

# Information, advice and feedback to internal reporters

## 1. Objectives

- To help organisations decide what information and advice should be given to staff who report wrongdoing.
- To provide guidance to organisations about the feedback they should give at the end of an investigation to the internal reporter.

## 2. Why is this important?

Staff who report wrongdoing need to be told how their report is going to be handled so they feel their concerns are being taken seriously. If the staff member who makes a report receives no feedback, they may assume that nothing is being done and take their concerns elsewhere. Without providing regular and accurate updates, organisations run the risk of heightening the concerns and dissatisfaction of the internal reporter. This in turn can have a negative impact on the workplace.

Staff who are subjects of a report also need to be given information and updates at appropriate intervals. *Guideline C8: People subject to internal reports* provides further guidance on how to manage this issue.

The prompt and efficient provision of information can also help to minimise any disruption to a workplace arising from a report of wrongdoing.

## 3. Legal and management obligations

### 3.1 PID Act

Section 6D of the *Public Interest Disclosures Act 1994* (PID Act) requires organisations' internal reporting policies to state that written acknowledgement and a copy of the policy will be provided to a person making a public interest disclosure (PID) within 45 days of the PID being made. In practice, we believe organisations should acknowledge the report much sooner than that.

According to s.27 of the PID Act, an organisation must notify an internal reporter about any action taken or proposed in response to their PID within six months of their PID being made. If the PID was referred to an investigating authority, the requirement to notify the internal reporter within six months also applies.

## 4. What does this mean for your organisation?

### 4.1 Managing expectations

It is vital your organisation manages the expectations of staff who make reports of wrongdoing from the start. If an internal reporter develops unrealistically high expectations, they are less likely to later be satisfied with:

- the way your organisation or relevant staff have dealt with the report
- the outcome of any action taken in relation to their report
- their treatment by colleagues or management.

Research has shown that the majority of internal reporters are not satisfied unless an investigation confirms their report and the organisation takes action in response.<sup>1</sup> This finding emphasises the need to carefully manage an internal reporter's expectations.

Assess an internal reporter's expectations at the time they report wrongdoing. Ask them to tell you:

- what they expect should happen to their report
- what outcome they are expecting as a result of their report.

Discuss the internal reporter's expectations with them and explain the process that will be followed. Make it clear to them at the outset:

- that your organisation must give fair and impartial consideration to their report
- that any decisions arising from their report will be based on evidence and you will independently assess the available evidence to determine if it is sufficient to substantiate the allegations
- the outcomes that are possible in the circumstances.

If the outcome the internal reporter is seeking would be unlikely to happen – for example, that the principal officer will conduct the investigation or the subject of the report will be suspended without pay during the investigation – tell them this at the outset and explain why. This may include any legal limitations on the jurisdiction of your organisation and its ability to take action in relation to the report of wrongdoing.

All the information given to the internal reporter – whether in writing or face to face – should be in plain English. Avoid using legal or technical terms. Verbal advice should be documented and filed appropriately on the relevant file.

## 4.2 Timeframes

Good administrative practice requires organisations to communicate with internal reporters at each stage of the process.

Internal reporters may automatically assume that nothing is being done about their report if they are not given any information. The integrity of the internal reporting process depends on your organisation keeping internal reporters regularly informed, even if there is no new information. It is still important to maintain regular contact because it assures the internal reporter that they have not been forgotten.

We recommend that relevant information should be given at the following times:

- when a report of wrongdoing is made
- after a report is assessed and a decision made about how the report will be progressed
- at regular intervals during any investigation that is conducted
- at the end of any investigation.

Table 1 provides guidance about what information could be given and when to staff who report wrongdoing, although this will depend on the circumstances. Your internal reporting policy should clearly state who is responsible for providing this information and within what timeframes.

