

Commissioner's Foreword

This publication contains guidelines I have prepared in accordance with section 14 of the *Public Interest Disclosure Act 2018* (PID Act).

Guidelines are issued in respect of the following:

1. Receipt, assessment and notification of appropriate disclosures
2. Notification of action taken
3. Informant confidentiality
4. Creation of procedural documents

This publication is **not** a manual of instruction for the administration of the PID Act. Nor is it a substitute for reading the PID Act.

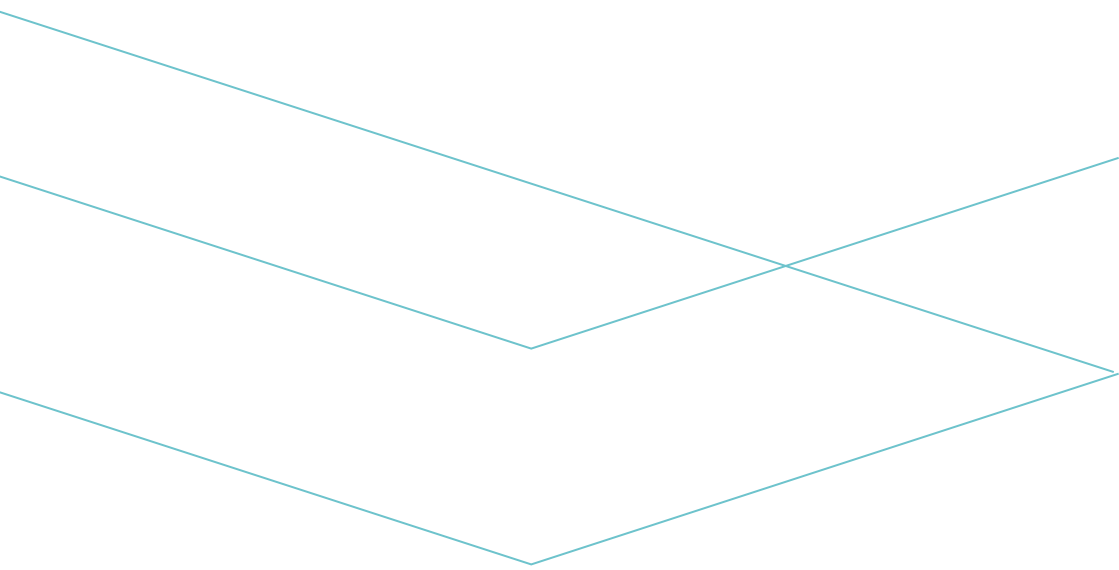
The PID Act and these guidelines must be read together.

Some general information is contained in this publication in order to assist the reader to understand the guidelines.

The Hon. Bruce Lander QC
Independent Commissioner Against Corruption

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What is a public interest disclosure?

The PID Act establishes a scheme that encourages and facilitates the disclosure of public interest information to certain persons or authorities (a public interest disclosure). It provides protections for those who make disclosures and sets out processes for dealing with disclosures.

The PID Act replaces the *Whistleblowers Protection Act 1993*.

There are two types of public interest information. The first is **environmental and health information**. The second is **public administration information**.

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Disclosures of environmental and health information

What is environmental and health information?

Environmental and health information means information that raises a potential issue of a substantial risk to the environment or to the health and safety of the public generally or a significant section of the public (whether occurring before or after the commencement of the PID Act).¹

Who can make a disclosure of environmental and health information?

Anyone can make a disclosure of environmental and health information.

However, to gain the protections provided under the PID Act, a person who makes a disclosure of environmental and health information:

- ▶ must believe on reasonable grounds that the information is true; or
- ▶ not being in a position to form such a belief, believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated.

A disclosure of environmental and health information that is accompanied by either of these beliefs is referred to as an **appropriate disclosure** of environmental and health information for the purposes of the PID Act.

Who can receive a disclosure of environmental and health information?

