

Public Interest Disclosure Policy

1. Purpose	2
2. Background.....	2
3. Definitions and Acronyms	2
4. Policy	2
5. Public Interest Disclosure Submission.....	4
6. Public Interest Disclosure Direct to the Commonwealth Ombudsman	4
7. External or Emergency Disclosures	4
8. Receipt of Public Interest Disclosure.....	5
9. Request for Extension	6
10. Protection from Reprisal	6
11. Withdrawing a Public Interest Disclosure	6
12. Responsibilities of the Discloser	7
13. Congruence with Legislation, policies and guides	7
14. Review	7
15. Accountabilities	7
16. Effective Date	7
17. Associated Documents and Forms	7
Attachment 1 - Flow Chart	8
Attachment 2 - Meaning of Public Interest Disclosure.....	9
Attachment 3 - Notification of Allocation.....	11
Attachment 4 - Notification of decision not to investigate	13
Attachment 5 - Request Extension of Time.....	14

Document Approval and Version Control

Policy Type	Management
Policy Category	Human Resources
Document version:	Version 3.0
Prepared By:	Louise Heaslip
Date:	8 May 2019
Approved By:	Managing Director
Date:	9 May 2019
Effective date:	9 May 2019
Police review due by:	9 May 2022

Responsible Officer

Name	Position	Contact Details
Louise Heaslip	General Manager, Corporate	(02) 6923 6903

a. Purpose

- 1.1 The *Public Interest Disclosure Act 2013 (PID Act)* supplements existing avenues for complaint and investigation. All AgriFutures Australia (the 'Corporation') staff are able to raise issues where they believe that there have been behaviours which do not comply with Corporation policies, the Code of Conduct, or the law.

b. Background

- 2.1 The PID Act is designed to:

- a. Promote the integrity and accountability of the Commonwealth public sector;
- b. Encourage and facilitate the making of public interest disclosures by public officials;
- c. Ensure that public officials who make public interest disclosures are supported and are protected from adverse consequences relating to the disclosures; and
- d. Ensure that disclosures by public officials are properly investigated and dealt with.

- 2.2 Under the PID Act, all Corporation staff, and some service providers, will fall within the definition of public official and may make a Public Interest Disclosure and will be afforded protection under the PID Act in relation to the public interest disclosure.

c. Definitions and Acronyms

- 3.1 The following definitions and acronyms apply throughout this document:

- a. AgriFutures Australia (the Corporation). Corporation staff referred to in this policy include Board Directors, Advisory Committee members, external research managers and internal staff as well as contractors or consultants.
- b. Authorised Officer means the person appointed by the Managing Director to receive public interest disclosures. In this case the Authorised Officer is the General Manager, Corporate.
- c. Principal Officer means the Managing Director or delegate.
- d. Public Interest Disclosure means a disclosure of information amounting to disclosable conduct.
- e. Public Official is as defined by s 69 of the PID Act and includes Corporation staff, past and present, as well as contractors and statutory office holders.
- f. Disclosable Conduct means conduct that is suspected or probable illegal conduct or other wrongdoing of the kind mentioned in 229 of the PID Act.

d. Policy

- 4.1 All Corporation staff are encouraged to report any genuine concerns about suspected wrongdoing or unlawful behaviour which they feel may constitute Disclosable Conduct.

- 4.2 Under s29 of the PID Act, Disclosable Conduct includes conduct which:

- a. Contravenes Commonwealth, state or territory law;
- b. In a foreign country, contravenes a foreign law that applies to the agency, official or service provider;

