

STANDARD OPERATING PROCEDURE 2 REQUIRE A PERSON TO DISCLOSE IDENTITY

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PURPOSE

The purpose of this Standard Operating Procedure (SOP) is to provide direction to investigators exercising the power under section 30 of the *Independent Commissioner Against Corruption Act 2012* (the ICAC Act), and provide appropriate information about the rights obligations and liabilities of persons who are subject to those powers.

SCOPE

This SOP applies to all investigators seconded or appointed under section 14 of the ICAC Act.

REQUIRE A PERSON TO DISCLOSE IDENTITY

Section 30 of the ICAC Act empowers an investigator, for the purposes of an investigation into corruption in public administration, to require a person who the investigator reasonably suspects has committed, is committing, or is about to commit, a prescribed offence, or may be able to assist an investigation of a prescribed offence, to state all or any of the person's personal details and to produce evidence of those details.

A prescribed offence means corruption in public administration or an offence against the ICAC Act: section 4 of the ICAC Act.

Corruption is defined in Section 5(1) of the ICAC Act to mean 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
- (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.

- (2) If the Commissioner suspects that an offence that is not corruption in public administration (an *incidental offence*) may be directly or indirectly connected with, or may be a part of, a course of activity involving the commission of corruption in public administration (whether or not the Commissioner has identified the nature of that corruption), then the incidental offence is, for so long only as the Commissioner so suspects, taken for the purposes of this Act to be corruption in public administration.

'Personal details' is defined in section 4 of the ICAC Act to mean;

- (a) the person's full name; and
- (b) the person's date of birth; and
- (c) the address of where the person is living; and
- (d) the address of where the person usually lives; and
- (e) the person's business address.

INVESTIGATOR RESPONSIBILITIES

The exercise of this power only arises if an investigator forms the requisite reasonable suspicion. There are two separate circumstances when an investigator might form a suspicion; first when the investigator suspects a person has, is or is about to commit a prescribed offence; or secondly, when the investigator suspects a person might be able to assist in the investigation of a prescribed offence. In both cases the suspicion must be reasonably held.

Should a person refuse or fail, without lawful excuse, to supply personal details or produce evidence of those details that person may have committed the offence of Obstruction (section 33(1)(c) of the ICAC Act) the maximum penalty for which is \$10,000 or 2 years imprisonment.

Section 33(2) empowers an investigator to arrest a person who the investigator reasonably suspects has committed an offence against that section when the person fails to state truthfully his or her personal details or to produce true evidence of those details.

An investigator who exercises the power of arrest must ensure the person who is required to comply has been advised of his and her rights and obligations regarding compliance and the consequences of non-compliance.

The investigator may use the ICAC approved template 'Require Person to Disclose Identity' as a guide where there is an indication the person may not comply. The template may be used as the record in writing of the conversation between the investigator and the person requested and be used as the investigator's original notes. The conversation should also be recorded on video. A copy of the template is attached as Appendix A but can also be found in the investigations template folder.

The investigator must exercise his or her discretion as to whether a person is arrested or reported for a breach of that section.

If an investigator exercises the power to arrest a person the investigator must immediately deliver that person into the custody of a police officer and the person will then be taken to have been apprehended by the police officer without warrant: section 33(3).

REFERENCES

Independent Commissioner Against Corruption Act 2012

DOCUMENT HISTORY

DATE	ACTION	PREPARED BY
04 Jul 2013	SOP created	Director Operations
28 Aug 2014	SOP reviewed	Director Operations
24 Dec 2015	SOP reviewed and amended	Director Operations
18 Oct 2016	SOP reviewed and amended	Director Investigations
16 Aug 2017	SOP reviewed and amended	Director Investigations
20 Mar 2018	SOP name reviewed	Director Investigations
27 May 2020	SOP reviewed and amended	Director Investigations

APPENDIX A – REQUIRE PERSON TO DISCLOSE IDENTITY

Provide Person Details

Pursuant to section 30 of **the *Independent Commissioner Against Corruption Act 2012*** I require you to provide your personal details which I will read out.

If you refuse or fail to provide the following details without a lawful excuse, you may be charged with the offence of obstruction. The offence is punishable by a maximum penalty of \$10,000 or imprisonment for 2 years.

I require you to state your full name.

Response :- _____

I require you to provide your date of birth.

Response :- _____

I require you to provide the address where you are living.

Response :- _____

I require you to provide the address where you usually live.

Response :- _____

I require you to provide your business address.

Response :- _____

Provide Evidence

Pursuant to section 30 of the **Independent Commissioner Against Corruption Act 2012** I require you to provide evidence of the following matter/s which I will read out.

If you refuse or fail to provide this evidence without a lawful excuse, you may be charged with the offence of obstruction. The offence is punishable by a maximum penalty of \$10,000 or imprisonment for 2 years.

I require you to provide evidence of your full name.

Response :- _____

I require you to provide evidence of your date of birth

Response :- _____

I require you to provide evidence of where you are living.

Response :- _____

I require you to provide evidence of where you usually live

Response :- _____

I require you to provide evidence of your business address.

Response :- _____

Date:- /...../.....