

- PROCEDURE -

**Public Interest Disclosure – TAFE SA
Employees**

Procedure Statement

Purpose

This procedure supports the TAFE SA Public Interest Disclosure Policy and will assist in the protection of integrity in TAFE SA by seeking to ensure compliance with the Public Interest Disclosure Act 2018 (the Act) and informing TAFE SA employees of the impact and operation of the Act.

This procedure sets out the process for:

- (a) TAFE SA employee to make an *appropriate disclosure* of *public interest information* concerning TAFE SA or a TAFE SA employee; and
- (b) receiving and dealing with *appropriate disclosures* of *public interest information* concerning TAFE SA or a TAFE SA employee.




Scope


This procedure applies to all TAFE SA employees (including contractors, volunteers, HPIs and casuals), the TAFE SA Board of Directors and contractors engaged by TAFE SA.

Roles and Responsibilities

Refer to Roles and Responsibilities in the Public Interest Disclosure Policy.

Risks and controls

Control reference number	Risk	Control	Step in procedure (Appendix A)
 Control 1	Not having a procedure as required under section 12 of the <u>Public Interest Disclosure Act 2018</u>	This Procedure and its publication on the TAFE SA website will mitigate this risk and ensure the Principal officer is compliant with the <u>Public Interest Disclosure Act 2018</u> .	1
 Control 2	TAFE SA employees following this Procedure	Training/information session(s) to be provided to relevant employees. Specific officers may be held to account if the Procedure is not followed.	2
 Control 3	False or misleading disclosure of public interest information being made	The <u>Public Interest Disclosure Act 2018</u> provides for a maximum penalty of \$20,000 or 2 years' imprisonment for	4

		<p>making a disclosure of public interest information knowing that it is misleading.</p> <p>The informant will, in addition, not be afforded any protections under the <u>Public Interest Disclosure Act 2018</u>.</p>	
 Control 4	<p>Person is prevented, hindered or obstructed from making, or victimised for making or intending to make, a disclosure of public interest information</p>	<p>The <u>Public Interest Disclosure Act 2018</u> provides for a maximum penalty of \$20,000 or 2 years' imprisonment for preventing, hindering or obstructing another person from making a disclosure of public interest information or for personally committing an act of victimisation against a person making or intending to make a disclosure under the <u>Public Interest Disclosure Act 2018</u>.</p>	4

Procedure Detail

What is a Public Interest Disclosure?

The 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 *appropriate disclosures* and sets out processes for dealing with those disclosures.

The Act replaces the *Whistleblowers Protection Act 1993*.

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

The Office of the Commissioner for Public Sector Employment has developed a *Public Interest Disclosure Act 2018 Fact Sheet for South Australian public officers* which will provide TAFE SA employees further details regarding public interest disclosure.

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.

What is public administration information?

Public administration information means information that raises a potential issue of corruption, misconduct or maladministration in public administration.

Who can make a disclosure of public interest information?

Anyone can make a disclosure of environmental and health information.

However, to gain the protections provided under the 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 able 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.

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 Act.

To gain the protections provided by the 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 Act.

People making a disclosure of *public interest information* are identified as an *informant*.

How do I make a disclosure of public interest information?

The following flowchart identifies the process for a TAFE SA employee to make a disclosure of *public interest information*.

Making an appropriate disclosure of public interest information – TAFE SA employees (public officers)

1. Before making a disclosure

- > A TAFE SA *public officer* wishing to make a disclosure will determine whether the information held is *public interest information*.
- > The person (the *informant*) will also need to determine to whom the information should be disclosed to make the disclosure an *appropriate disclosure* i.e. who the *relevant authority* is depending on what the information relates to.
- > The *informant* should also consider whether they want their identify to remain anonymous.
- > Where an *informant* wishes to reveal their identity and receive further contact, they should discuss and agree with the *relevant authority* on how they wish to be contacted and the level of confidentiality they wish to be maintained in any further contact.