- c. Perverts the course of justice;
 - d. Is corrupt;
 - e. Constitutes a maladministration, including conduct that is based on improper motives or is unreasonable, unjust, oppressive or negligent;
 - f. Is an abuse of public trust;
 - g. Involves fabrication, falsification, plagiarism or deception relating to scientific research, or other misconduct in relation to scientific research, analysis or advice;
 - h. Results in wastage of public money or public property;
 - i. Unreasonably endangers health and safety; and
 - j. Endangers the environment.
- 4.3 All Corporation staff are responsible for acting appropriately in response to any unlawful or improper behaviour by another staff member. The PID Act establishes a legal framework for ‘public interest whistleblowing’ in which allegations of unlawful or improper behaviour can be raised without victimisation or discrimination. It is an offence under the PID Act to take, or threaten to take, a reprisal against an employee who discloses suspected unlawful or improper conduct.
- 4.4 A Public Interest Disclosure is a disclosure of information that is:
- a. A disclosure concerning suspected or probable illegal conduct or other wrongdoing (referred to as “disclosable conduct”); or
 - b. A disclosure concerning a previous “internal disclosure” of the information that has not been adequately dealt with, and if wider disclosure satisfies public interest requirements; or
 - c. A disclosure concerning a substantial and imminent danger to health or safety; or
 - d. A disclosure to an Australian legal practitioner for purposes connected with the above matters.
- 4.5 A Public Interest Disclosure requires the presence of disclosable conduct – it is **not** disclosable conduct if a person disagrees with:
- a. A government policy or proposed policy;
 - b. Actions or proposed actions by a Minister, the Speaker of the House of Representatives or the President of the Senate; or
 - c. Expenditure or proposed expenditure related to such policy or action.
- 4.6 Disclosable conduct also does not include:
- * judicial conduct
 - * the proper performance of the functions and proper exercise of the powers of an intelligence agency or its officials
 - * conduct that is wholly private and has no bearing on their position as a public official

e. Public Interest Disclosure Submission

- 5.1 Corporation staff who wish to make a PID (the disclosers) do not have to identify themselves and may remain anonymous.
- 5.2 The identity of the discloser **remains protected from broader disclosure**. A person who receives and investigates a PID that is, a supervisor, an Authorised Officer or Principal Officer, **cannot reveal the discloser's identity** during, or after, the PID process without the discloser's consent.
- 5.3 There is no formal process prescribed for the making of a PID. Corporation staff should contact their Authorised Officer if they wish to make a PID. This can be done in person, in writing or anonymously in writing.
- 5.4 The Corporation website has a designated email address for staff or other officers to lodge a disclosure. The email address is **pid@agrifutures.com.au**. This email address is only able to be accessed by the Authorised Officer and the Managing Director.
- 5.5 The information disclosed should be sufficiently detailed so as to enable an Authorised Officer to make an assessment of whether it is a PID.
- 5.8 In the event that the PID is in relation to the conduct of the Managing Director, General Manager, Corporate (where they are the Authorised Officer) or a member (or members) of the Board, the disclosure should be directed to the Commonwealth Ombudsman (see paragraph 6 below).
- 5.9 A PID may even be made in circumstances where the person making it does not know it is a PID. In these circumstances the Authorised Officer, or supervisor or manager, will advise the discloser that the information disclosed could be considered to be a PID and so the processes under the PID Act will have to be followed.
- 5.10 A PID may be made to the agency, or authorised officer of the agency, to which the discloser last belonged if the information relates to that agency.

f. Public Interest Disclosure Direct to the Commonwealth Ombudsman

- 6.1 A person, internal or external to the Corporation may choose instead to make a PID directly to the Commonwealth Ombudsman via the following email address: **pid@ombudsman.gov.au**. The Ombudsman may decide to investigate an internal disclosure that is made to an authorised officer in the Ombudsman's office or allocated (with consent) to the Ombudsman by another agency.
- 6.3 If the Ombudsman decides to investigate a disclosure, the investigative powers under The Ombudsman Act 1976 will generally be used rather than the the PID Act powers.
- 6.4 The Ombudsman may also investigate under The Ombudsman Act 1976 if a complaint is made about an agency's actions in handling a PID.

g. External or Emergency Disclosures

- 7.1 In limited circumstances a public official may disclose such information to a person outside government – this is known as an external disclosure or emergency disclosure.

