Freedom of Information, Privacy Protection & Public Interest Disclosures in the Northern Territory

Annual Report 2011-2012

Public Interest Disclosures
Message from the Commissioner

This is the 3rd combined Annual Report from the Office of the Commissioner, Information and Public Interest Disclosures. It has been a busy year with the finalisation of a number of reports into serious improper conduct by public officers in a variety of public bodies. Summaries of these investigations are contained in section 2.5.6 of this report.

Although most public officers are honest, loyal and working in the public interest, the Office has identified several areas of concern. Procurement, an essential function across the whole of government, has been identified in jurisdictions across the world as the process most likely to engender corrupt conduct. The Northern Territory is no exception and investigations have revealed that in some public bodies, a clan mentality exists within certain small workgroups where improper conduct is tolerated and supported, with a 'get the job done regardless' attitude and where the giving and receiving of gifts and benefits is a common practice.

Recommendations such as increased controls over the procurement process, the tightening of the gifts and benefits policies, and the establishment of audit and risk committees have restricted the ability for public officers to engage in this type of conduct.

It is often said that corruption is an activity that takes place "behind closed doors, between consenting adults." Both parties benefit and neither has the least incentive to make the transaction known. This is the difficulty in investigating improper conduct, and why the protections and incentives found in the Public Interest Disclosure Act encourage disclosers to take that first step of making a disclosure.

During this reporting period, Chief Executives have been willing to work with the Office by assisting with investigations and complying with recommendations. As a result no public reports have had to be tabled. We see this as a 'win' as the fact that Chief Executives work cooperatively with us means that they take responsibility for the issues and are more likely to make sustainable changes to the culture of their organisations.

For independent integrity agencies such as ourselves, we sometimes wonder how we can continue to satisfy our statutory obligations in a world of diminishing resources. Where FOI and privacy are concerned, we continue to put a big effort into supporting information officers in public bodies, ensuring they have training, a network of contacts to support them and regular communication from our office. Although their skill levels differ, there are many good information officers who do a great job.

We placed special emphasis on youth and seniors during Privacy Awareness Week – both groups with particular needs when it comes to privacy.
Executive was very proactive during the investigation and instituted his own enquiries, including conducting an anonymous survey of staff.

The survey results led to several recommendations including education of staff and managers on drug theft, increased security for certain drug types, and investigations into the establishment of a 'Wellness Clinic' for hospital personnel.

We commend the Chief Executive for his positive approach and his assistance in responding to concerns raised.

Matter 2

OCPID investigated an allegation that a manager within a council had directed that fines issued by regulatory staff for offences such as parking and dog offences be withdrawn because the persons receiving the fines were council members or friends of council members. Further allegations investigated in this matter were that a relative of a senior council employee was employed within the council, despite having limited qualifications or experience.

After investigation it was found that some of the fines identified were withdrawn as per council policy however the receivers of other fines were directed to pay. Those fines withdrawn were clearly within the parameters of the 'withdrawal' policies, and not because of any relationship to council members. Examination of recruitment files relating to the individual in question showed that correct merit based recruitment procedures had taken place and the relative was not involved in the recruitment process.

Matter 3

OCPID investigated several allegations that senior managers within a council were misusing council property and equipment, were showing inappropriate bias in the awarding of contracts, and were failing to follow the requirements of the Local Government Act.

Whilst it was shown that no criminal activity had taken place, the policies and procedures in place within council were of a very poor standard or non-existent. Financial mismanagement meant that the council was unable to effectively meet its responsibilities.

Recommendations for improvements to policy and process were made and implemented, and the Department of Housing, Local Government and Regional Services assisted the council to meet its obligations. Training for the public officers within the organisation has also been improved to educate against similar incidents occurring in the future.

Matter 4

OCPID investigated an allegation that a public officer had released confidential information including pricing and specifications in relation to a tender for the provision of services to a potential tenderer prior to the release
of tender documents. It was further alleged that the public officer had accepted gifts and hospitality from competing firms over a number of years.

The investigation revealed that the officer had been the project manager and contact officer on a number of high value government projects and over time had become friends with many contractors and suppliers within the industry. This friendship included receiving hospitality, such as dinners and accommodation, and gifts such as entertainment and donations.

The investigation further revealed that the officer did release confidential information regarding an upcoming tender, and this information enabled the tenderer to win the contract. This behaviour has been reported to the Police Commissioner as contrary to the Criminal Code Act and is currently the subject of a Police investigation.

Disciplinary action was taken against the officer however he resigned prior to the completion of the investigation. The Commissioner made many recommendations for change within the organisation including changes to the end-to-end procurement process including supervision and training, the conflict of interest policy, the gifts and benefits policy, and the establishment of an Audit and Risk Committee. These recommendations are currently being implemented and the organisation is continuing to improve its processes.

This is another matter where the Chief Executive needs to be congratulated. In this case it was accepted that a problem existed within his organisation, and he displayed strong leadership and determination to implement changes to prevent similar incidents occurring in the future.

**Matter 5**

OCPID investigated an allegation that a public officer in a hospital unlawfully accessed confidential information regarding a sensitive medical procedure and subsequently released that information to friends and relatives of the patient.

After investigation it was found that the officer had not accessed any patient files, however did obtain that information from a list that was available to all staff. Hospital management agreed to restrict access to this document on a 'needs to know' basis, and to reiterate the confidentiality provisions within induction and training.

**Matter 6**

OCPID investigated an allegation that a council had reissued a long term lease on a property to a company whose sole director was a council member, even though an Audit Committee recommended that the process be by public tender.

The investigation revealed that council had debated this lease agreement for a number of years, finally agreeing to what was described as an excellent lease agreement for council. Whilst there did not appear to be any impropriety
on behalf of the council member involved, the Commissioner identified failings in the council’s governance, management and support.

The Commissioner made recommendations for change to ensure the provision of ongoing training and support for elected members in corporate governance addressing in particular the Code of Conduct and conflict of interest issues. Further recommendations were made for the council to review the current processes for lease management oversight to ensure that the obligations placed on the council and lessees are complied with. The Chief Executive in this matter was very proactive in managing the changes required, continually updating the Commissioner on the progress and success of each element.

Matter 7

OCPID investigated an allegation that two public officers sought and accepted gifts of electrical appliances from a period contract holder to help furnish a new office.

The investigation revealed that the improper conduct had in fact occurred, with the officers requesting, and the contractor supplying, goods valued at over $1,000.00 without submitting an invoice for payment. Both officers tendered their resignations during the investigation process.

The Commissioner made recommendations for change within the organisation in respect to the gifts and benefits policy and general training of staff relating to conflicts of interest. This matter formed a part of a referral to the Police Commissioner and is currently under investigation.

Matter 8

OCPID investigated allegations that public officers asked contractors to submit multiple invoices for the one job in order to subvert the tier levels of procurement. This practice, known as ‘invoice splitting’ enables the contractor to break up a large job into smaller invoices, meaning that only one quote is required to authorise payments, instead of having to go through the full procurement process.

The investigation revealed that this was a common practice and those involved justified their actions by saying that the work was done quicker and there was no cost to government. While the work may, in fact, have been completed more quickly, the lack of a competitive procurement process did not allow for the best ‘value for money’ process to be engaged.

The Commissioner recommended that controls be put in place to stop this action from recurring, and that the policies and procedures in the organisation be reviewed and strengthened. This matter formed a part of a referral to the Police Commissioner and is currently under investigation.