2. Making a disclosure


- > Informants wanting to make an appropriate disclosure of public interest information relating to TAFE SA or a TAFE SA public officer may contact a relevant authority e.g.:
 - the Office for Public Integrity (OPI);
 - a TAFE SA Responsible Officer via PublicInterestDisclosure@tafesa.edu.au;
 - if the disclosure relates to a TAFE SA *public officer*, the *public officer's* manager or supervisor; or
 - the Office of the Commissioner for Public Sector Employment
 - another relevant authority.
- > *Appropriate disclosures* of *public interest information* relating to TAFE SA or a TAFE SA public officer can be made by any of the options detailed in page 7 of this procedure.
- > If an informant is a TAFE SA public officer, they are obliged to report matters relating to corruption, serious or systemic misconduct or maladministration in public administration to the OPI via the online report form on the ICAC website..

3. Assessment of the disclosure and action

- > Assessment of a disclosure and subsequent action will be undertaken by a relevant authority in accordance with the flowchart detailed on page 9 of this procedure.
- > An *informant* who believes that an *appropriate disclosure* made by them is not being dealt with by TAFE SA appropriately, should contact PublicInterestDisclosure@tafesa.edu.au if prior disclosure has been made to a supervisor or manager or, if the *appropriate disclosure* was made to a TAFE SA *Responsible Officer*, contact another *relevant authority*, such as OPI or the Office of the Commissioner for Public Sector Employment.

Making an appropriate disclosure of public interest information – TAFE SA employees (public officers) (cont.)

3. Assessment of the disclosure and action (cont.)

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- > An *informant* who believes or suspects that they have been or may be the subject of *detriment* on the grounds of having made or being about to make an *appropriate disclosure* of *public interest information*, is encouraged to report that belief or suspicion to:
 - a TAFE SA *Responsible Officer*, or
 - an alternate TAFE SA *Responsible Officer* if the belief or suspicion relates to a TAFE SA *Responsible Officer* handling a disclosed matter; or
 - another relevant authority such as the OPI or the Commissioner for Public Sector Employment.

Who can receive a disclosure of public interest information?

For a disclosure to be considered an *appropriate disclosure* of *public interest information*, it must be made to a *relevant authority*. Relevant authorities relating to TAFE SA are defined in the TAFE SA *Public Interest Disclosure Policy* and are detailed further in the ICAC-issued *Public Interest Disclosure Guidelines*.

Relevant authorities within TAFE SA include:

- where the information relates to a *public officer*: a person designated as a *Responsible Officer* by the *Chief Executive*; or a manager or supervisor of the *public officer*; and
- where the information relates to TAFE SA, a person designated as a *Responsible Officer* by the *Chief Executive*.

A person designated as a TAFE SA *Responsible Officer* for the purposes of the Act must:

- receive appropriate disclosures of public interest information relating to TAFE SA or TAFE SA *public officers* and ensure compliance with the Act in relation to such disclosures;
- make appropriate recommendations to the *Chief Executive* in relation to dealing with such disclosures; and
- provide advice to TAFE SA employees in relation to the administration of the Act.

An *informant* can make an *appropriate disclosure* of *public interest information* regarding TAFE SA or a TAFE SA *public officer* to a TAFE SA *Responsible Officer* via the following channels:

- **By completing an online form**; or (NB This form is being finalised and will be linked in this procedure and published to the TAFE SA website once this procedure is approved)
- **By post** (*Mark the envelope private and confidential); or

Public Interest Disclosure, TAFE SA
GPO Box 1872
Adelaide SA 5001
- **By telephone: 1800 822 852 or 8417 0496**; or
- **By email: PublicInterestDisclosure@tafesa.edu.au**

The PublicInterestDisclosure@tafesa.edu.au email account is monitored by two TAFE SA Responsible Officers – one being the lead responsible for receiving a disclosure or contact from an informant, the second being a back-up during an absence of the lead.

The lead (or back-up, as required) will receive the contact or disclosure and either allocate it to the appropriate TAFE SA *Responsible Officer* (TAFE SA *public officers* have been designated by the Chief Executive as *Responsible Officers* for the purposes of the Act to cater to disclosures relating to certain topics i.e. the TAFE SA Board, human resources, financial matters and the quality of TAFE SA teaching and learning), determine whether to assess the disclosure themselves, or refer it to another *relevant authority*.

An *informant* may choose to contact a TAFE SA *Responsible Officer* via the channels above and request to meet them face to face in a neutral location prior to making an *appropriate disclosure*.