**Table 1: Information to be provided to an internal reporter**

<b>At the outset</b>	<ul style="list-style-type: none"><li>• Written acknowledgement of receipt of the report.</li><li>• The timeframe in which the internal reporter will be advised about the action to be taken.</li><li>• The name and contact details of a person who they can contact about what is happening.</li><li>• A request not to discuss their report with anyone, particularly anyone who may be involved in the investigation.</li></ul> <p>In the model internal reporting policies for <a href="#">organisations</a> and <a href="#">local government</a>, we recommend this information be provided within two working days from the date a report is made. However, this turnaround time may not always be possible, especially if the report of wrongdoing has been made in a regional centre and will be handled at a head office located in a different city or town.</p>
<b>After an assessment decision</b>	<ul style="list-style-type: none"><li>• Information about the action that is to be taken.</li><li>• The likely timeframes for any investigation.</li><li>• Information about support options within your organisation available to the internal reporter to assist them with any concerns during the process – for more details see <a href="#">Guideline D1: Internal reporter support strategy</a>.</li><li>• Information about external organisations and services that the internal reporter can access for support.</li></ul> <p>In the model internal reporting policies for <a href="#">organisations</a> and <a href="#">local government</a>, we recommend this information be provided within 10 working days from the date a report is made.</p>
<b>During any investigation</b>	<ul style="list-style-type: none"><li>• The ongoing nature of the investigation, its progress and reasons for any delay.</li><li>• If the internal reporter's identity needs to be disclosed for the matter to be investigated, provide an opportunity to talk about this.</li></ul> <p>You should nominate an individual – either a disclosures coordinator, disclosures officer or support person – as the point of contact with the internal reporter. This person should be responsible for providing ongoing information and answering any questions or concerns the internal reporter may have.</p>
<b>At the end of any investigation</b>	<ul style="list-style-type: none"><li>• Advise of any problem – systemic or otherwise – that was identified.</li><li>• Provide enough information to show that adequate and appropriate action was taken and/or is proposed to be taken to address these problems.</li><li>• Advise the internal reporter if they will be required as a witness in any further matters, such as disciplinary or criminal proceedings.</li></ul> <p>You should work out who is going to give this information about the outcome to the internal reporter. Ideally, it should be someone who has a good understanding of the allegations, the investigation that was conducted and the action to be taken.</p>

## 4.3 Arrangements between investigating authorities and organisations

Various scenarios may eventuate during the handling of a report of wrongdoing that will affect what arrangements are put in place by organisations and investigating authorities to provide information and advice to internal reporters.

Depending on the circumstances, your organisation should carefully consider who is responsible for providing information updates to the internal reporter. Arrangements between organisations and investigating authorities may differ, depending on which body receives the complaint. For example:

- A report may be made directly to an investigating authority and handled by them without your organisation becoming aware of it. In this case, the investigating authority would be solely responsible for maintaining a relationship with the internal reporter and providing them with updates.
- A report may be made to an investigating authority which in turn notifies your organisation that they have received a report of wrongdoing. The investigation of the report may be conducted by the investigating authority, your organisation, or jointly. You should make clear arrangements at the outset stating who is responsible for telling the internal reporter what and when, as well as who is responsible for providing them with support.
- A report may be made directly to an investigating authority but referred to another body for appropriate investigation and handling following assessment. In this case, your organisation should make clear arrangements with the investigating authority about who will be responsible for speaking with the reporter, including who will advise them about the referral of the report to another body.

When the obligations about communicating with an internal reporter are unclear, one option to consider is arranging periodic round table meetings between your organisation, the investigating authority and the internal reporter so that consistent information is relayed to all involved parties on a regular basis.

You should also consider the nature and timing of the information the investigating authority and your organisation can provide to the various parties and to staff generally about your organisation's ongoing involvement in the matter and the investigating authority's involvement in any aspects of the matter.

For more details see [Guideline C6: Managing referred and external investigations](#).

## 5. Your questions answered

### What information and advice should our organisation provide to the internal reporter if the report is not substantiated?

