

OFFICIAL



Mr Andrew Hastie MP
Chair
Parliamentary Joint Committee on Intelligence and Security
Parliament House, Canberra

Dear Mr Hastie

Thank you for the opportunity to provide evidence yesterday to the Parliamentary Joint Committee on Intelligence and Security's inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press.

At the hearing, a member of the Committee (Senator Fawcett) asked for further information on the handling of the 23 public interest disclosures that were received by my office during the last three financial years.

I advised at the hearing that information on public interest disclosures is published to the extent possible in my office's annual report. I undertook to provide the relevant parts of those reports to the Committee, and have included this information in an appendix to this letter.

I should note that five public interest disclosures that were received during the 2018-19 financial year (and included in the figure of 23 disclosures cited at the hearing) have not yet been included in an annual report. As such, the enclosed appendix comprises extracts from our 2015-16, 2016-17, and 2017-18 annual reports, for which the total is 22 disclosures.

I further note that section 76 of the *Public Interest Disclosure Act 2013* also requires the Commonwealth Ombudsman to prepare an annual report on the operation of the Act. The Ombudsman's reports include statistics on my office's receipt and handling of public interest disclosures, as well as the alleged kinds of disclosable conduct to which the disclosures relate. These reports are publicly available from the Ombudsman's website.

If I can be of any further assistance to the Committee, please contact my office.

Yours sincerely

Margaret Stone AO FAAL
Inspector-General

15 August 2019

OFFICIAL

OFFICIAL

OFFICIAL

OFFICIAL

APPENDIX

2015–16 ANNUAL REPORT

Activity 4: Public Interest Disclosures

Facilitating the investigation of public interest disclosures and undertaking other responsibilities under the PID Act

Introduction

The *Public Interest Disclosure Act 2013* (PID Act) is intended to promote integrity and accountability within the Commonwealth public sector, including by encouraging public interest disclosures by public officials; providing appropriate support to disclosers to ensure that they are not subject to adverse consequences relating to their disclosures; and ensuring that disclosures by public officials are properly investigated and dealt with.

Key IGIS responsibilities under the PID scheme include:

- receiving, and where appropriate, investigating, disclosures about suspected wrongdoing within the intelligence agencies
- assisting current or former public officials who work for, or who previously worked for, the intelligence agencies in relation to the operation of the PID Act
- assisting the intelligence agencies in meeting their responsibilities under the PID Act, including through education and awareness activities
- overseeing the operation of the PID scheme in the intelligence agencies.

Quantitative performance measures

The following metrics, identified in the *OIGIS Corporate Plan 2015–19*, were used to support the quantitative assessment of our performance in relation to this activity:

- number of public interest disclosure matters handled
- target percentage (90%) of complaints acknowledged within five business days.

These metrics have been reported on in the preceding section of this annual report (Activity 3), alongside the metrics for other types of complaints.

In summary, there were four Public Interest Disclosure matters handled during the reporting period, each of which was acknowledged within five business days.

Discussion

In the reporting period four disclosures were made to the IGIS under the PID scheme.

One of these disclosures was made by an anonymous complainant who alleged that members of a small work unit in an Australian Intelligence Community (AIC) agency were secretly monitoring the internal communications of their workplace colleagues. They were said to be using information accessed as a source of gossip and potential influence.

Although the complaint was anonymous, it contained sufficient inside knowledge of the agency in question to suggest that it came from a current public official. The matter was construed as reaching the PID threshold and formally allocated to the Inspector-General for investigation.

The anonymous nature of the complaint and its lack of specificity (for example, with regard to the names of purported offenders and date ranges) made it difficult to investigate. Despite this, a number of forensic technical checks were undertaken to identify any inappropriate conduct or unusual patterns. None were found.

OFFICIAL

The second matter considered to be a disclosure was a complaint made by a serving AIC officer who had been suspended on full pay pending the formal withdrawal of the officer's security clearance and the termination of the officer's employment.

The discloser claimed that the 'review for cause' investigation which had led to the recommendation to withdraw the security clearance had been so flawed as to amount to a denial of procedural fairness, and that, for this reason, the decision should be overturned.

After reviewing relevant material, the IGIS identified no procedural flaws and decided that the decision of the agency head to withdraw the discloser's security clearance was not unreasonable in the circumstances.

Public Interest Disclosure

The third PID received by this office revolved around claims by a former AIC agency employee that he should not have been permitted to attend specialist training in sensitive techniques relevant to his then employment, if he was already the subject of a 'review for cause' security investigation into his continued suitability to hold a security clearance. It was construed that the discloser had raised serious concerns of maladministration, and the matter was allocated to the IGIS for investigation.

