



Public Interest Disclosure Procedure

Policy Owner: Royal Botanic Gardens Board

Date approved: 21 June 2023

Reviewing Officer: Manager, Governance & Projects

CONTEXT

The Public Interest Disclosures Act 2012 (the Act) allows people to make disclosures about improper conduct, corruption or detrimental action by public officers and public bodies.

RBGV is a public body subject to the Act but is not authorised to receive public interest disclosures. Any disclosure about RBGV must be made directly to the Independent Broad-based Anti-Corruption Commission (IBAC).

PURPOSE

These Procedures are a resource for disclosers and potential disclosers to outline how RBGV will manage their welfare if they make a disclosure to IBAC and their disclosure is made known to RBGV. These procedures also cover how, if made aware, RBGV will manage the welfare of other people connected to a public interest disclosure or public interest complaint from detrimental action being taken against them in reprisal.

APPLICATION

These Procedures apply to all members of the public, RBGV employees and RBG Board members and should be read in conjunction with the RBGV Public Interest Disclosure Policy.

PROCEDURE

1. Making a Disclosure

RBGV is not permitted to receive disclosures made under the Act. Therefore, if you wish to make a disclosure about RBGV, its employees or Board members, you will need to make that disclosure directly to IBAC (www.ibac.vic.gov.au).

If RBGV receives a complaint, report, or allegation of improper conduct or detrimental action, RBGV will refer the discloser to IBAC. In this case, the discloser cannot be given the protections under the Act.

Complaints, reports and allegations which do not fall within the definition of serious improper conduct under the Act are not considered public interest disclosures. These can be received by RBGV and will be handled in accordance with the complaints handling process (for external complaints) and/or the relevant internal policy.

Further information on what constitutes a disclosure, how disclosures can be made and how they are assessed can be found on the IBAC website (www.ibac.vic.gov.au).

2. Welfare Management

Confidentiality obligations require a person who has made a public interest disclosure not to discuss the matter with any other person except with IBAC (or another investigative entity to which IBAC may have referred the disclosure) or their legal representative. Therefore, RBGV will only be made aware that a person requires protection under the Act if that information has been provided to RBGV by IBAC or the Victorian Inspectorate (when assessing whether a disclosure is a public interest complaint), or by the investigative entity investigating a public interest complaint.

RBGV will keep all information it receives in relation to a public interest disclosure confidential, and will manage the welfare of any relevant people in accordance with its obligations under the Act. These people include:

- Disclosers or potential disclosers
- People who have co-operated or intend to co-operate with an investigation of a public interest complaint (co-operators)
- People who are the subject of allegations

RBGV will:

- ensure these procedures are accessible on its website and available internally and externally to employees, Board members and any individual in the broader community,
- not tolerate the taking of direct or indirect detrimental action in reprisal against any person for making a public interest disclosure, including to take any reasonable steps to protect individuals from such action being taken against them,
- afford natural justice and treat fairly those who are the subject of allegations contained in disclosures,
- take the appropriate disciplinary and other action against any employees or Board members engaged in the taking of detrimental action,
- ensure that RBGV as a whole handles the welfare management of individuals connected with public interest disclosure matters consistently and appropriately in accordance with its obligations under the Act, any regulations made under the Act, any guidelines issued by IBAC and these procedures, and
- be visible, approachable, openly communicative and lead by example in establishing a workplace that supports the making of public interest disclosures.

2.1. Roles and Responsibilities

2.1.1. Public Interest Disclosure Coordinator

RBGV's Public Interest Disclosure Coordinator is responsible for ensuring that, where RBGV is made aware of a public interest disclosure, the welfare of any individuals connected with this disclosure is properly managed.

The Public Interest Disclosure Coordinator is:

- the contact point for general advice about the operation of the Act and for integrity agencies such as IBAC,
- responsible for ensuring that RBGV carries out its responsibilities under the Act, any regulations made pursuant to the Act and any guidelines issued by IBAC,
- RBGV's chief liaison with IBAC in regard to the Act,
- required to take all necessary steps to ensure information received or obtained in connection with a disclosure, including the identities of the discloser and the

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individuals to whom the disclosure relate, are kept secured, private and confidential at all times,

- responsible for arranging any necessary and appropriate welfare support for the discloser, including appointing a welfare manager to support a person entitled to be protected and to protect them from any reprisals, and
- responsible for collating information required to be reported by RBGV in its annual reports under the Act.

The Public Interest Disclosure Coordinator will ensure they undertake available public interest disclosure training provided by IBAC or other relevant bodies.

The Public Interest Disclosure Coordinator appointed by RBGV is:

Sarah Boswell
Chief Information Officer
Royal Botanic Gardens
Birdwood Avenue
Private Bag 2000
SOUTH YARRA VIC 3141
Ph: (03) 9252 2367
Sarah.Boswell@rbg.vic.gov.au

2.1.2. Welfare Manager

In appropriate circumstances, RBGV will appoint a suitable welfare manager to protect a discloser or a co-operator. RBGV may appoint a contractor to provide welfare services to a discloser or co-operator.