- 7.2 A public official can make a PID to other people, including people outside government only in limited circumstances. Two other restrictions apply to these disclosures:
- a. The matter must not include intelligence information or sensitive law enforcement information or concern an intelligence agency; and
 - b. A disclosure may not be made to a foreign public official.
- 7.3 External and emergency disclosures will generally be quite rare - See Attachment 2: Meaning of Public Interest Disclosure

h. Receipt of Public Interest Disclosure

- 8.1 If the PID is made to a supervisor or manager, the disclosure must be referred to the Authorised Officer (AO).
- 8.2 Once a disclosure is received, the AO is obliged to:
- a. Advise the discloser that the information provided may be considered a PID under the PID Act and that they are obliged to pass the information on to the Principal Officer (PO) for investigation.
 - b. Assess the risk of reprisals and possible actions to be taken to protect the discloser with regard to these risks;
 - c. Advise the discloser of protections from reprisals in relation to the disclosure of the disclosable conduct available to them under the PID Act;
 - d. Advise the discloser that access to the information the discloser has provided will be limited to the AO and the PO;
 - e. Explain to the discloser what the PID Act requires in order for the disclosure to be an internal disclosure;
 - f. Confirm with the discloser the nature of the information and obtain the discloser's consent to provide their details to the PO.
 - g. Advise the Commonwealth Ombudsman that a public interest disclosure has been made - See Attachment 3: Notification of Allocation.
- 8.3 The AO will then determine whether or not to investigate or allocate the disclosure. There is a limited discretion available to the AO not to allocate a potential PID. If this discretion is exercised, the discloser must be notified of the decision and the reasons for the decision explained. This must also be recorded and forwarded to the Ombudsman - see Attachment 4: Notification Not to Proceed with an Investigation.
- 8.4 The AO may contact the discloser for further information prior to making the decision to allocate the matter to a PO. If the information relates in whole or in part to another agency an AO may allocate the PID, or that part of the PID relevant to the agency, to that other agency for investigation. In this event, the AO will notify the discloser that their matter has been allocated to a PO of another agency, for investigation.
- 8.5 Once an AO has allocated a PID it must be investigated by the Principal Officer (PO) subject to certain exceptions contained within the PID Act.
- 8.6 The PO may contact the discloser for further information to assist in the investigation of the matter and the preparation of the Investigation Report.

- 8.8 The PO is required to complete the investigation of the PID and prepare a report within **90 days** of the PID being allocated to them by the AO.
- 8.7 The PO must, as soon as reasonably practicable after the matter is allocated to them, inform the discloser that they are required to investigate the disclosure.
- 8.8 The PO must also inform the discloser of the estimated length of the investigation.
- 8.9 On completion of an investigation of the PID, the PO must prepare a report to send to the Ombudsman that sets out:
 - a. The matters considered in the course of the investigation;
 - b. The duration of the investigation;
 - c. The findings (if any);
 - d. The action (if any) that has been, is being, or is recommended to be, taken; and
 - e. Any claims made about, and any evidence of, detrimental action taken against the discloser, and the agency's response to those claims and that evidence.

i. Request for Extension

- 9.1 Agencies may seek an extension of time from the Commonwealth Ombudsman, to complete its investigation. - see Attachment 5: Request for an Extension of Time.
- 9.2 Requests for an extension of time should be sought from the Ombudsman no later than **21 days prior to the expiry of the investigation completion date**. Forms are to be forwarded to PID@ombudsman.gov.au.

j. Protection from Reprisal

- 10.1 Section 10 of the PID Act provides protection to Corporations staff who make a public interest disclosure by providing that:
 - a. The individual is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the public interest disclosure; and
 - b. No contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the individual on the basis of the public interest disclosure.
- 10.2 Under s20 of the PID Act it will be an offence to identify the discloser as being the person making the PID to others not directly involved in the PID process.
- 10.4 The PID Act also provides remedies which are available to you in the event that reprisals are taken. The remedies available include compensation, injunctions, reinstatement, apology or a combination of these remedies.

k. Withdrawing a Public Interest Disclosure

- 11.1 A discloser cannot withdraw a PID. Once a PID has been made, even if the discloser did not know, or intend it to be a PID, it must be dealt with in accordance with the PID Act.

l. Responsibilities of the Discloser

12.1 A person who makes a PID should not discuss the details of the disclosure with anyone who does not need to know. Discussions with those people will not be covered by the protections in the PID Act.