Following investigation, the IGIS was satisfied that the complainant was not actually the subject of a formal 'review for cause' process prior to the commencement of the relevant training. Rather, the process was commenced one week after the course was concluded.

The IGIS found that while security related concerns had been raised about the complainant in the preceding weeks, the agency had sought to find a reasonable balance between maintaining appropriate and necessary security standards and treating the complainant in a fair and reasonable manner.

The fourth internal disclosure made directly to the Inspector-General came from a former AIC agency officer who raised concerns about the manner in which a code of conduct investigation was carried out; alleged workplace bullying and harassment; and whether the agency concerned had inappropriately communicated personal information about the discloser to AIC and other agencies with a view to exclusion from future employment.

This matter was regarded as a PID on the basis that the disclosure pointed to potential maladministration and actions which, if proven, could give rise to disciplinary action. Although the matter was still open at the end of the reporting period, it was finalised very shortly afterwards. The IGIS found no evidence to support the claims made by the discloser.

The office was also very heavily involved in providing comments and input to the statutory review of the PID Act, which was conducted by Mr Philip Moss AM in the second half of the reporting period. This is discussed in more detail under Activity 5 in this report.

OFFICIAL

2016–17 ANNUAL REPORT

PART 2.4: Activity Four – Public Interest Disclosures

About public interest disclosures

The *Public Interest Disclosure Act 2013* (PID Act) is intended to promote integrity and accountability within the Commonwealth public sector, including by encouraging public interest disclosures by public officials, providing appropriate support to disclosers to ensure that they are not subject to adverse consequences relating to their disclosures, and ensuring that disclosures by public officials are properly investigated and addressed.

Performance summary

Performance criteria: Facilitating the investigation of public interest disclosures relating to intelligence agencies and undertaking other responsibilities under the PID Act

Source: *Corporate Plan 2016-2010*

Quantitative performance measures

NUMBER OF PUBLIC INTEREST DISCLOSURES AND TIMELINESS OF RESPONSE		
TARGET: 90% acknowledged within 5 business days		
Total number of PID	Acknowledged within 5 business days	Average number of business days for acknowledgement
11	75%	6

Figure 2.8: Timeliness of response to public interest disclosures

COMPLAINTS BY AGENCY AND SOURCE – PUBLIC INTEREST DISCLOSURES			
Complaints by agency and source	Number of public interest disclosures*	From public	From intelligence agency employee or ex-employee**
ASIO	2	0	2
ASIS	2	0	2
ASD	5	1	4
AGO	1	0	1
DIO	2	1	1
ONA	1	0	1

*One disclosure concerned more than one agency (ASD, AGO and DIO) and did not meet the threshold for allocation

**Two anonymous disclosures were presumed to have been made by an intelligence agency employee or ex-employee

Figure 2.9: Public interest disclosures by agency and source

OFFICIAL

IGIS's handling of public interest disclosures

Key IGIS responsibilities under the PID scheme include:

- receiving, and, where appropriate, investigating disclosures about suspected wrongdoing within the intelligence agencies
- assisting current or former public officials who work for, or who previously worked for, the intelligence agencies in relation to the operation of the PID Act
- assisting the intelligence agencies in meeting their responsibilities under the PID Act, including through education and awareness activities
- overseeing the operation of the PID scheme in the intelligence agencies.

There were eleven public interest disclosures handled during the reporting period, almost three times the number received in each of the two preceding reporting periods.

Most of the eleven public interest disclosures raised allegations of maladministration covering a range of issues, including staff recruitment and termination, allowances, the conduct of security clearances, and conduct relating to the withdrawal of security clearances. One disclosure related to conduct endangering health, namely systemic bullying, and another to the contravention of a law of the Commonwealth.

A former ASD contractor claimed that his security clearance was delayed after he made an internal complaint. The claim was considered to be a public interest disclosure and was referred by the IGIS to ASD to conduct an investigation into the claims.

ASD's investigation found no evidence of wrong conduct, finding that the discloser had contributed to the delay by failing to attend several appointments for an obligatory psychological assessment. ASD informed the IGIS of its finding and provided a copy of its investigation report. The agency also sent a copy of the report to the discloser, as required by section 51(4) of the *Public Interest Disclosure Act 2013*.

The discloser immediately contacted IGIS to dispute the agency's finding, saying he had only been told of one appointment for psychological assessment, which he attended. In response, IGIS asked the agency to re-examine the evidence. In conducting its second investigation, ASD discovered that typographical errors had existed in the discloser's contact details until an observant staff member noticed discrepancies and successfully made contact with the discloser to offer an appointment. Previous appointments for psychological assessment had been sent to an incorrect email address and were never received by the discloser.

ASD met with IGIS to discuss the circumstances of the case and propose options for resolving the issues identified through its investigation. ASD and IGIS developed an agreed course of action to address the identified issues. ASD sent a written apology to the discloser and explained the errors that had occurred in the first investigation. The agency also advised the discloser that he remained eligible for future work with ASD.

