

Tip sheet for employees

Use and misuse of public sector resources

ICAC

INDEPENDENT
COMMISSION
AGAINST
CORRUPTION

FEBRUARY 2008

The ICAC receives numerous allegations about the misuse and theft of resources by public officials. The complaints come from people who work in public agencies and in the private sector, the general public and chief executive officers of public sector agencies.¹ Serious allegations about the misuse of resources can become the subject of ICAC investigations.

As a public official it is important that you understand your responsibilities and obligations in using public resources, and what is appropriate and inappropriate use of these resources. The inappropriate use of public resources can lead to disciplinary action and in some cases to dismissal, findings of corrupt conduct or prosecution for criminal offences. Knowing more about this topic can also help you recognise when someone is misusing a public resource.

Public resources

Public resources are those items that are paid for, owned, or controlled by public sector agencies. Resources can be tangible, such as equipment or public housing, or intangible, such as your time. Examples include:

- computers/internet/email
- confidential information
- telecommunication devices
- vehicles and fuel cards
- corporate credit cards and Cabcharge cards/vouchers
- files, records and archives
- your time at work
- tools, machinery and equipment
- landscaping supplies, including plants and mulch
- grants and other funds like petty cash
- stationery and other office supplies

- office furniture and fittings
- publicly-funded services such as public housing, public transport, public health and legal services, etc.

Public resources are there to enable you to do your job, which is to serve the public efficiently, effectively and impartially. Everyone working in the public sector has a responsibility to act in the public interest, and the appropriate use of public resources is part of that responsibility. This includes putting the public duty above your own personal interests in the allocation of public resources, for example, public housing or a contract to deliver goods or services.

Misuse of resources is a breach of public duty. Misuse that is sufficiently serious to result in disciplinary action or to constitute a criminal offence can also constitute corrupt conduct under the ICAC Act.

What is misuse?

Wasting resources through inefficiency and poor planning is one way that resources can be misused. However, to use resources deliberately to benefit yourself or selected others can amount to corrupt conduct.

Misuse can involve theft – for example, an employee stealing tools from work – or unauthorised use – for example, an employee using a computer to improperly access and misuse confidential information or to do ‘outside’ work.

Examples of improper or corrupt misuse of resources include:

- using public resources, such as your work time, work equipment or facilities, for private work purposes without permission;
- use of vehicles and fuel cards – using your work car and fuel card for non-work purposes when this is not part of your contract;

- surplus materials – taking left-over materials from a work site outside the requirements of policy. Depending on the agency’s policy, this can amount to theft;
- falsifying your timesheet, travel or accommodation records to gain a benefit for yourself or others;
- favouritism – using your position to allocate a public resource, such as a job, public housing or publicly-funded health or legal services, to favour friends or relatives rather than allocating the resource in an impartial manner and in accordance with the agency’s policies;
- purchasing personal goods or services on an agency’s credit card outside the policy;
- changing or deleting information on a database to falsify a public record, for example a birth date;
- using the internet to access pornographic material or send offensive emails. Agencies may also ban personal use of the internet for activities such as on-line gambling, share-trading and accessing on-line communities;
- confidential information – providing confidential information to an outside person or agency without authorisation and/or for an improper purpose including personal gain.

Acceptable private use of public resources

Most agencies allow limited personal use of some public resources. The NSW Department of Premier and Cabinet says that “official facilities and equipment should only be used for private purposes when official permission is given”.² Relevant policies should set out what constitutes reasonable personal use, for example in Use of Communication Devices and Use of Vehicles policies.

A Communication Devices Policy might include provisions that:

- limited personal local telephone calls are acceptable, but frequent and lengthy calls and long distance personal calls are not;³

- limited personal use of the email system and the internet is acceptable but frequent transmission of personal emails and sending or accessing offensive or pornographic material is not.

Such policies generally make it clear that the organisation’s email and internet systems and traffic are public resources, and the employer therefore has the right to access these systems for audit or other purposes. This should not be a problem if your personal use of these resources – including the content and frequency of use – does not breach the relevant policies and is otherwise lawful.

Some agencies allow selected work resources to be used that, unlike telephones for example, would not normally be available for personal use. Borrowing a laptop computer to write a job application at home might be such a use. An agency might also decide to allow limited personal use of a colour photocopier. The principles for this kind of personal use, where permitted, are the same and the ICAC recommends that agencies:

- limit and record the equipment that can be used in this way and ensure staff know the conditions of this use;
- limit the circumstances in which these items can be used. This could include stipulating that the resource is for personal use only, and cannot be loaned out by the employee or used to generate income;
- limit the occasions that an individual can use a resource. A staff member should not use a public resource frequently as an alternative to purchasing this item themselves;
- ensure that written records are made and retained about the use of such resources, including requests to borrow and approvals, the condition of the resource when lent and returned, and who is responsible for any running costs, loss or damage.

