

MAKING DISCLOSURES UNDER THE *PUBLIC INTEREST DISCLOSURES ACT* TO THE INTEGRITY COMMISSION

November 2015



This guidance applies to:

Public officers (including contractors) who wish to use the *Public Interest Disclosure Act 2002* (the PID Act) to disclose matters relating to improper conduct or detrimental action by other public officers or a public body to the Integrity Commission.

This guidance is not relevant to:

Members of the public who wish to make complaints to the Integrity Commission.

What does the PID Act do?

The PID Act does two things:

1. offers protection for public officers when they disclose improper conduct; and
2. requires the investigation of certain types of disclosure.

When making a disclosure, it may be helpful for the discloser/complainant to communicate this e.g. '*I am making a disclosure about improper conduct*', or '*I am providing this information under the PID Act*'.

Disclosures to the Integrity Commission

The Integrity Commission can receive disclosures about:

- Public bodies (defined at section 4 of the PID Act);
- Public officers (defined at section 4 of the PID Act);
- State Service agencies; and
- Persons employed under the provisions of the *Parliamentary Privilege Act 1898*.

Note: The PID Act requires that disclosures about certain officers (eg councillors or the Commissioner of Police) be made directly to the Ombudsman. See section 7 of the PID Act.

Disclosures made directly to the Commission may still receive the full protections of the PID Act.

However the Commission can only take action if the disclosure contains a complaint about 'misconduct', as defined in the *Integrity Commission Act 2009* (the IC Act). Otherwise the Commission may refer the disclosure to the Ombudsman or a public body.



What protections are available?

The IC Act provides different protections to complainants to the PID Act. The IC Act provides protections for anonymity however will not protect a person from reprisals.

Making a disclosure under the PID Act protects a public officer from:

- civil or criminal liability or any liability arising by way of administrative process (including disciplinary action) for making the disclosure (section 16);
- committing an offence by disclosing information that an Act imposes confidentiality over (section 17(1)(a));
- breaching an obligation to maintain confidentiality over the information disclosed (section 17(1)(b)); and
- reprisal for having made a disclosure (section 19).

What can disclosures be about?

A disclosure under the PID Act **must** be of improper conduct. Improper conduct has a specific definition:

- conduct that constitutes an illegal or unlawful activity; or
- corrupt conduct; or
- conduct that constitutes maladministration; or
- conduct that constitutes professional misconduct; or
- conduct that constitutes a waste of public resources; or
- conduct that constitutes a danger to public health or safety or to both public health and safety; or
- conduct that constitutes a danger to the environment; or
- misconduct, including breaches of applicable codes of conduct; or
- conduct that constitutes detrimental action against a person who makes a public interest disclosure under the PID Act

that is serious or significant.

‘Serious or significant’ is determined in accordance with the Ombudsman’s guidelines.

What is the Integrity Commission likely to do with a disclosure?

The Commission can do one of two things upon receipt of a disclosure:

- **if the disclosure is a complaint about ‘misconduct’:** deal with the disclosure under the IC Act, incorporating the protections of the PID Act; or
- **if the disclosure is about improper conduct not amounting to misconduct:** refer the disclosure to the Ombudsman or a public body as if the disclosure had been made to the Ombudsman or that public body.

Sometimes a disclosure will be made to the Ombudsman or a public body that involves misconduct. In these circumstances, the Ombudsman or public body can refer the disclosure to the Commission as if the disclosure had been made directly to the Commission.



The definition of **misconduct** is quite different to the definition of **improper conduct**.

There are a number of important differences between ‘improper conduct’ under the PID Act and ‘misconduct’ under the IC Act. It is possible that misconduct could also amount to improper conduct, however improper conduct has a broader definition.

Misconduct is defined in the IC Act. It includes conduct, or an attempt to engage in conduct, of or by a public officer that is or involves:

- a breach of a code of conduct applicable to the public officer; or
- the performance of the public officer’s functions or the exercise of the public officer’s powers, in a way that is dishonest or improper; or
- a misuse of information or material acquired in or in connection with the performance of the public officer’s functions or exercise of the public officer’s powers; or
- a misuse of public resources in connection with the performance of the public officer’s functions or the exercise of the public officer’s powers; or
- conduct, or an attempt to engage in conduct, of or by a public officer that adversely affects, or could adversely affect, directly or indirectly, the honest and proper performance of functions or exercise of powers of another public officer.

Improper conduct has a wider definition than misconduct. Consequently, a disclosure about improper conduct may not be sufficient to cause the Commission to take action under the IC Act.