For a disclosure to be considered an **appropriate disclosure** of environmental and health information it must be made to a **relevant authority**.

Where information relates to a risk to the environment you should consider making a disclosure to the Environment Protection Authority.

Where the information relates to a location within the area of a particular local council, you should consider making a disclosure to a member, officer or employee of that council.

There are other **relevant authorities** that can receive disclosures relating to environmental and health information.² The list of relevant authorities is included in the appendices of this publication.

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² Section 5(5) of the PID Act specifies the relevant authorities that can receive a disclosure of public interest information.

Disclosures of public administration information

What is public administration information?

Public administration information means information that raises a potential issue of corruption, misconduct or maladministration in public administration (whether occurring before or after the commencement of this Act).³

The definitions of corruption, misconduct and maladministration in public administration are the same as those found in the ICAC Act and can be found of the appendices.

Who can make a disclosure of public administration information?

While anyone can make a disclosure of public administration information only public officers who make such a disclosure are eligible for the protections provided by the PID Act.

The term **'public officer'** is defined in Schedule 1 of the ICAC Act. The most common categories of public officer can be found in the appendices of this publication.

Who can receive a disclosure of public administration information?

To gain the protections provided by the PID Act a public officer must make a disclosure of public administration information to a **relevant authority** in circumstances where the public officer reasonably suspects that the information raises a potential issue of corruption, misconduct or maladministration in public administration.

A disclosure of public administration information that is accompanied by such a suspicion is referred to as an **appropriate disclosure** of public administration information for the purposes of the PID Act.

There are a number of relevant authorities that can receive disclosures relating to public administration information.⁴ The list of relevant authorities is included in the appendices of this publication.

How do I make a disclosure of public administration information?

Each relevant authority will have its own procedures in relation to receiving public administration information. You should check with the relevant authority to understand how to make your disclosure to that relevant authority.

⁴ Section 5(5) of the PID Act specifies the relevant authorities that can receive a disclosure of public interest information.

What protections are given under the PID Act?

A person who makes an appropriate disclosure of public interest information is protected by that person's identity being kept confidential in accordance with section 8 of the PID Act.

- (1) *A person to whom an appropriate disclosure of public interest information is made, or a person to whom such a disclosure is referred or who otherwise knows that such a disclosure has been made, must not, without the consent of the informant, knowingly divulge the identity of the informant except—*
- (a) *so far as may be necessary to ensure that the matters to which the information relates are properly investigated; or*
 - (b) *in accordance with any applicable guidelines prepared under section 14.*

Maximum penalty: \$20 000 or imprisonment for 2 years.

- (2) *The obligation to maintain confidentiality imposed by this section applies despite any other statutory provision, or a common law rule, to the contrary.*

> See PID Act, section 8

A person who makes an appropriate disclosure of public interest information has the immunity provided for in section 5(1) of the PID Act.

- (1) *If—*
- (a) *a person makes an appropriate disclosure of environmental and health information; or*
 - (b) *a public officer makes an appropriate disclosure of public administration information,*

the person is not subject to any liability as a result of that disclosure.

> See PID Act, section 5(1)

The PID Act contains provisions dealing with victimisation of a person who suffers a detriment on the ground, or substantially on the ground, that the person has made or intends to make an appropriate disclosure of public interest information. This is addressed in section 9 of the PID Act which makes an act of victimisation a criminal offence.

I have an obligation to make a report to the OPI. Can I still be protected under the PID Act?

A public officer who makes a report to the OPI under the ICAC Act may also be protected under the PID Act. Where a public officer makes a report to the OPI about a matter the public officer reasonably suspects involves a potential issue of corruption, misconduct or maladministration in public administration, that report will also be an appropriate disclosure of public administration information because the OPI is itself a relevant authority.

Accordingly, such a report will ordinarily provide the public officer with the protections under the PID Act.