12.3 A person who makes a PID should also be prepared to provide further information to help the investigator, as this will often be required. Under the PID Act all Corporation staff must use their best endeavours to assist in any investigation.

m. Congruence with Legislation, policies and guides

13.1 This policy has been developed in accordance with:

a. Public Interest Disclosure Act 2013;

b. Privacy Act 1988;

c. Commonwealth Authorities and Companies Act 1997;

d. Commonwealth Ombudsman Information sheets:

- i. Information for Agencies
- ii. Agency Guide to the Public Interest Disclosure Act 2013;
- iii. How to make a public interest disclosure;
- iv. Responsibilities of principal officers of Commonwealth agencies;
- v. The role of authorised officers;

n. Review

14.1 This policy should be reviewed every three years or earlier if required.

o. Accountabilities

15.1 The General Manager, Corporate is responsible for this policy.

p. Effective Date

16.1 This Policy will become effective immediately it is approved.

q. Associated Documents and Forms

Attachment 1 Public Interest Disclosure Flowchart

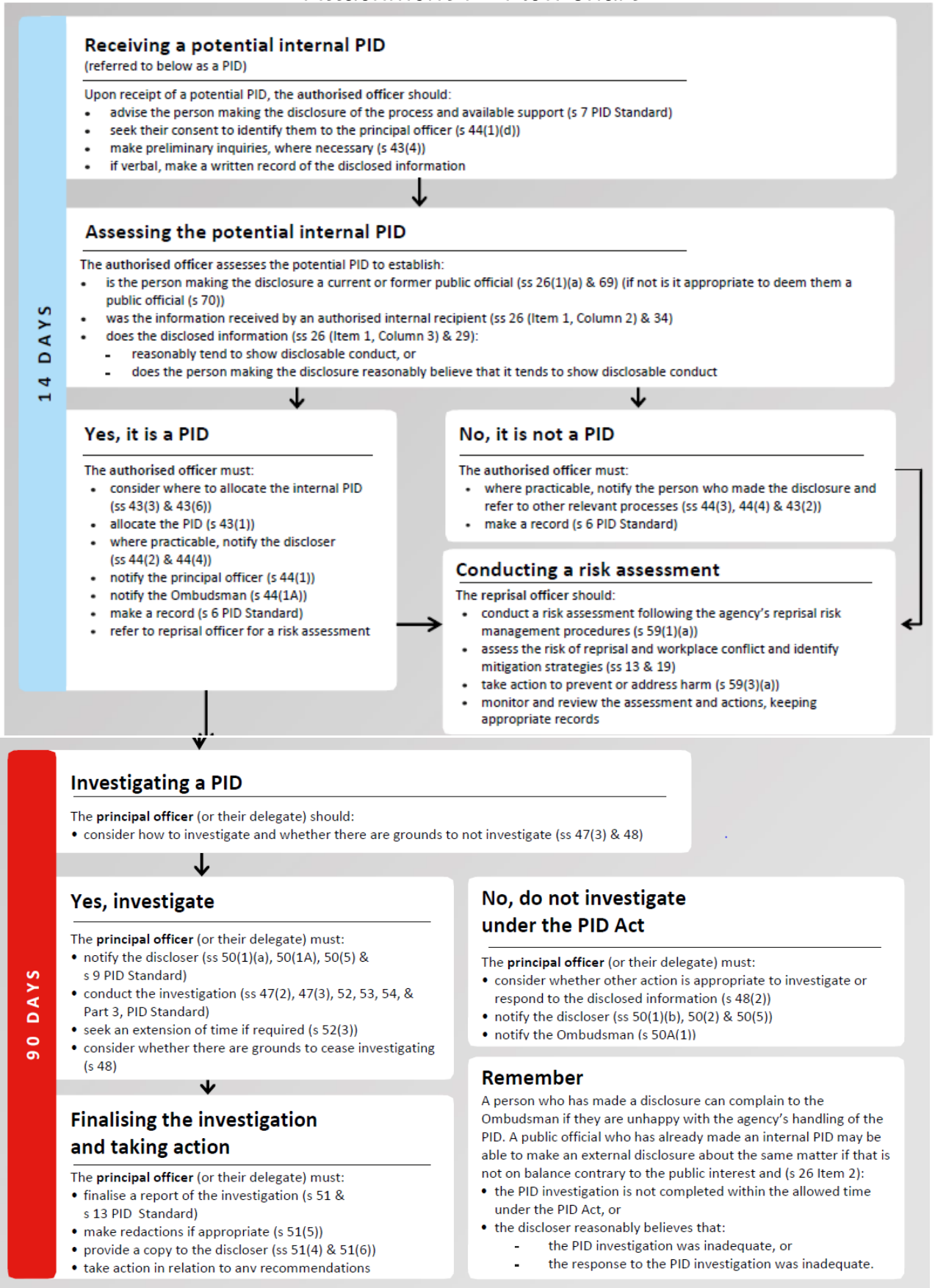
Attachment 2 Section 26: Meaning of Public Interest Disclosure