Informants should note that the PublicInterestDisclosure@tafesa.edu.au email account is monitored by two TAFE SA *Responsible Officers* (one as lead the other as a back-up) and one of these officers will consider the subject matter and determine which TAFE SA *Responsible Officer* (including themselves) is appropriate to receive and act on the *appropriate disclosure* and liaise with the *informant* (if their identity is revealed).

How are disclosures of public interest information dealt with once received?

The following flowchart identifies the process for receiving and dealing with a disclosure of *public interest information* relating to TAFE SA or a TAFE SA *public officer*.

Receiving and dealing with an appropriate disclosure of public interest information relating to TAFE SA or a TAFE SA public officer

1. Receiving a disclosure

- > Any person in TAFE SA who receives a disclosure of information is required to comply with the provisions of ICAC Guideline 1.
- > If a person receives a disclosure of information relating to TAFE SA or a TAFE SA *public officer* and is unsure whether they are a *relevant authority* for the particular information, they should contact a TAFE SA *Responsible Officer* via PublicInterestDisclosure@tafesa.edu.au and seek advice or, alternatively, contact the Office of Public Integrity.
- > Two Responsible Officers are responsible for monitoring the PublicInterestDisclosure@tafesa.edu.au email account, one taking the lead responsibility and the second a back-up.
- > The lead (or back-up, as required) will receive the contact or disclosure and either allocate it to the appropriate TAFE SA *Responsible Officer* (TAFE SA *public officers* have been designated by the Chief Executive as *Responsible Officers* for the purposes of the Act to cater to disclosures relating to certain topics i.e. the TAFE SA Board, human resources, financial matters and the quality of TAFE SA teaching and learning), determine whether to assess the disclosure themselves, or refer it to another *relevant authority*.
- > When seeking advice from a TAFE SA *Responsible Officer* or the Office of Public Integrity, a person **must not** disclose the identity of the *informant*, nor disclose any information that could reveal the identity of the *informant*, unless the *informant* consents.

2. Assessment

- > A *relevant authority* to whom an *appropriate disclosure* is made is required to assess the information as soon as possible after the disclosure is made to ascertain whether the 'imminent risk' provision of ICAC Guideline 1 applies.
- > 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 *relevant authority* should immediately communicate such information as may be necessary to mitigate that risk to the most appropriate agency (e.g. South Australia Police, SafeWork SA, SA Ambulance, Environment Protection Authority).
- > The *relevant authority* must then assess the information to determine if it is an *appropriate disclosure of public interest information* i.e. does the information raise a potential issue of corruption, misconduct or maladministration in public administration or does the information raise a potential issue of a substantial risk to the environment or to the health or safety of the public generally or a significant section of the public and if any of the provisions of ICAC Guideline 1 apply.

Receiving and dealing with an appropriate disclosure of public interest information relating to TAFE SA or a TAFE SA public officer (cont.)

2. Assessment (cont.)

- > If the *relevant authority* 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 *relevant authority* must comply with reporting obligations under the *ICAC Act*
- > If there is no obligation to report under the *ICAC Act*, the *relevant authority* should then assess whether any further action needs to be taken.
- > If no further action needs to be taken i.e. if the information disclosed:
 - does not justify the taking of further action; or
 - 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,then the relevant authority must take reasonable steps to notify the *informant* (if the *informant's* identity is known):
 - that an assessment of the information has been made;
 - that no action is being taken in relation to the information; and
 - the reasons why no action is being taken in relation to the information.
- > This notification must be made within 30 days of receiving the *appropriate disclosure of public interest information*.
- > If notification is not made within this timeframe and the *informant* believes on reasonable grounds that the information is true, the informant is entitled to disclose the *public interest information* to a journalist or a member of parliament other than a Minister of the Crown, and the disclosure will be considered to be an *appropriate disclosure of public interest information*.

3. Action

- > If the information does not give rise to a potential issue of corruption, but warrants further action, the *relevant authority* needs to determine who best should take action in relation to it, having regard to the following criteria:
 - If investigation of the information may be warranted, who has the skills, resources and powers to investigate the matter?
 - If the information is substantiated following an investigation, what action would be appropriate? Who has the skills, resources and powers to take appropriate action in relation to the matter arising from the information, if the information is substantiated?
- > If action is to be taken, the *relevant authority* 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
 - of the action to be taken in relation to the information.
- > This notification must be made within 30 days of receiving the *appropriate disclosure of public interest information*.