The OPI will deal with your report in accordance with the ICAC Act but will also act consistently with the requirements of the PID Act. For more information about how the OPI deals with complaints and reports visit the ICAC website (icac.sa.gov.au).

Where can I find more information about public interest disclosures?

- ▶ the *Public Interest Disclosure Act 2018*
- ▶ the ICAC website (icac.sa.gov.au)
- ▶ the Public Interest Disclosure Regulations (if created)

Guidelines issued under the PID Act

These are the guidelines published by the ICAC under section 14 of the PID Act. The guidelines relate to four sections of the PID Act:

Guideline one:

Receipt, assessment & notification of appropriate disclosures (section 7)

Guideline two:

Notification of action taken (section 7)

Guideline three:

Informant confidentiality (section 8)

Guideline four:

Creation of procedural documents (section 12)

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Receipt, assessment & notification
of appropriate disclosures (section 7)

PUBLIC INTEREST
DISCLOSURE
GUIDELINE ONE

Guideline one: Receipt, assessment & notification of appropriate disclosures (section 7)

The action that must be taken upon receipt of an appropriate disclosure of public interest information must be in accordance with sections 7(1) and 7(2) of the PID Act.

Section 7(1) and 7(2) of the PID Act provides:

- (1) A person to whom an appropriate disclosure of public interest information is made must assess the information as soon as practicable after the disclosure is made and, following such assessment—*
- (a) must (unless subsection (2) applies) take action in relation to the information in accordance with any applicable guidelines prepared under section 14 or, if no applicable guidelines exist, take such action as is appropriate in the circumstances; and*
 - (b) must take reasonable steps to notify the informant (if the informant's identity is known) that an assessment of the information has been made and to advise the informant—*
 - (i) of the action being taken in relation to the information; or*
 - (ii) if, in accordance with subsection (2), no action is being taken in relation to the information—of the reasons why no action is being taken in relation to the information; and*
 - (c) must provide OPI with information relating to the disclosure in accordance with any applicable guidelines prepared under section 14.*

> See PID Act, section 7(1)

(2) *No action need be taken in relation to an appropriate disclosure of public interest information if—*

- (a) *the information disclosed does not justify the taking of further action; or*
- (b) *the information disclosed relates to a matter that has already been investigated or acted upon by a relevant authority and there is no reason to re-examine the matter or there is other good reason why no action should be taken in respect of the matter.*

> See PID Act, section 7(2)

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The following guidelines apply in respect of the action to be taken by **a person to whom an appropriate disclosure of information has been made** (the recipient of the disclosure) and in respect of the notification to the OPI of the receipt of the appropriate disclosure:

1. If the content of the disclosure suggests that there is an imminent risk of serious physical injury or death to any person or the public generally, the recipient of the disclosure **must** immediately communicate such information as may be necessary to mitigate that risk to the most appropriate agency (eg. South Australia Police, SafeWork SA, SA Ambulance, Environment Protection Authority).
2. If the recipient of the disclosure forms a reasonable suspicion that the matter(s) the subject of the disclosure involve(s) corruption in public administration, or serious or systemic misconduct or maladministration in public administration, the recipient of the disclosure **must** comply with his or her reporting obligations under the ICAC Act.
3. If the recipient of the disclosure assesses the content of the disclosure as requiring further action, the recipient of the disclosure **must**, unless the matter is reported to the OPI as a potential issue of corruption in public administration, ensure that:
 - (a) such action as may be appropriate in the circumstances is taken by the recipient of the disclosure to ensure the matter the subject of the disclosure is properly addressed; or
 - (b) such information as is necessary to enable action to be taken is communicated to the most appropriate person or relevant authority to take such action.