Attachment 3 Notification of Allocation Form

Attachment 4 Notification of Decision not to Investigate Form

Attachment 5 Request for Extension of Time Form

Attachment 1 - Flow Chart



Attachment 2 Meaning of Public Interest Disclosure

A disclosure of information is a *public interest disclosure* if:

- a. the disclosure is made by a person (the *discloser*) who is, or has been, a public official; and
- b. the recipient of the information is a person of the kind referred to in column 2 of an item of the following table; and
- c. all the further requirements set out in column 3 of that item are met:

Public interest disclosures			
Item	Column 1	Column 2	Column 3
	Type of disclosure	Recipient	Further requirements
1	Internal disclosure	An authorised internal recipient, or a supervisor of the discloser	The information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct.
2	External disclosure	Any person other than a foreign public official	<p>(a) The information tends to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct.</p> <p>(b) On a previous occasion, the discloser made an internal disclosure of information that consisted of, or included, the information now disclosed.</p> <p>(c) Any of the following apply:</p> <p>(i) a disclosure investigation relating to the internal disclosure was conducted under Part 3, and the discloser believes on reasonable grounds that the investigation was inadequate;</p> <p>(ii) a disclosure investigation relating to the internal disclosure was conducted (whether or not under Part 3), and the discloser believes on reasonable grounds that the response to the investigation was inadequate;</p> <p>(iii) this Act requires an investigation relating to the internal disclosure to be conducted under Part 3, and that investigation has not been completed within the time limit under section 52.</p> <p>(e) The disclosure is not, on balance, contrary to the public interest.</p>

Public interest disclosures			
Item	Column 1	Column 2	Column 3
	Type of disclosure	Recipient	Further requirements
			<p>(f) No more information is publicly disclosed than is reasonably necessary to identify one or more instances of disclosable conduct.</p> <p>(h) The information does not consist of, or include, intelligence information.</p> <p>(i) None of the conduct with which the disclosure is concerned relates to an intelligence agency.</p>
3	Emergency disclosure	Any person other than a foreign public official	<p>(a) The discloser believes on reasonable grounds that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the environment.</p> <p>(b) The extent of the information disclosed is no greater than is necessary to alert the recipient to the substantial and imminent danger.</p> <p>(c) If the discloser has not previously made an internal disclosure of the same information, there are exceptional circumstances justifying the discloser's failure to make such an internal disclosure.</p> <p>(d) If the discloser has previously made an internal disclosure of the same information, there are exceptional circumstances justifying this disclosure being made before a disclosure investigation of the internal disclosure is completed.</p> <p>(f) The information does not consist of, or include, intelligence information.</p>
4	Legal practitioner disclosure	An Australian legal practitioner	<p>(a) The disclosure is made for the purpose of obtaining legal advice, or professional assistance, from the recipient in relation to the discloser having made, or proposing to make, a public interest disclosure.</p> <p>(b) If the discloser knew, or ought reasonably to have known, that any of the information has a national security or other protective security classification, the recipient holds the appropriate level of security clearance.</p> <p>(c) The information does not consist of, or include, intelligence information.</p>

