.

Sometimes the Shire 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 or
2. it is necessary to do so to enable the matter to be investigated effectively or
3. the Shire are ordered by a court or any other person or body having authority to hear, receive or examine evidence or
4. the Shire are required by ss.152 or 153 of the *Corruption, Crime and Misconduct Act 2003*.

Before the Shire identify the discloser for any of the reasons above, the PID Officer will take all reasonable steps to inform the discloser that this will happen and the reasons why. The PID Officer will use the *Notification of disclosure of identifying information form* to do this.

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

The 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, the PID Officer will notify as described above.

### **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). The Shire's PID Officer will use the *Consent to disclosure of identifying information form* to record this.

Additionally, the Shire 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. PID Officers are ordered by a court or any other person or body having authority to hear, receive or examine evidence or
5. PID Officers are required 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 the Shire's Chief Executive Officer provides protection for any employees who make disclosures (s. 23(1(b))).

*Don't be afraid to speak up* contains general information about the protections provided by the PID Act. Our PID Officer will be able to expand on this information specific to the Shire of Wyndham East Kimberley.

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 and they are encouraged to tell the PID Officer who is handling the disclosure immediately of their concerns.

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 Chief Executive 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, the Shire's PID Officer will provide the following reports:

1. within three months of making a disclosure, the action taken, or propose to take, in relation to the disclosure (s. 10(1))
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)).

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

The 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:

Any person's safety s(1)(a) or

The investigation of an offence or possible offences s(1)(b) or

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 the PID Officer will 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 on the Shire's record keeping system and only accessed by authorised persons.

## PID Register

To assist with annual reporting to the Public Sector Commissioner the Shire will maintain a public interest disclosure register. The Shire will assign a unique register number to each disclosure and record key information about the disclosure, any investigation and the outcome in the public interest

disclosure register. This electronic register is kept strictly confidential and maintained in a secure location by the Senior Governance and Risk Officer.

## F. HOW TO MAKE A PUBLIC INTEREST DISCLOSURE

### 1. Before making a disclosure

The Shire strongly encourages anyone thinking about making a public interest disclosure to seek advice from a 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 at [www.publicsector.wa.gov.au](http://www.publicsector.wa.gov.au)

At the Shire of Wyndham East Kimberley the occupant(s) of the following designated position(s) are specified with the authority as the person(s) 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 Wyndham East Kimberley.

Their names and contact details are:

Position	Name of PID Officer	Contact details
Senior Governance and Risk Officer	<a href="#">Kourtney Williams</a>	<a href="mailto:kourtney.williams@swek.wa.gov.au">kourtney.williams@swek.wa.gov.au</a>
Senior Planning Officer	<a href="#">Katherine Gilpin</a>	<a href="mailto:katherine.gilpin@swek.wa.gov.au">katherine.gilpin@swek.wa.gov.au</a>
Coordinator Financial Operations	<a href="#">Felicity Heading</a>	<a href="mailto:felicity.heading@swek.wa.gov.au">felicity.heading@swek.wa.gov.au</a>
Depot Administration Officer	<a href="#">Shannon Hassett</a>	<a href="mailto:Shannon.hassett@swek.wa.gov.au">Shannon.hassett@swek.wa.gov.au</a>

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. The PID Officer will also let the discloser know that they need to make the disclosure voluntarily and consciously –a PID Officer 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 the 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 pmade, for example, our general complaints or grievance resolution process.

Our PID Officer will be able to provide more detailed information about the Shire of Wyndham East Kimberley's disclosure process and what people can expect from it.

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 Wyndham East Kimberley or
2. A public officer or public sector contractor of the Shire of Wyndham East Kimberley or
3. A matter or person that the Shire of Wyndham East Kimberley 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*.

## **2. 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 it is expected that most disclosures will be made in writing the Shire of Wyndham East Kimberley has developed a form which can be used for the purpose of making such a disclosure. There is no requirement to use the form. The form will help to define the details of the disclosure. A discloser may fill out the form themselves or the 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.

The Shire must accept anonymous disclosures, but if a discloser decides to make an anonymous disclosure they should understand that it may be more difficult for the 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 the 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.

## **3. Determining whether your matter is an appropriate disclosure**

Once the PID Officer has received the disclosure they will assess whether it meets the requirements under the PID Act. It may be that the 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, the 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.

#### **4. 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:

- a) the matter is trivial
- b) the disclosure is vexatious or frivolous
- c) there is no reasonable prospect of obtaining sufficient evidence due to the time that has elapsed since the matter(s) occurred
- d) 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.

#### **5. Referring public interest matters**

Where the 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, the PID Officer may need to refer an allegation of an offence supported by evidence to the Western Australia Police for investigation.

#### **6. Investigating the disclosure**

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

If causing the disclosure to be investigated, the 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. The 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, the 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 the disclosure is an employee, they 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 the PID Officer.

The 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 the PID Officer, or other investigator, will be guided by the procedures below.

### ***Internal investigative procedures***

1. Develop the terms of reference for the investigation, clarifying the key issues in the disclosure
2. Ensure the objectives of the investigation include;
  - a. collecting and collating information related to the disclosure
  - b. considering the information collected
  - c. drawing conclusions objectively and impartially
3. Specify a date by which the investigation should be completed and a report provided to the discloser about the final outcome, bearing in mind that the discloser may be able to disclose to a journalist if;
  - a. the PID Officer does not notify the discloser within three months of them making their disclosure about how they plan to deal with the disclosure
  - b. the PID Officer discontinues an investigation
  - c. the PID Officer does not complete the investigation within six months
  - d. the PID Officer does not provide a final report to the discloser about the outcome and any action taken, including the reasons for that action
4. Inform the subject of the disclosure about their rights and obligations under the PID Act, the PID Officer's code of conduct and integrity, any agency code of conduct and the law
5. Maintaining procedural fairness for the person who is the subject of the disclosure
6. The investigator will make contemporaneous notes of discussions and interviews and, where practicable and appropriate, record discussions and interviews on audio or videotape (ensuring people are made aware and have consented to being recorded).
7. Ensure strict security to maintain the confidentiality requirements of the PID Act.
8. Use the available resources available on the Public Sector Commission Website to ensure the delivery of an effective process and disclosure.

### **What are the responsibilities of a person if they 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.

The Shire will treat the person fairly and impartially throughout the process, and inform them of their rights and obligations. The Shire will generally keep the parties involved informed during any investigation, although we cannot release any information to the person that may prejudice the 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. The subject consents to their 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. is made in accordance with a court order or other body having authority to hear evidence
6. it is made in accordance with ss. 152 or 153 of the *Corruption, Crime and Misconduct Act 2003*.

The Shire will also provide appropriate natural justice. This means that, before the Shire 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 a person is the subject of a disclosure, they 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, the subject 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.

## **7. Taking action**

The 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, the 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 the 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 or other appropriate body or
3. taking disciplinary action against a person responsible for the matter.

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

In taking action the PID Officer and/or the Shire of Wyndham East Kimberley 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 the Shire 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.

The 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.

## **8. After the public interest disclosure process has been finalised**

The PID Act places no further obligations on the Shire of Wyndham East Kimberley or the PID Officers 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).

## **9. 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 s. 5 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 the PID Officer that 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.

## 10. Contact details and further information

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### 11. Further contact details

More information regarding Public Interest Disclosures can be found by visiting the Shire's Website, or contacting the Senior Governance and Risk Officer: [mail@swek.wa.gov.au](mailto:mail@swek.wa.gov.au) or 08 9168 4100