4. The recipient of the disclosure **must** notify the OPI as soon as reasonably practicable after the receipt of the appropriate disclosure by making an electronic notification via the dedicated notification form on the ICAC website (icac.sa.gov.au) and must include in that notification:
- (a) the date the disclosure was received;
 - (b) the name and contact details of the recipient of the disclosure;
 - (c) a summary of the content of the disclosure;
 - (d) the assessment made of the disclosure;
 - (e) the action taken by the recipient of the disclosure including:
 - (i) whether the disclosure was referred to another relevant authority, public authority or public officer or another person; and
 - (ii) if the disclosure was referred to another relevant authority, public authority or public officer or another person:
 - (1) the date of the referral;
 - (2) the identity of that relevant authority, public authority or public officer or another person to whom the disclosure was referred;
 - (3) the manner of referral; and
 - (4) the action to be taken by that relevant authority, public authority or public officer or another person (if known).
 - (f) if no action was taken by the recipient of the disclosure, the reason why no action was taken; and
 - (g) whether the identity of the informant is known only to the recipient of the disclosure or if the identity of the informant has been communicated to a relevant authority, public authority or public officer or another person (and if so, the reasons why such communication was made).

5. The recipient of the disclosure must retain the unique reference number issued by the OPI upon the making of a notification and must ensure this unique reference number is provided to any other person or authority to whom the disclosure is referred.

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Notification of action taken
(section 7)

PUBLIC INTEREST
DISCLOSURE
GUIDELINE TWO

Guideline two: Notification of action taken (section 7)

In addition to the requirement for OPI to be notified when an appropriate disclosure of public interest information is received, the OPI **must** also be notified of any action taken in relation to the disclosure.

Section 7(3) of the PID Act provides:

- (3) A person who takes action referred to in subsection (1)(a) in relation to public interest information or, if such action consists of referring the disclosure of public interest information to another person, the person to whom it is referred—*
- (a) must take reasonable steps to notify the informant (if the informant's identity is known) of the outcome of that action; and*
 - (b) must provide OPI with information relating to the outcome of that action in accordance with any applicable guidelines prepared under section 14.*

> See PID Act, section 7(3)

This guideline applies in relation to the notification to the OPI of the outcome of any action taken upon receipt of, or referral of, an appropriate disclosure of public interest information.

The recipient of the disclosure or, if the recipient of the disclosure has referred the disclosure to some other person or authority, then that other person or authority, must notify the OPI as soon as reasonably practicable via the online notification form (icac.sa.gov.au) the following:

- (a)** the unique reference number issued by the OPI upon notification of the original disclosure;
- (b)** the name and contact details of the notifier;
- (c)** the name and contact details of the person or authority responsible for taking the action;
- (d)** what (if any) findings were made in respect of the disclosure;
- (e)** the nature of the action taken (if any);
- (f)** the outcome of any action taken;
- (g)** whether the identity of the informant was disclosed to a person other than the original recipient of the disclosure; and
- (h)** whether the informant was notified of the action taken and, if so, when that notification was made.

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Informant confidentiality
(section 8)

PUBLIC INTEREST
DISCLOSURE
GUIDELINE THREE

Guideline three: Informant confidentiality (section 8)

The PID Act creates an obligation to maintain the confidentiality of all people who make an appropriate disclosure of public interest information.

Section 8 of the PID Act provides:

- (1) *A person to whom an appropriate disclosure of public interest information is made, or a person to whom such a disclosure is referred or who otherwise knows that such a disclosure has been made, must not, without the consent of the informant, knowingly divulge the identity of the informant except—*
 - (a) *so far as may be necessary to ensure that the matters to which the information relates are properly investigated; or*
 - (b) *in accordance with any applicable guidelines prepared under section 14.*

Maximum penalty: \$20 000 or imprisonment for 2 years.

- (2) *The obligation to maintain confidentiality imposed by this section applies despite any other statutory provision, or a common law rule, to the contrary.*

> See PID Act, section 8

The following guidelines apply in respect of section 8(1) of the PID Act.