The Welfare Manager is responsible for monitoring the needs of the discloser or co-operator and to provide advice and support. The Welfare Manager will:

- examine the immediate welfare and protection needs of the discloser or co-operator and, where that person is an employee, seek to foster a supportive work environment
- advise the discloser or co-operator of available legislative and administrative protections
- develop a risk management plan for each disclosure, including proactively assessing the risk of detrimental action being taken in reprisal
- protect the discloser or co-operator from detrimental action such as harassment, intimidation or victimisation in reprisal for their actions
- keep current records of all aspects of the case management of the discloser or co-operator, and
- endeavour to ensure that the expectations of the discloser or co-operator are realistic.

2.1.3. Director and Chief Executive

The Director and Chief Executive is obliged under the IBAC Act to notify IBAC when there are reasonable grounds to suspect corruption is occurring or has occurred at RBGV.

2.1.4. Employees and Board Members

Employees and Board members are encouraged to raise matters of concern in relation to RBGV, including about any employee or Board member. In particular, employees and Board members are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures, whether

such conduct or action has taken place, is suspected will take place, or is still occurring.

RBGV is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of public interest disclosures. All RBGV employees and Board members have an important role to play in supporting those who have made a legitimate disclosure in accordance with the Act and must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

2.2. Detrimental Action

It is a criminal offence to take detrimental action against another person in reprisal for a public interest disclosure under the Act.

In addition, the taking of detrimental action in reprisal for making a disclosure can be grounds for a person to make a further disclosure with respect to that conduct. The disclosure of this allegation should be made to IBAC as a new disclosure. If any person reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action apparently taken in reprisal for a disclosure, the welfare manager or Public Interest Disclosure Coordinator must record details of the incident and advise the person of their rights under the Act to make a disclosure to IBAC. Where the detrimental action is of a serious nature likely to amount to a criminal offence, RBGV will also consider reporting the matter to the police or IBAC.

A discloser of a public interest disclosure may also:

- take civil action against the person who took detrimental action against the discloser and seek damages,
- take civil action against RBGV jointly and severally to seek damages if the person who took detrimental action against the discloser took that action in the course of employment with, or while acting as an agent of RBGV, and
- apply for an order or an injunction from the Supreme Court.

2.2.1. Transfer of employees

An RBGV employee who has made a public interest disclosure and believes on reasonable grounds that detrimental action will be, is being, or has been taken against them may request a transfer of employment.

After making a disclosure an employee can be transferred internally to another part of RBGV, or to another public service body or public entity on similar terms and conditions of employment. This can only happen if they request or consent to a transfer and the following other conditions apply:

- the Director and Chief Executive has reasonable grounds to suspect detrimental action will be, is being, or has been taken against the employee,
- the Director and Chief Executive considers that the transfer will avoid, reduce or eliminate the risk of detrimental action, and
- if transfer to another public body is proposed, the head of that public body consents to the transfer.

The transfer can be temporary or permanent, and if the employee is moved to another public body, the employee's service in the new body is regarded as continuous with their pre-transfer service.

2.2.2. Disciplinary Action

Where a discloser is implicated in improper conduct, and an investigative entity has provided the necessary information to RBGV, it will protect the discloser from reprisals in accordance with the Act, any guidelines issued by IBAC and these procedures. RBGV acknowledges that the act of disclosing should not shield disclosers from the reasonable consequences flowing from any involvement in improper conduct. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

The management of the welfare of a discloser may become complicated when that person is implicated in misconduct, whether or not that misconduct is related to the disclosure.

Taking disciplinary or other action against a person who has made a public interest disclosure invariably creates the perception that it is being taken in reprisal for the disclosure. The Director and Chief Executive will make the final decision as to whether disciplinary or other action will be taken against a discloser. Where disciplinary or other action relates to conduct that is the subject of the disclosure, the disciplinary or other action will only be taken after the disclosed matter has been appropriately dealt with. In all cases where disciplinary or other action is being contemplated, any such action will not be taken without RBGV ensuring that:

- the fact that a person has made a public interest disclosure is not any part of the reason for RBGV taking the action against the employee,
- there are good and sufficient grounds that would fully justify action against any other person in the same circumstances, and
- there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

RBGV will take all reasonable steps to thoroughly document its decision-making process, including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not being taken in retribution against the discloser for making the disclosure.

The discloser will be clearly informed of any action proposed to be taken, be afforded natural justice, and inform and be informed of any mitigating factors taken into account. Such communications with the discloser will be made in plain English and reasonable steps to provide appropriate support will be offered where appropriate.

2.3. Confidentiality

RBGV will take all reasonable steps to protect the identity of the discloser and the matters disclosed by a discloser. Maintaining confidentiality in relation to public interest disclosure matters is crucial, among other things, in ensuring detrimental actions are not taken in reprisal against a discloser.