It is important to provide a clear explanation of the reasons for the decisions made and actions taken in response to a report of wrongdoing. This is particularly important if your finding is that there is insufficient evidence to substantiate the allegations.

You should also make staff aware of any review process available to them. Advise them too that any new or additional information they provide will be assessed.

### Does an internal reporter need to be given the details of any disciplinary action taken as a result of their report?

There is no obligation on an organisation to provide an internal reporter with complete details about any disciplinary action taken as a result of their report. However, the internal reporter should be given some idea of the outcome. If internal reporters are not told about any disciplinary action, they are most likely to assume that no action has been taken. This may result in a reporter feeling obliged to escalate their concerns – for example, by going to the media.

Any decisions about providing information should aim to balance the needs of the internal reporter, your organisation and the privacy of subjects of the report. Generally, enough information should be given to clearly show that adequate and appropriate action was taken or is going to be taken in response to the report of wrongdoing. In particular, you should emphasise how the problems are being addressed.

Some organisations decline to provide any details about disciplinary action because they believe that this would be in breach of the [Privacy and Personal Information Protection Act 1998](#) (PPIP Act). However, section 4(3)(e) of the PPIP Act states that information about an individual obtained during the course of an investigation arising from a PID is not considered to be personal information. In certain circumstances then, including where the subject of the report provides consent for information to be given, it may be appropriate to reveal further details.

You could, for example, consider advising the internal reporter of the outcome of any disciplinary action on a strictly confidential basis. This advice should probably be given verbally to avoid the risk of any correspondence being circulated inappropriately. If any advice is given verbally, it should still be documented and appropriately filed. Verbal advice is still official advice.

The internal reporter should also be notified if they will be required as a witness in any future disciplinary or criminal proceedings.

### What information about a PID can be accessed under the [Government Information \(Public Access\) Act 2009](#)? For example, can an organisation release information about a report of wrongdoing that will identify the internal reporter?

Under the [Government Information \(Public Access\) Act 2009](#) (GIPA Act) access to government information is restricted only when there is an overriding public interest against disclosure, whether or not such information is already known either to the applicant or generally.

Under Schedule 1, clause 1 of the GIPA Act, there is an overriding public interest against the disclosure of information that might identify or tend to identify a person who has made a PID. This applies even to the exceptions to confidentiality set out in s.22(1) of the PID Act.

If a GIPA application is received requesting information that does not identify or tend to identify the internal reporter, the organisation should consider the application carefully and decide whether there is any risk that releasing the information might lead to confidentiality being breached. If there is no such risk, then the organisation should consider the application as it would any other GIPA application and balance the public interest factors for and against disclosure.

If a GIPA application is received requesting information that does identify the internal reporter, the information cannot be disclosed. This applies even when the request is from the internal reporter or the same information has been in the media.

## Can our organisation give the internal reporter a copy of the investigation report?

Where appropriate, there is nothing to prevent an organisation giving the internal reporter a copy of the draft report during the investigation to check facts, or giving them a copy of all or parts of the final report – provided this is not in response to a GIPA application.

The decision about what information should be given to the internal reporter may be affected by other considerations such as:

- the 'excluded information' provisions in the GIPA Act
- any ongoing investigation
- confidentiality considerations
- legal proceedings.

## 6. Additional resources

- Model internal reporting policies for [organisations](#) and [local government](#)
- [Guideline C6: Managing referred and external investigations](#)
- [Guideline C8: People subject to internal reports](#)
- [Guideline D1: Internal reporter support strategy](#)
- NSW Ombudsman's [Reporting on progress and results of investigations](#)
- [Government Information \(Public Access\) Act 2009](#)
- [Privacy and Personal Information Protection Act 1998](#)
- [Public Interest Disclosures Act 1994](#)

## 7. Last updated

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## 8. Endnotes

- 1 Brown, AJ (ed.) 2008, *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations*, ANU E Press, Canberra, p. 118.

## 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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