- 1.** A person to whom an appropriate disclosure of public interest information is made, or a person to whom such a disclosure is referred or a person who otherwise knows that such a disclosure has been made (all of whom are called the recipient), may divulge the identity of an informant where:
 - (a)** the recipient believes on reasonable grounds that it is necessary to divulge the identity of the informant to prevent or minimise an imminent risk of serious physical injury or death to any person; and

the identity of the informant is divulged to a person or authority that the recipient believes on reasonable grounds is the most appropriate authority or person to be able to take action to prevent or minimise the imminent risk of serious physical injury or death to any person.

or
 - (b)** the recipient has been issued with a notice from the OPI advising that the identity of the informant is required by the OPI, in which case the recipient must disclose the identity of the informant to the OPI.
- 2.** If the identity of an informant is disclosed to the OPI in response to a notice made by the OPI pursuant to (1)(b) of guideline three (above), the OPI must not disclose the identity of the informant to another person or authority without the written authorisation of the ICAC or the Deputy ICAC.

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Creation of procedural
documents (section 12)

PUBLIC INTEREST
DISCLOSURE
GUIDELINE FOUR

Guideline four: Creation of procedural documents (section 12)

Section 12 of the PID Act requires the principal officer of a public sector agency to prepare a document setting out the procedures related to making and dealing with appropriate disclosures of public interest information, and to make the document publicly available.

Section 12(4), (5) and (6) of the PID Act provides:

- (4) *The principal officer of a public sector agency must ensure that a document setting out procedures—*
- (a) *for a person who wants to make an appropriate disclosure of public interest information to the agency; and*
 - (b) *for officers and employees of the agency dealing with such a disclosure,*
- is prepared and maintained in accordance with any applicable guidelines prepared under section 14.*

DRAFT > See PID Act, section 12(4)

- (5) *The document required under subsection (4) must—*
- (a) *without limiting that subsection, include—*
 - (i) *clear obligations on the public sector agency and its officers and employees to take action to protect informants; and*
 - (ii) *risk management steps for assessing and minimising—*
 - (A) *detrimental action against people because of public interest disclosures; and*
 - (B) *detriment to people against whom allegations are made in a disclosure; and*
 - (b) *be made available free of charge on the Internet, and at premises determined by the responsible Minister, for inspection by members of the public.*
- (6) *This section does not apply to—*
- (a) *a public sector agency consisting only of a single person; or*
 - (b) *a public sector agency that has been granted an exemption, in writing, by the [ICAC].*

> See PID Act, sections 12(5) and 12(6)

The following guidelines apply in respect of section 12 of the PID Act and **are in addition to** those requirements specified in section 12(5) of the PID Act.

1. The principal officer of a public sector agency must ensure that the document containing the procedures for section 12(4) of the PID Act includes:
 - (a) A clear statement from the principal officer outlining his or her expectations in respect of the operation and implementation of the PID Act, including a statement as to the principal officer's commitment to the protection of informants and to the genuine and efficient consideration and action in relation to information provided in a public interest disclosure.
 - (b) The manner in which the public sector agency will receive a disclosure of public interest information, including:
 - (i) specifying the precise way in which a disclosure can be securely received, including URL links, particular telephone numbers, email addresses and postal addresses;
 - (ii) the steps that will be in place to ensure public interest information will be securely received and stored; and
 - (iii) the person (either by reference to positions or individuals) who will have responsibility for ensuring compliance with those steps.
 - (c) The criteria that will be applied in the assessment of a public interest disclosure.
 - (d) The manner in which details of the assessment will be securely stored and the person (either by reference to positions or individuals) in the public sector agency who might be advised of the assessment.
 - (e) The manner in which an informant will be kept informed as to action taken in respect of a disclosure.
 - (f) The person (either by reference to positions or individuals) in the public sector agency who can be contacted if the informant believes that his or her disclosure is not being dealt with appropriately.

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Who is a public officer?