The discloser expressed appreciation for IGIS involvement in ensuring his concerns were properly considered, and was satisfied with ASD's explanation that the delay was due to error rather than a reprisal for his internal complaint.

OFFICIAL

Overseeing the operation of the PID scheme in the intelligence agencies

In accordance with s 44(1A)(b) of the PID Act, the intelligence agencies are required to inform IGIS when a public interest disclosure is allocated for investigation by an intelligence agency, and meet other reporting obligations.

IGIS was informed of nine PID received by the intelligence agencies in the reporting period. Five of these were from ASD, and four from ASIO.

IGIS also has a role in meeting annual reporting obligations by collecting and collating the intelligence agencies' responses to the Commonwealth Ombudsman's annual PID survey. IGIS performs this role to ensure the protection of classified details relating to the intelligence agencies.

OFFICIAL

2017–18 ANNUAL REPORT

ACTIVITY 4 – PUBLIC INTEREST DISCLOSURES

ABOUT PUBLIC INTEREST DISCLOSURES

The *Public Interest Disclosure Act 2013* (PID Act) is intended to promote integrity and accountability within the Commonwealth public sector, including by encouraging public interest disclosures by public officials, providing appropriate support to disclosers to ensure that they are not subject to adverse consequences as a result of their disclosures, and ensuring that disclosures by public officials are properly investigated and addressed.

PERFORMANCE SUMMARY

Facilitating the investigation of public interest disclosures relating to intelligence agencies and undertaking other responsibilities under the PID Act.

Performance criteria: timeliness of our response to public interest disclosures.

Target: 90% of public interest disclosures acknowledged within five business days.

Source: *IGIS Corporate Plan 2017-2021*, p. 6.

QUANTITATIVE PERFORMANCE MEASURES

Figure 2.7: Timeliness of response to public interest disclosures

Total number of PID	Acknowledged within 5 business days	Average number of business days for acknowledgement TARGET: 90% acknowledged within 5 business days
7	7	2

Figure 2.8: Public interest disclosures by agency and source

Agency	Number of public interest disclosures	From public	From intelligence agency employee or ex-employee
ASIO	4	0	4
ASIS	2	0	2
ASD	0	0	0
AGO	1	0	1
DIO	0	0	0
ONA	0	0	0

OFFICIAL

IGIS'S HANDLING OF PUBLIC INTEREST DISCLOSURES

The office has key responsibilities under the PID scheme, including:

- receiving, and, where appropriate, investigating disclosures about suspected wrongdoing within the intelligence agencies
- assisting current or former public officials who work for, or who previously worked for, the intelligence agencies in relation to the operation of the PID Act
- assisting the intelligence agencies in meeting their responsibilities under the PID Act, including through education and awareness activities
- overseeing the operation of the PID scheme in the intelligence agencies.

There were seven public interest disclosures handled during the reporting period, four fewer than in the previous reporting period.

Most of the seven public interest disclosures raised allegations of maladministration covering a range of issues, including termination of employment, conduct relating to the withdrawal of security clearances, and conduct relating to internal investigations into staffing matters.

PROCEDURAL FAIRNESS

An ASIO staff member alleged a lack of procedural fairness during a review of their suitability to retain a Positive Vetting security clearance. The individual said ASIO had provided written advice which indicated there would be an opportunity to respond to ASIO's preliminary views, and that opportunity was not provided. Instead, ASIO's investigators had moved directly to the final outcome.

The office's investigation included a review of all relevant records and discussions with senior staff responsible for the process. While the investigation substantiated the claim that procedural fairness had not been afforded to the individual in that ASIO had not followed the procedure outlined in their written advice, IGIS staff were pleased to see that, as soon as ASIO was alerted to the PID, they proposed to address the problem by offering the staff member additional opportunities to provide written and oral responses to the concerns raised. After the staff member provided additional information, ASIO initiated further investigation to inform their decision about the staff member's suitability to retain a PV clearance. We assess ASIO's remedial actions were appropriate.

OVERSEEING THE OPERATION OF THE PID SCHEME IN THE INTELLIGENCE AGENCIES

In accordance with section 44(1A)(b) of the PID Act, the intelligence agencies are required to inform IGIS when a PID is allocated for investigation by an intelligence agency, and must meet other reporting obligations.

The office was informed of two PIDs received by the intelligence agencies in the reporting period, one from ASIO and one from ASD.

The office also has a role in meeting annual reporting obligations by collecting and collating the intelligence agencies' responses to the Commonwealth Ombudsman's annual PID survey. The office performs this role to ensure the protection of classified details relating to the intelligence agencies.

