

Reporting on progress and results of investigations

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Reporting on progress and results of investigations

An issue that often arises in the context of an investigation into complaints or disclosures is what information can be given to interested parties about the progress and results of an investigation. While it is not possible to give a definitive answer to this question that applies in all circumstances, it is possible to give some general guidance.

Who

When considering what information should be provided to the parties involved in an investigation, consideration needs to be given to whether the investigation is either 'evidence focussed' or 'outcome focussed':

- 'evidence focussed' inquiries seek to pursue all lines of inquiry in a way that will meet all legal and procedural requirements, particularly where there is a possibility of criminal or disciplinary action, or a finding of wrong conduct against an individual which could significantly affect the person's reputation, interests, etc, ie, where a person is the subject of the complaint/disclosure
- 'outcome focussed' inquiries are primarily directed at quickly identifying and remedying problems. They therefore only seek to obtain sufficient information for a fair and informed judgment to be made about the issues in question, particularly where those issues relate to policies, procedures and/or practices. An outcome focussed investigation may require no more than consideration of the terms of the complaint/disclosure and a study of any relevant documents.

Where an investigation is 'evidence focussed', the parties with a legitimate interest in receiving information about the progress and outcome of the investigation might include:

- complainants/internal reporters
- subjects of complaints/disclosures
- witnesses whose evidence is obtained during the course of an investigation.

Where an investigation is 'outcome focussed', the party with the legitimate interest in receiving such information may only be the complainant/internal reporter.

Why

The reasons why information should be given to interested parties about the progress and results of investigations would include:

- to meet the legitimate expectations of those involved
- to respect the rights and interests of those involved
- to better manage complainants/internal reporters and subjects of complaints/disclosures
- to provide procedural fairness to subjects of complaints/disclosures.

How

There are various ways in which relevant information on the progress and outcome of an investigation can be provided to interested parties, for example:

1. discretionary release, eg:
 - written advice in reports, letters, facsimiles or emails
 - oral advice during or at the conclusion of interviews/hearings, or at the conclusion of an investigation
2. under the *Government Information (Public Access) Act* – particularly where there is a possibility of defamation proceedings being instituted by a subject of the investigation.

What and when

The stages at which information might best be provided to interested parties, and the information that could be provided, are set out on the following pages.

Also see public interest disclosure guideline D2 for advice on providing information, advice and feedback to internal reporters.

Table 1. Reporting to complainants, internal reporters, subjects and witnesses

	Complainants	Internal reporters	Subjects	Witnesses
At the outset	<ul style="list-style-type: none"> acknowledgement of the receipt of the complaint the timeframe in which they will be advised as to the action to be taken on their complaint the name and contact details of a person who they can contact about what is happening with their complaint what action will be taken on their complaint (at an appropriate time)¹ 	<ul style="list-style-type: none"> acknowledgement of receipt of the disclosure⁴ the timeframe in which they will be advised as to the action to be taken on their disclosure the name and contact details of a person who they can contact about what is happening with their disclosure a request not to discuss their disclosure with any person, particularly any person who may be involved in the investigation 	N/A	N/A
After a decision is made	<ul style="list-style-type: none"> general information as to what is proposed to be done in relation to the complaint² the likely timeframes for the actions proposed the nature of the complainant's likely involvement in the actions to be taken what information would be provided to them and at what stages during the course of the investigation the name and contact details of a contact person within the agency who will be responsible for the handling of their complaint, etc the need to keep this information confidential (where appropriate)³ 	<ul style="list-style-type: none"> the action that is to be taken on their complaint the likely timeframes for any investigation a further request that they do not discuss their disclosure with any person 	<ul style="list-style-type: none"> the broad substance of any allegations against them (where the investigation could lead to findings and/or recommendations that could detrimentally impact on the person) how the complaint/disclosure will be dealt with the opportunities that will be made available to them to put their case, or to show cause, whether in writing, at a hearing or otherwise⁵ if the name of the person who made the disclosure is known or likely to become known (with the internal reporter's agreement) the name of the internal reporter and that it is a criminal offence and also a disciplinary matter to take detrimental action substantially in reprisal (may not be the reporter)⁶ 	

Table 1. Reporting to complainants, internal reporters, subjects and witnesses cont'd.