Public officers include:

The Governor	A member of parliament	A member of the Joint Parliamentary Services Committee
A judicial officer	A member of staff of the state courts administration council	A person who constitutes a statutory authority
A statutory office holder	A member of the governing body of a statutory authority	An officer or employee of a statutory authority or statutory office holder
A member of a local government body	An officer or employee of a local government body	The Local Government Association of South Australia
A person who is a member of the governing body of the Local Government Association of South Australia	An officer or employee of the Local Government Association of South Australia	The Chief Executive of an administrative unit of the public service
A public sector employee (including a public servant)	A police officer	A protective security officer
An officer or employee appointed by the employing authority under the <i>Education Act 1972</i>	A person appointed by the Premier under the <i>Public Sector Act 2009</i>	A person to whom a function or power of a public authority or a public officer is delegated in accordance with an Act
A person who is, in accordance with an Act, assisting a public officer in the enforcement of the Act	A person performing contract work for a public authority or the Crown (including an employee of the contractor)	A private certifier within the meaning of the <i>Development Act 1993</i>
An authorised examiner appointed under paragraph (b) or (c) of the definition of authorised examiner in section 5(1) of the <i>Motor Vehicles Act 1959</i>		

For a full list of public officers and public authorities see Schedule 1 of the *Independent Commissioner Against Corruption Act 2012* and the *Independent Commissioner Against Corruption Regulations 2013*.

Definitions of corruption, misconduct and maladministration

Corruption in public administration means conduct that constitutes—

- (a) *an offence against Part 7 Division 4 (Offences relating to public officers) of the Criminal Law Consolidation Act 1935, which includes the following offences:*
 - (i) *bribery or corruption of public officers;*
 - (ii) *threats or reprisals against public officers;*
 - (iii) *abuse of public office;*
 - (iv) *demanding or requiring benefit on basis of public office;*
 - (v) *offences relating to appointment to public office; or*
- (b) *an offence against the Public Sector (Honesty and Accountability) Act 1995 or the Public Corporations Act 1993, or an attempt to commit such an offence; or*
- (ba) *an offence against the Lobbyists Act 2015, or an attempt to commit such an offence; or*
- (c) *any other offence (including an offence against Part 5 (Offences of dishonesty) of the Criminal Law Consolidation Act 1935) committed by a public officer while acting in his or her capacity as a public officer or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or an attempt to commit such an offence; or*

> See ICAC Act, section 5(1)

- (d) *any of the following in relation to an offence referred to in a preceding paragraph:*
- (i) *aiding, abetting, counselling or procuring the commission of the offence;*
 - (ii) *inducing, whether by threats or promises or otherwise, the commission of the offence;*
 - (iii) *being in any way, directly or indirectly, knowingly concerned in, or party to, the commission of the offence;*
 - (iv) *conspiring with others to effect the commission of the offence.*

> See ICAC Act, section 5(1)

Misconduct in public administration means—

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- (a) *a contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or*
 - (b) *other misconduct of a public officer while acting in his or her capacity as a public officer.*

> See ICAC Act, section 5(3)

Maladministration in public administration—

- (a) *means—*
 - (i) *conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or*
 - (ii) *conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and*
- (b) *includes conduct resulting from impropriety, incompetence or negligence; and*
- (c) *is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.*

> See ICAC Act, section 5(4)

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List of relevant authorities

Section 5 of the PID Act specifies the relevant authorities to which a disclosure of public interest information (which includes public administration information) can be made.