The obligation of confidentiality extends to any person receiving a disclosure or making a disclosure. It is in the interest of the discloser to ensure they do not discuss any related matters other than with officers of IBAC, another investigative entity, or other persons authorised by law.

RBGV will ensure all files, whether paper or electronic, are kept securely. Those files will be accessible only by the Public Interest Disclosure Coordinator.

The Welfare Manager will not divulge any details relating to the disclosed matter to any person other than the Public Interest Disclosure Coordinator or an investigator appropriately authorised under the Act or the IBAC Act. All meetings between any relevant people will be conducted discreetly to protect the confidentiality of the person making a public interest disclosure.

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The Freedom of Information Act 1982 (FOI Act) provides a general right of access for any person to seek documents in the possession of RBGV.

However, the Act provides that certain information related to public interest disclosures as contained in documents in the possession of RBGV will be exempt from the application of the FOI Act.

Such information excluded from the operation of the FOI Act includes:

- any information relating to a disclosure made in accordance with the Act.
- any information that is likely to lead to the identification of a discloser.

RBGV is required to contact IBAC prior to providing any document originating from IBAC or relating to a public interest disclosure, if that document is sought under the FOI Act.

DEFINITIONS

Provide definitions for key words in alphabetical order.

Corrupt conduct

Dishonest activity in which an employee or Board member acts contrary to the interest of that body and abuses their position of trust in order to achieve personal gain or advantage for themselves or for another person or entity.

Corrupt conduct includes:

- taking or offering bribes
- dishonesty using influence
- committing fraud, theft or embezzlement
- misusing information or material acquired at work
- conspiring or attempting to engage in the above corrupt activity.

Corruption can occur through:

- improper or unlawful actions by public officers or public bodies
- failure of public officers or public bodies to act
- actions of private individuals who try to improperly influence public sector functions or decisions.

Detrimental action or reprisal

Action taken against a person who has made a Public Interest Disclosure, including action causing injury, loss or damage, intimidation or harassment, or discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business. It includes the taking of disciplinary action.

Discloser

A person who (purports to) make(s) a complaint, allegation or disclosure (however described) under the Act (may also be described as a Public Interest Discloser or Whistleblower).

IBAC

The Independent Broad-based Anti-corruption Commission.

Improper conduct

Is defined in the Act to mean:

- Corrupt conduct
- Conduct of a public officer or body that constitutes:
 - a criminal offence;
 - serious professional misconduct;
 - dishonest performance of public functions;
 - intentional or reckless breach of public trust;
 - intentional or reckless misuse of information;
 - substantial mismanagement of public resources;
 - substantial risk to the health or safety of one or more people; or
 - substantial risk to the environment.
- the conduct of any person that:
 - adversely affects the honest performance by a public officer or public body of their functions; or
 - is intended to adversely affect the effective performance by a public officer or public body of their functions for the benefit of themselves or another person (for example resulting in the person obtaining a licence, permit or approval, appointment, financial benefit or other direct or indirect monetary or proprietary gain).

The conduct must be a serious breach of an established professional code of conduct and/or other serious departures from the person's professional responsibilities. Less serious or trivial conduct is excluded from the definition of improper conduct.

Public Interest Disclosure (PID)

A report made by a person about corrupt conduct or improper conduct of public bodies or public officers. A disclosure can also be made about detrimental action against a person by public bodies or public officers in reprisal for the making of a public interest disclosure by any person. The disclosure can relate to corrupt conduct, improper conduct or detrimental action against a person that may already have taken place, may be occurring now, or may be intending to be taken in the future.

Public Interest Complaint (PIC)

A public interest disclosure that has been determined by IBAC, the Victorian inspectorate or the Integrity and Oversight Committee to be a Public Interest Complaint.

BREACH OF POLICY

Any breaches of this policy will be addressed via the appropriate channel subject to whether it is determined to be unsatisfactory performance or misconduct.

Where appropriate, a public interest disclosure may be made to IBAC regarding breach of this policy.

RELATED DOCUMENTATION

- Public Interest Disclosure Policy

FURTHER INFORMATION

- *Public Interest Disclosure Act 2012 (Vic)*
- *Independent Broad-based Anti-corruption Commission Act 2011*
- IBAC Public Interest Disclosure Guidelines and Information Sheets

CONTACT

Queries about this Procedure should be directed to the Manager Governance and Projects or RBGV's Public Interest Disclosure Coordinator:

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VERSION CONTROL

Policy Name	Version No.	Approved By	Date
Protected Disclosure Procedure	1	Executive Team	25 June 2013
Protected Disclosure Procedure	2	Executive Team	September 2016
Public Interest Disclosure Procedure	3	Executive Team	15 June 2020
Public Interest Disclosure Procedure	4	Royal Botanic Gardens Board	21 June 2023

REVIEW

This policy will be reviewed every three years or earlier as required.