



ASSESSMENT GUIDE

Assessing allegations of corrupt conduct: A guide to recordkeeping under section 40A

This guide has been developed by the Crime and Corruption Commission (CCC) to assist agencies with their recordkeeping practices relating to section 40A of the *Crime and Corruption Act 2001* (CC Act). It consists of the following materials:



1. An overview of recordkeeping, in the context of managing allegations of corrupt conduct
2. A suggested template for a Corrupt Conduct Assessment form
3. Examples of records to be kept, designed to assist with recording decisions not to refer a matter to the CCC.



Assessing complaints: why keep records?

The *Public Records Act 2002* (the PR Act) governs recordkeeping in Queensland. Under the PR Act, agencies must make and keep records of their activities and manage their public records responsibly.

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In respect of complaints management, failure to keep properly detailed records can expose an agency to significant business and regulatory risks. In the case of allegations of corrupt conduct, such risks include:

- A lack of strictly followed protocols increases the potential and opportunity for an accusation of covering up suspected corrupt conduct to be made.
- Decisions regarding complaints of corrupt conduct may be put at risk when they cannot be validated through access to captured information or documentary evidence.
- An absence of captured records significantly hinders an agency's ability to provide a rationale for its position, especially when responding to a CCC query.
- The inability of assessing officers and decision-makers to provide documentary evidence to account for their actions or decisions while carrying out their duties on behalf of an agency may cause damage to the reputation of both the organisation and staff members.

Requirements under section 40A

In addition to the PR Act, there are now recordkeeping requirements under section 40A of the CC Act in relation to complaints of corrupt conduct. Section 40A details what information must be captured as a record of any decision not to notify the CCC of an allegation of corrupt conduct, including the reasoning on which that decision is based, the evidence (or lack thereof) considered, and any findings.

The information recorded should be sufficient for a reasonable person to understand how and why the decision was made. The capture of relevant information should be systematic and integrated into complaints assessment processes.

The following **Corrupt Conduct Assessment form** has been designed to guide you through all the information you need to record to meet your obligations under section 40A and satisfy the requirements of the CCC.

Further information and resources

This guide should be read in conjunction with other CCC publications:

- *Corruption in focus* is the CCC's primary guide to dealing with corrupt conduct, written specifically for the Queensland public sector.
- Agencies with section 40 agreements should also refer to *How to classify matters of corrupt conduct pursuant to section 40 directions: A five-step guide for public officials and delegated decision-makers*.
- The CCC and the Queensland State Archives (QSA) have jointly published a short guide to explain the requirements and benefits of effective recordkeeping, *Public records: Advice for all employees of a public authority*.



Corrupt conduct assessment form

The form below may be used as the basis of a template that can be adapted and customised to particular agency needs. It integrates sections 15, 38, 40 and 40A of the CC Act, and includes key information and criteria required under those sections of the CC Act.

It is not exhaustive and should be considered as a guide only.

General information

Agency file reference number	
Date of assessment	
Date of receipt of the complaint or matter	
Name of complainant(s) / discloser(s)	
Name and position of subject officer(s)	
Business area of subject officer(s)	
The details of the complaint or matter (this is also part of s40A(3)(a) of the CC Act)	
The details of the allegation types	

Note: Agencies with section 40 agreements should consider other information required under the directions.

Assessment details (step-by-step process)

Step 1. “Type A” corrupt conduct assessment (s15(1) of the CC Act)

Corrupt conduct means conduct of a person, regardless of whether the person holds or held an appointment, that —

(a) **adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of—**

- (i) a unit of public administration (UPA); or
- (ii) a person holding an appointment; AND

☐ Yes ☐ No

(b) **results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a way that—**

- (i) is not honest or is not impartial; or
- (ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or
- (iii) involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; AND

☐ Yes ☐ No

(c) **would, if proved, be—**

- (i) a criminal offence; or
- (ii) a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or were the holder of an appointment.

☐ Yes ☐ No

Does the “Type A” conduct satisfy all three elements above? ☐ If yes, go to Step 3 ☐ If no, go to Step 2

Step 2. “Type B” corrupt conduct assessment (s15(2) of the CC Act)

Corrupt conduct also means conduct of a person, regardless of whether the person holds or held an appointment, that—

(a) **impairs, or could impair, public confidence in public administration; AND** ☐ Yes ☐ No

(b) **involves, or could involve, any of the following—**

- (i) collusive tendering;
- (ii) fraud relating to an application for a licence, permit or other authority under an Act with a purpose or object of any of the following (however described)—
 - (A) protecting health or safety of persons;
 - (B) protecting the environment;
 - (C) protecting or managing the use of the State’s natural, cultural, mining or energy resources;
- (iii) dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets;
- (iv) evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue;
- (v) fraudulently obtaining or retaining an appointment; AND

☐ Yes ☐ No

(c) **would, if proved, be—**

- (i) a criminal offence; or
- (ii) a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or were the holder of an appointment.