	Complainants	Internal reporters	Subjects	Witnesses
During the course of an investigation	<ul style="list-style-type: none"> the on-going nature of the investigation the progress so far the reasons for any delay when it is anticipated the investigation will be completed the need to keep this information confidential (where appropriate)⁷ 	<ul style="list-style-type: none"> the on-going nature of the investigation⁸ the progress so far and any reasons for any delay advance warning if their identity is to be disclosed to the subject of the investigation, either directly or indirectly a further request not to discuss their disclosure with any other person 	<ul style="list-style-type: none"> the on-going nature of the investigation⁹ the progress so far the reasons for any delay when it is anticipated the investigation will be completed 	<ul style="list-style-type: none"> the nature of the allegations relevant to the evidence they will be asked to provide (where appropriate) whether or not their evidence will be kept confidential and how it is intended it be used whether their involvement will be on-going, and if so the nature and likely timing of this involvement a request or direction that this information and their involvement be kept confidential (where appropriate)¹⁰
Prior to completing an investigation	N/A	N/A	<ul style="list-style-type: none"> the grounds of any proposed adverse comment in respect of the subject any case the subject may need to make, answer or address the opportunity that is to be made available for them to put their case (eg, a time period for written submissions or the date of a hearing) 	N/A
At the completion of an investigation	<ul style="list-style-type: none"> the general outcome of the investigation¹¹ any recommendations arising out of an 'outcome focussed' investigation, and any recommendations arising out of an 'evidence focussed' investigation that could impact on the interests of or otherwise be of concern to the complainant 	<ul style="list-style-type: none"> sufficient information to demonstrate that adequate and appropriate action was taken, and/or is proposed to be taken, in respect of their disclosure and in relation to any systemic issue brought to light by their disclosure 	<ul style="list-style-type: none"> the outcome of the investigation any recommendations that relate particularly to the subject of the investigation what is likely to happen next where appropriate, a request that this information be kept confidential 	<ul style="list-style-type: none"> the general outcome of the investigation¹² what is likely to happen next whether the witness will be further involved in the matter, eg, as a witness in any disciplinary or criminal proceedings a request or direction that this confirmation be kept confidential (where appropriate)

Table 1. Reporting to complainants, internal reporters, subjects and witnesses cont'd.

	Complainants	Internal reporters	Subjects	Witnesses
At the completion of an investigation cont'd.	<ul style="list-style-type: none"> what is likely to happen next and whether the complainant is likely to be further involved in the matter, eg, as a witness in any disciplinary or criminal proceedings the need to keep this information confidential (where appropriate) 	<ul style="list-style-type: none"> advice as to whether he/she will be further involved in the matter, eg, as a witness in any disciplinary or criminal proceedings advice not to discuss his/her disclosure with any other person, particularly any person who may have been involved in the investigation (where on-going confidentiality as to his/her identity is an important issue) 	<ul style="list-style-type: none"> where appropriate, further advice that it is an offence to take detrimental action substantially in reprisal 	

Endnotes

- Where confidentiality is an issue, complainants should also be informed of the need for them to be circumspect in the information they give their colleagues, and in their conduct in the presence of colleagues, so as not to prejudice the confidentiality of the complaint. It should be pointed out that this is important for their own protection, the integrity of any investigation that may be, or is being, carried out, and to respect the rights of the people who are the subjects of the complaint.
- It is important to explain to complainants either the reasons why no action, or action that does not meet their expectations, is to be taken on their complaint, or what action is proposed to be taken in relation to the complaint – whether internal investigation, referral to some outside body, or some other action.
- It is important to consider whether secrecy is required for the effective investigation of a complaint. This impacts on the need to advise the complainant of the importance of confidentiality/secrecy and on the timing of advice as to what action is to be taken.
- While the *Public Interest Disclosures Act 1994* requires the internal reporting policies of public authorities to provide that a copy of the policy and a written acknowledgement be provided to a person reporting wrongdoing within 45 days of the disclosure being made, public authorities should acknowledge the report much sooner in practice.
- It is necessary to consider whether secrecy is required for the effective investigation of a complaint/disclosure. This will impact on when it will be appropriate to notify the subjects of the complaint/disclosure that the allegations have been made, and as to the nature of the allegations.
While the person the subject of an investigation should be informed of the substance of the allegations against them and proposed adverse comments, this does not require all the information in the investigator's possession relating to those allegations be disclosed to that person. Indeed it may damage the effectiveness of the investigation to show the investigator's hand completely by offering too much information too early to the person the subject of the complaint/disclosure.
- While the content or timing of a complaint/disclosure will often effectively disclose the identity of the complainant/internal reporter, provided allegations can be put fairly and completely to the subject of an allegation, procedural fairness does not require that the identity of a complainant/internal reporter be disclosed.
- The most common source of criticism or complaint about the conduct of an investigation is that the investigator/agency did not give sufficient and on-going feedback to the complainant. Complainants should be kept up to date and regularly advised, in general terms, of progress in investigating or otherwise dealing with their complaint and the timeframes that apply. It is important to reassure complainants that their complaint is being taken seriously.
- This may be in response to a specific request for information, or otherwise from time to time at the discretion of the investigator during the course of an investigation.
- See footnote 7 above but have regard to the issues raised in footnote 4.
- Where witnesses only have a peripheral involvement in an investigation, the content and timing of any information provided to them will depend on the particular circumstances of the case.
- Where an investigation does not substantiate a complaint or disclosure, the fact that the investigation is being carried out, the results of the investigation and the identity of the person who is the subject of the complaint/disclosure should remain as confidential as possible, unless the subject requests otherwise.
- See footnote 9.