



# 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 \(Protection of Whistleblowers\) Act 2022](#) (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 whistleblower consents to the release of information identifying them, or
  - there are reasonable grounds to believe that the release of the identifying information is essential:
    - for the effective investigation of the disclosure;
    - to prevent a serious risk to public health, public safety, the health or safety of any individual, or the environment;
    - to comply with the principles of natural justice; or
    - to an investigation by a law enforcement or regulatory agency for the purpose of law enforcement.

- ❖ There are only narrow circumstances in which release of identifying information will be essential for the effective investigation of disclosures or to comply with the principles of natural justice. Generally, this would involve where the whistleblower is an identifiable central player in the events in question, such as where the alleged perpetrator has offered the whistleblower a bribe, or confessed wrongdoing to the whistleblower.

## **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).
- Be aware releasing information that might identify the whistleblower (outside of the circumstances set out above) could be an interference with privacy under the Privacy Act.
  - Make it clear that a request for official information<sup>1</sup> must be refused if it could identify a person who has made a protected disclosure ([Section 19 PDA](#)).
- Seek legal advice before deciding that one of the exceptions to confidentiality applies.

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<sup>1</sup> Under the Official Information Act 1982 or Local Government Official Information and Meetings Act 1987

## 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.
- If disclosure of information that might identify a whistleblower is **essential** (pursuant to the strict requirements of [section 17 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.

## Consider what to do if the disclosure does not relate to serious wrongdoing

- If an employee of an organisation believes on reasonable grounds that the information they have disclosed is about serious wrongdoing, that information is disclosed in accordance with the Act, and the whistleblower did not act in bad faith, the organisation must treat it as complying with the PDA, for the purposes of the protections provided for under the Act.<sup>2</sup>
- This means that even if an employee *is mistaken* about the information relating to serious wrongdoing, or mistaken as to what the information reveals, your organisation must still protect the employee's confidentiality.

## Actions to take if confidentiality obligations are breached

Take all steps possible to mitigate the damage if the whistleblower's identity is inadvertently disclosed, including:

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<sup>2</sup> Section 9 Protected Disclosures Act

- Ascertain whether the recipient(s) passed on or used the identifying material, and if so to whom.
- Require any recipients to delete or destroy any documents that include information that could identify the whistleblower.
- Obtain a clear assurance from any recipients that they will not:
  - pass on or use the identifying material,
  - take any action against the whistleblower.
- Actively monitor to ensure that any recipients adhere to the above requirements.
- Advise the whistleblower of the release of their identity and the actions that have been taken to remedy the matter.
- Request that the whistleblower advise of any adverse action that may have been taken against them by recipients.
- Consider what further might be done to support the whistleblower and help remedy the release of their identity, and any harm arising from it.
- Advise the whistleblower of their right to complain to the Privacy Commissioner.

## 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.