Attachment 3 - Notification of Allocation

The Commonwealth Ombudsman, or IGIS if the information relates to an intelligence agency, must be notified when an agency has allocated a disclosure (s 44(1A). s 43(5) requires the AO to use their best endeavours to decide the allocation **within 14 days** after the disclosure is made.

Notification forms should be completed and provided to the Ombudsman (unless it relates to an intelligence agency) **within 10 days**, or as soon as practicable, of the allocation. The discloser's name and contact details must only be provided if consent has been provided (s44)

Agency information

Receiving agency	
Your reference number	
Date disclosure received	<i>{Date disclosure made to authorised officer}</i> Click here to enter a date.
Allocation date	Click here to enter a date.
Accepting agency	<i>{Agency to which the disclosure was allocated}</i>
Accepting agency's reference number	
Who was the disclosure first made to?	Choose an item.

Discloser's details

Is the discloser anonymous - Choose an item.

Has consent been granted to provide details - Choose an item.

Name	
Address	
Contact number	
Email address	
Status of discloser	Choose an item.
Date discloser informed of the allocation decision (optional)	Click here to enter a date.

Disclosed Information

Nature of disclosure 1	Choose an item.
Nature of disclosure 2	Choose an item.
Details of information disclosed	<i>{Provide a brief summary of the information disclosed}</i>

Attachment 4 - Notification of decision not to investigate

Under the *Public Interest Disclosure Act 2013* the Commonwealth Ombudsman, or IGIS if the information relates to an intelligence agency (s 50A(2)), must be notified with reasons when an agency has decided to not investigate a disclosure or not investigate further (s 50A(1)).

Notification forms should be completed and provided to the Ombudsman (unless it relates to an intelligence agency) within 10 working days, or as soon as reasonably practicable, of the decision to not investigate a disclosure or not investigate further. Forms are to be forwarded to PID@ombudsman.gov.au.

Agency Information

Agency	
Your reference number	
Date disclosure allocated	Click here to enter a date.
Decision date	Click here to enter a date.

Reasons to not Investigate or not Investigate Further

Had investigation commenced	Choose an item.
Reason for decision to not investigate or not investigate further 1	Choose an item.
Reason for decision to not investigate or not investigate further 2	Choose an item.
Details of decision	<i>{Provide a brief summary of the decision}</i>
Date discloser informed of the decision (optional for agencies to complete this question)	<i>{Or indicate if there is no way of contacting the discloser}</i> Click here to enter a date.

Attachment 5 - Request Extension of Time

Under the *Public Interest Disclosure Act 2013* agencies have 90 days from the date of allocation to investigate a disclosure and prepare a report on the investigation (s 52). Agencies may seek an extension of time from the Commonwealth Ombudsman, or IGIS if the information relates to an intelligence agency, to complete its investigation (s 52(3)).

Requests for an extension of time should be sought from the Ombudsman (unless it relates to an intelligence agency) no later than 21 days prior to the expiry of the investigation completion date. Forms are to be forwarded to PID@ombudsman.gov.au.

Agency Information

Agency	
Your reference number	
Date disclosure allocated	Click here to enter a date.

Extension Request Details

Length of extension sought	
Reason for extension	
Action taken to progress investigation	<i>{Provide timeline of actions taken since commencement of allocation}</i>
Is this the first request for an extension?	Choose an item.
Extensions sought and granted	<i>{Provide details of previous extensions sought and granted}</i>
Has discloser's view been sought? (optional for agencies to complete this question)	Choose an item. <i>{If yes briefly explain the discloser's view}</i>