☐ Yes ☐ No

Does the “Type B” conduct satisfy all three elements above? ☐ If yes, go to Step 3 ☐ If no, go to Step 5

Step 3. Reasonable suspicion

Having regard to all the initial information available to you, decide whether you do or do not hold a reasonable suspicion of corrupt conduct.

For a suspicion to be “reasonable”, there needs to be more than bare or idle speculation. In essence, there must be sufficient evidence for a reasonable person to suspect corrupt conduct.

You must objectively base your assessment on the information at hand. It is not sufficient for you to subjectively decide that someone is or is not capable of the alleged conduct.

You do not have to have sufficient evidence to prove the corrupt conduct allegation.

Do you hold a reasonable suspicion of corrupt conduct? ☐ If yes, continue ☐ If no, go to Step 5

List the information relied on to form the reasonable suspicion.

- a. statutory declaration
- b. statement from the complainant (e.g. telephone, email, and letter)
- c. audit report / grievance process
- d. accounting records / payroll records / other evidence
- e. other (please specify)

Insert details below:

Step 4. Categorisation of corrupt conduct

a. Agencies with section 40 agreements

Level 1 ☐ Immediate referral to CCC

Level 2 ☐ Monthly schedule referral to CCC

Level 3 ☐ No referral to CCC – subject to audit.

(Also, complete s40A mandatory recording at Step 5.)

Reasons: Document the reasons for your categorisation (refer to the table in your s40 agreement)

Insert details below:

b. Other agencies (without section 40 agreements)

s38 ☐ Immediate referral to the CCC.

Step 5. 40A record of alleged corrupt conduct not notified to the CCC

This section applies if a public official (or decision-maker) decides that a complaint of alleged corrupt conduct is not required to be notified to the CCC under s38/40 of the CC Act. A record of this decision must be captured. For further explanation refer to the explanatory notes.

List the information relied on in reaching the conclusion (i.e. no reasonable suspicion)

- a. statutory declaration
- b. statement from the complainant (e.g. telephone, email and letter)
- c. audit report / grievance process
- d. accounting records / payroll records / other evidence
- e. other (please specify, including if the matter is a Level 3 category).

Insert details below:

Document the reasons for the conclusion

(why the complaint did not meet the definition or threshold of a reasonable suspicion of corrupt conduct OR why the complaint is a Level 3, s40 matter that does not need to be referred to CCC i.e. agreement)

Insert details below:

Step 6. Conflict of interest

Are there any conflict of interest issues?

☐ Yes ☐ No

If yes, do you (assessing officers and decision-makers) have conflicts of interest in assessing this matter?

Insert details below:

If yes, detail the steps taken to deal with any perceived or actual conflicts.

Insert details below:

Step 7. Assessment endorsement details

Public official (or decision-maker's) name, position and endorsement of the assessment and categorisation of the complaint. Are there any conflict of interest issues?

If yes, record details under **Step 6**.

Step 8. Other information to consider

Agencies may use this step to include any additional requirements they have internally (e.g. notify the executive manager of allegation) or any additional external requirements to notify other agencies (e.g. notify a regulatory body)

- Public interest disclosure (PID) assessment.
- Notification to the Queensland Police Service (an offence under the Criminal Code or another Act).
- Notification to other bodies (under your agency's statutory Act or other Acts – for example, to the Queensland Audit Office).¹
- Recommendation for how to deal with the complaint.
- Preliminary steps assessment that need to happen immediately (preserve evidence, alternative duties/ suspension, restrict access and monitoring activities).

¹ Theft of property may need to be reported to the Queensland Audit Office under the requirements of section 21 of the Financial and Performance Management Standard 2009.

Recording a decision not to refer an allegation of corrupt conduct to the CCC

A decision-maker who is assessing a complaint and who forms a view that they do not need to refer the complaint to the CCC should, at a minimum:

- accurately record how the complaint was assessed against the definition of corrupt conduct
- specify why the complaint did not meet the definition or threshold for notification to the CCC
- record the decision-maker's name, position and their endorsement of their assessment
- identify and record any conflict of interest issues, and detail the steps taken to deal with any perceived or actual conflicts.

The following examples illustrate how to correctly capture information in a record to meet the requirements of section 40A of the CC Act.

Example 1 – allegation of misuse of information

Allegation

Mr X, a transport officer, provided personal information obtained through a driver licence application to a friend who is trying to locate his estranged wife.