Examples:

Officer A solicits a bribe to exercise their statutory functions in a certain way

- o This could be improper conduct
- o This could also be misconduct
- o A disclosure about this can be made to the Ombudsman, the Integrity Commission or the public body where Officer A is employed

Agency B fails to adequately perform its functions

- o This could be improper conduct
- o This is not misconduct
- o A disclosure about this can be made to the Ombudsman

Officer C prints a document on 30 single sided pages instead of 15 double sided pages

- o This is not improper conduct (it is not serious or significant)
- o This is not misconduct

Manager D unfairly terminated Officer E’s employment

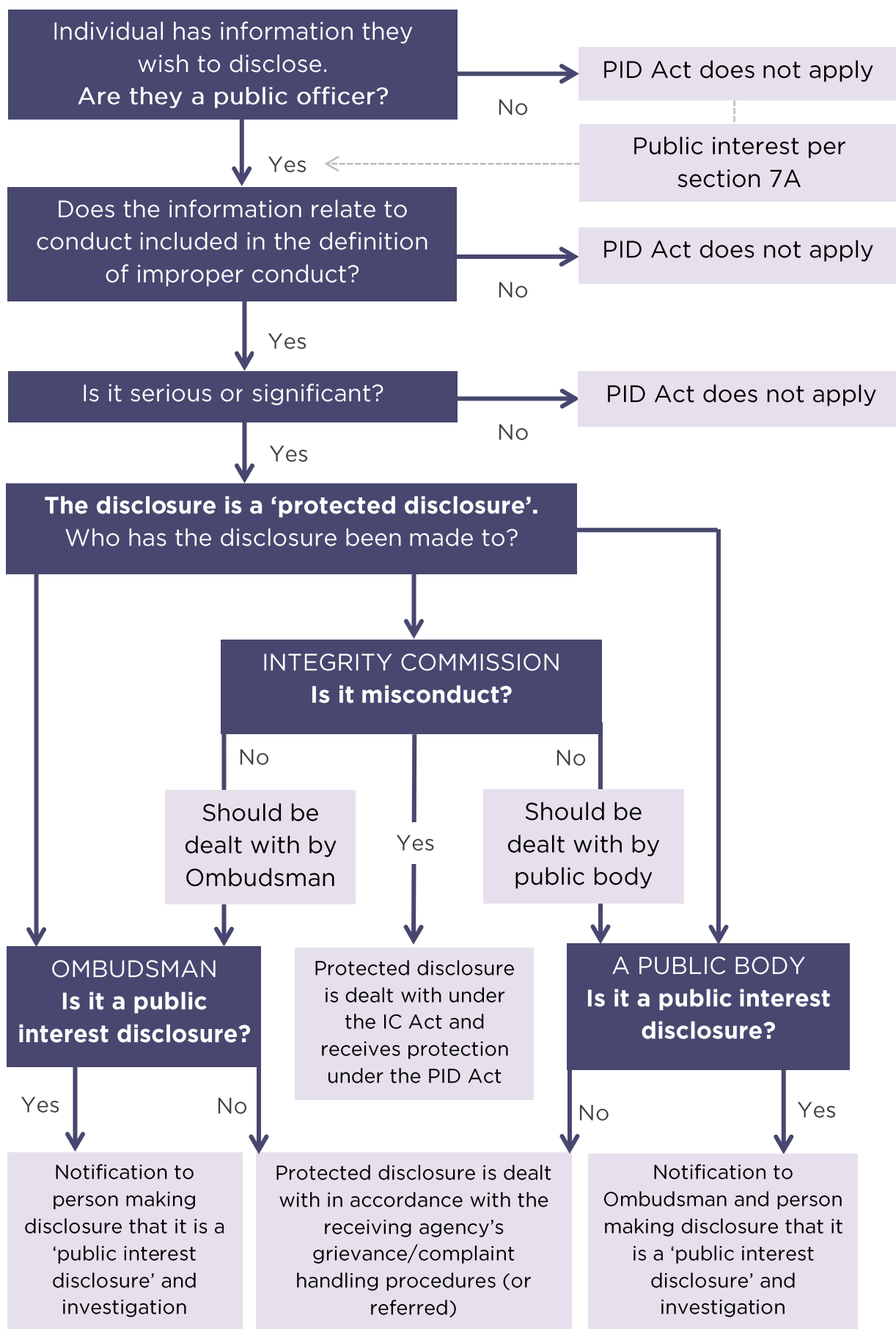
- o This could be improper conduct
- o This could also be misconduct
- o A disclosure about this can be made to the Ombudsman, the Integrity Commission or the public body where Manager D and Officer E are employed

Councillor F votes in favour of their own application at a council meeting

- o This could be improper conduct
- o This could also be misconduct
- o A disclosure about this can be made to the Ombudsman only (given that disclosures about certain officers such as councillors must go to the Ombudsman)



Summary of the Integrity Commission's disclosure handling process



The information herein does not constitute legal advice. Please obtain legal advice if necessary.

Making disclosures under the Public Interest Disclosures Act to the Integrity Commission

