



# Checklist: How to protect whistleblower confidentiality

This checklist will assist if:

- your organisation has received a protected disclosure about serious wrongdoing in your workplace; or
- you are an ‘appropriate authority’ who has received a disclosure from an employee of another organisation.

It explains how to comply with the confidentiality requirements of the Protected Disclosures Act 2000 (PDA).

For more information, check out the Ombudsman’s [Protected disclosures – guidance on internal policies and procedures](#).

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## Have procedures that clearly explain the confidentiality requirements

- You must ensure your practices and procedures for handling protected disclosures require that the whistleblower’s identity is protected **unless**:
  - the person consents in writing to the disclosure of information that might identify them<sup>1</sup>; or
  - disclosure of identifying information is **essential**:
    - for the effective investigation of the protected disclosure<sup>2</sup>; or
    - to prevent serious risk to the public health or public safety or the environment<sup>3</sup>;  
or

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<sup>1</sup> Section 19(1)(a) Protected Disclosures Act 2000

<sup>2</sup> s19(i)(b)(i) Protected Disclosures Act 2000

<sup>3</sup> s19(i)(b)(ii) Protected Disclosures Act 2000

- having regard to the principles of natural justice (the right for affected people to have their side of the story heard).<sup>4</sup>

## **Make sure your processes protect the identity of whistleblowers**

- Include a commitment to maintaining the confidentiality of whistleblowers.
- Outline responsibilities for people who receive the disclosures.
- Provide practical guidance on how information about a whistleblower's identity will be protected. For example:
  - editing documents used in the investigation to remove a whistleblower's name, position and any contextual material that could identify them;
  - replacing references to the whistleblower with a pseudonym, letter or number;
  - restricting access to relevant documents to staff managing the disclosure; and
  - conducting any meetings involving the whistleblower in a private and safe place (eg away from relevant staff or off-site).
- Consider ways to investigate the disclosure without revealing a whistleblower's identity.
  - Can evidence of the wrongdoing be obtained from another authoritative source such as documents, video footage, telephone or computer records?
  - Consider interviewing the whistleblower as part of a process of interviewing other staff (preferably not first or last).
  - When interviewing other staff, plan how best to describe the alleged wrongdoing in a manner that does not inadvertently disclose the identity of the whistleblower (particularly if the whistleblower is the person most likely to be aware of the issue).
- Make it clear that a request for official information<sup>5</sup> should be refused if it could identify a person who has made a protected disclosure ([s19\(2\) PDA](#)).
- Seek legal advice before deciding that one of the exceptions to confidentiality applies.

## **Communicate with and provide support for the whistleblower**

- Ensure your processes provide for early discussion with the whistleblower about any potential issues that might impact on your ability to protect their confidentiality. Include in your discussion the risks of any inadvertent disclosure of their identity. Consider revisiting this conversation throughout the investigation.

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<sup>4</sup> s19(i)(b)(iii) Protected Disclosures Act 2000

<sup>5</sup> Under the Official Information Act 1982 or Local Government Official Information and Meetings Act 1987

- If disclosure of information that might identify a whistleblower is **essential** (pursuant to the strict requirements of [s19\(1\)\(b\) PDA](#)), then also ensure that you:
  - consult with the whistleblower prior to disclosure to explain why you consider this is **essential**, and take their views into account;
  - put in place protections to **mitigate any harm** associated with the disclosure of identifying information (and revisit this throughout the investigation);
  - consider how to **support the discloser**, including peer support, support from a designated senior staff member, information about how to access external support, and ongoing monitoring of any support;
  - monitor and continually review the welfare of the employee during and after the disclosure of their identity, to ensure that any accused parties or their supporters do not target the discloser; and
  - monitor and report on the employment status of parties who have made disclosures, particularly if their identity has been disclosed.

## Further guidance

The Ombudsman is available to provide confidential assistance to organisations that have received a protected disclosure. If you're concerned about how you ought to address confidentiality as the receiver of a protected disclosure, or you just need further information and guidance, you can [contact](#) the Ombudsman. Your enquiries will be treated in confidence, and will be dealt with by our specialist staff.