Assessment of the allegation against the definition of corrupt conduct (section 15, CC Act)

Elements that make the conduct "Type A" corrupt conduct:

1. Adversely affects the performance of the department through breach of privacy obligations.
2. Involves a misuse of information.
3. Is a criminal offence (i.e. abuse of public office/ computer hacking and misuse).

Delegate's decision, including assessment of the reasonable suspicion test

The allegations, if proven, would meet the definition of corrupt conduct under section 15 of the CC Act, however no reasonable suspicion formed. The results of assessment enquiries² conducted by the assessing officer (driver licence audit data) did not support that Mr X had inappropriately accessed the driver licence system, as alleged, in order to disclose that information to his friend. This matter is not reported to the CCC under section 38/40 of the CC Act.

Endorsed by: Mr Z, Director, Ethical Standards Unit, 5 December 2019.

Disclosure of conflicts of interest

Mr T, Assessing officer – ☒ Identified no conflict of interest with the person of interest (POI).

Mr Z, Decision-maker – ☒ Identified no conflict of interest with POI.

² Assessment enquiries refer to the "initial information". For example, reliable and accurate information that is already in the possession of the agency, such as documentary records, internal data and CCTV footage. Note that any preliminary inquiries, such as interviewing any witness or staff who is the subject of the complaint, may not be undertaken.

Example 2 – allegation relating to a recruitment panel (impartiality)

Allegation

An employee (Ms Y) of a university manipulated a selection panel for the Manager (Finance) role on which she sat to ensure that her spouse got a position for which he is not qualified.

Assessment of the allegation against the definition of corrupt conduct (section 15, CC Act)

Elements that make the conduct “Type A” corrupt conduct:

1. Adversely affects the performance of the university through the appointment of an unqualified person.
2. Lacks impartiality.
3. Is reasonable grounds for dismissal.

Delegate’s decision, including assessment of the reasonable suspicion test

The allegation, if proven, would meet the definition of corrupt conduct under section 15 of the CC Act, however no reasonable suspicion formed. The results of assessment enquiries conducted by the assessing officer (information about the recruitment panel, applications, panel’s selection recommendation etc. in relation to the Manager, Finance recruitment) did not support that Ms Y was on the selection panel. Nor does Ms Y work in the finance area – Ms Y is a Payroll Manager who does not have involvement in recruitment outcomes. This matter is not reported to the CCC under section 38/40 of the CC Act.

Endorsed by: Mr Z, Director, Ethical Standards Unit, 5 December 2019.

Disclosure of conflicts of interest

Mr T, Assessing officer – ☒ Identified a perceived conflict of interest with POI (Ms Y). Action required – Mr T must complete a Conflict of Interest Declaration (Individual) form. Mr Z, the decision-maker, decided that it was appropriate for Mr T to continue with his assessment of the allegation as his perceived conflict of interest was that he has worked under the supervision of Ms Y in his previous job.

Mr Z, Decision-maker – ☒ Identified no conflict of interest with POI.

Example 3 – allegation in relation to grants

Allegation

A government department issues \$5000 grants to individuals who satisfy certain criteria. The Department discovered that two grants were made to applicants who falsely claimed they satisfied the criteria. The departmental officers involved in the grants process had no knowledge of the false statements and acted with due diligence in awarding the grants.

Assessment of the allegation against the definition of corrupt conduct (section 15, CC Act)

Elements that make the conduct “Type B” corrupt conduct:

1. It does not impair and could not impair public confidence in public administration.
2. Is dishonestly obtaining a benefit from the payment of public funds.
3. Is a criminal offence (i.e. fraud).

Delegate’s decision, including assessment of the reasonable suspicion test

The allegation involved two private citizens (applicants) who may have defrauded the Department (e.g. obtained public monies fraudulently). The assessment enquiries conducted by the assessing officer identified that the incidence of false applications was isolated and there was no evidence to suggest that the fraudulent applications were systemic in nature. It is the view that for conduct to satisfy the first element of “Type B” corrupt conduct – impairs or could impair public confidence in public administration – the conduct will generally need to be serious and the scale on which the conduct has occurred will generally need to be significant and capable of adversely affecting the efficacy of the department. This matter is not reported to the CCC under section 38/40 of the CC Act, but is reported to Queensland Police.

Endorsed by: Mr Z, Director, Ethical Standards Unit, 5 December 2019.

Disclosure of conflicts of interest

Mr T, Assessing officer – ☒ Identified no conflict of interest with any POIs.

Mr Z, Decision-maker – ☒ Identified no conflict of interest with any POIs