- (5) *A disclosure of public interest information is made to a relevant authority if it is made to—*
- (a) *where the information relates to a public officer—*
 - (i) *a person who is, in accordance with any guidelines prepared under section 14, designated as a person who is taken to be responsible for the management or supervision of the public officer or to the relevant responsible officer; or*
 - (ii) *a person who is, in fact, responsible for the management or supervision of the public officer or to the relevant responsible officer; or*
 - (b) *where the information relates to a public sector agency or public sector employee—*
 - (i) *the Commissioner for Public Sector Employment; or*
 - (ii) *the responsible officer for the relevant public sector agency; or*
 - (c) *where the information relates to an agency to which the Ombudsman Act 1972 applies—the Ombudsman; or*
 - (d) *where the information relates to a location within the area of a particular council established under the Local Government Act 1999—a member, officer or employee of that council; or*
 - (e) *where the information relates to a risk to the environment—the Environment Protection Authority; or*
 - (f) *where the information relates to an irregular and unauthorised use of public money or substantial mismanagement of public resources—the Auditor-General; or*

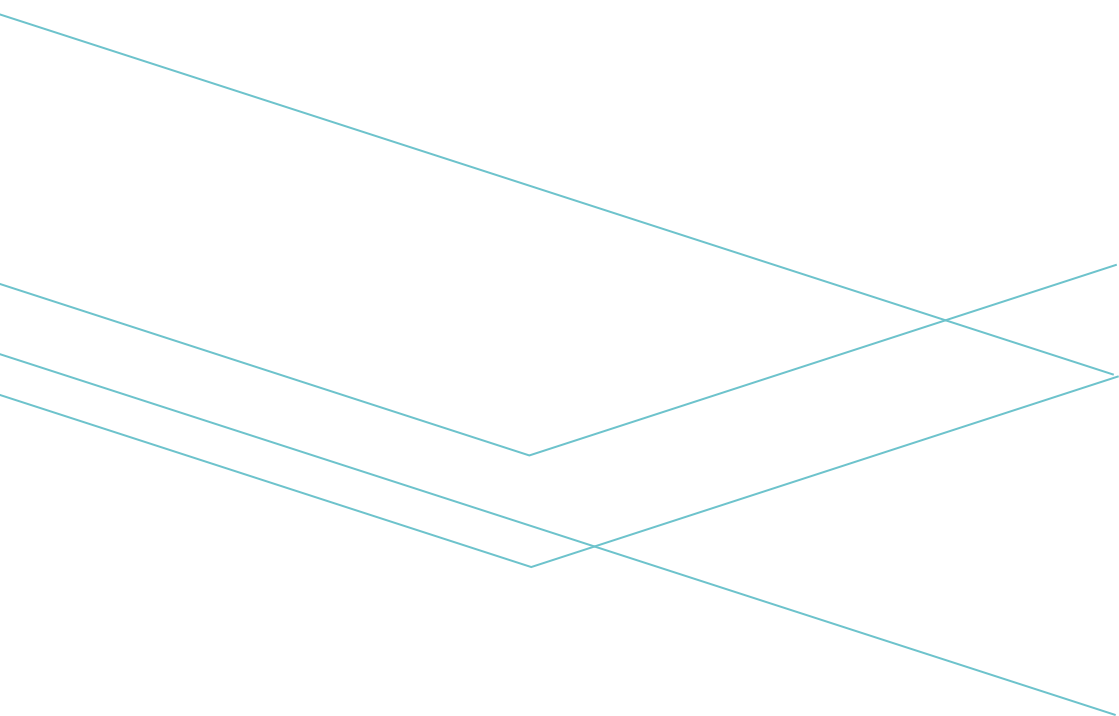
> See PID Act, section 5(5)

- (g) *where the information relates to the commission, or suspected commission, of any offence—a member of the police force; or*
- (h) *where the information relates to a judicial officer—the Judicial Conduct Commissioner; or*
- (i) *where the information relates to a member of Parliament—the Presiding Officer of the House of Parliament to which the member belongs; or*
- (j) *where the information relates to a person or a matter of a prescribed class—an authority declared by the regulations to be a relevant authority in relation to such information; or*
- (k) *a Minister of the Crown; or*
- (l) *OPI; or*
- (m) *any other prescribed person or person of a prescribed class.*

> See PID Act, section 5(5)

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