Always check with your supervisor if you are not sure whether you are permitted personal use of a resource. Make sure you find out what the procedures are to use a resource and your responsibilities for using it on-site and/or maintaining and returning it.

Consequences of misuse

Most public agencies have policies setting out what constitutes the misuse of resources and the penalties for misuse.⁴ The penalties can include:

- counselling;
- issuing a warning that certain conduct is unacceptable;
- demotion;
- being required to repay the cost of the misuse;
- dismissal;
- being reported to the police;
- investigation by the ICAC.

The following are examples of matters concerning misuse of resources that have come to the attention of the ICAC.

Case study 1 – Counselling

A public official who worked the night shift in an accommodation unit often brought in her laundry to do during her shift, using the agency's washing and drying facilities. The agency counselled her and reminded her and other staff of the 'Use of Resources' policy.

Case study 2 – Dismissal

A small group of agency staff with access to vehicles and fuel cards were also using the fuel card for personal purchases such as biscuits, milk, newspapers, and cool drinks which were then charged to the card as fuel.

The agency discovered that one of the petrol station staff was providing this 'service' for these employees. The petrol station attendant was acting contrary to the contract with the agency and the contract was cancelled. Some of the employees concerned were dismissed.

Case study 3 – Dismissal and being reported to police

An Area Health Service (AHS) reported allegations that kitchen staff at a hospital were stealing food from the hospital, leaving earlier than the times recorded on their time sheets and taking unauthorised breaks. This had been going on for some time.

The AHS found that the culture in the unit was such that even the supervisors and other senior staff were involved in this inappropriate conduct.

The AHS also received information that one of the kitchen staff in question had also stolen other goods from the hospital. The AHS reported the matter to NSW Police, who recovered the stolen goods. This staff member and one of the supervisors who was found to have stolen food were dismissed. Other staff members resigned during the AHS's investigation.

Case study 4 – Dismissal, repaying costs, and being reported to the police

A public officer made several cash withdrawals from his corporate credit card over a six-month period without the written approval of the Finance Section and in breach of the organisation's policy. This came to a total of \$15,000.

The officer claimed these expenses as travel expenses and falsified travel documentation to cover his use of these funds. The agency found that the officer's actions were premeditated and not the result of his lack of knowledge of the policy as he had initially claimed. The agency terminated the officer's employment, directed him to repay the \$15,000 and reported the matter to NSW Police.

Serious and systemic misuse of resources may become the subject of an ICAC investigation and result in a public inquiry, a report to Parliament, and media coverage. Criminal charges and prosecution may follow.

Case study 5 – Investigation by the ICAC

An officer with Integral Energy was responsible for disposing of decommissioned electrical transformers through a competitive tender process (the copper in the transformers is valuable as a scrap metal). The officer's duties included receiving expressions of interest, assessing them and selecting the successful tender.

The ICAC found that on 19 occasions the officer advised the successful tenderers that they could pay for the transformers by making out a bank cheque payable to the officer himself. The officer then created false Integral Energy receipts, which he forwarded to the successful tenderers. He kept the financial proceeds of these 19 transactions for his own use. They amounted to \$391,856. Integral Energy terminated the employment of this officer when his conduct came to light.

The ICAC made findings of corrupt conduct against the officer and recommended criminal prosecution. He was ultimately convicted of offences under the *Crimes Act 1900* and sentenced to a period of imprisonment.

The Commission's public report on the matter included a recommendation to Integral Energy that it take specific action to ensure compliance with policies and procedures relating to contracts and disposals.

Proper use of public resources – what employees and employers can expect of each other

Employees are expected to be efficient and economical in their use and management of public resources, including their own work time. They should be scrupulous in their use of public property and services.⁵

Employees have a right to expect that their agency has policies and procedures in place to guide them in the

proper use of resources, and that they will receive training in these and related policies, such as the code of conduct and conflicts of interest policy.

Employees also have the right to expect that management will lead by example in following these policies and procedures. Employees have an obligation to meet the requirements of codes and policies.

Employers have a right to expect that employees will abide by policies and procedures, including those concerning the use of resources, and will ask for advice on these if needed. Agencies often require employees to sign policies to say that they have read and understood them, and agree to abide by them.

Employers may also require, but should in any case encourage, employees to report the misuse of resources in accordance with the agency's internal reporting policies, and inform employees about making a protected disclosure.⁶

Points to remember about the use of public resources

- Public resources are there for you to do your job. Public resources range from stationery to heavy plant equipment to the internet and email systems, to plants and mulch and the chair you sit on.
- Codes of conduct and use of resources policies are there to guide you in the appropriate and proper use of public resources.
- Limited personal use of resources is permitted by most agencies within specific guidelines.
- As a condition of employment, many agencies require employees to sign that they have read, understood, and agree to abide by use of resources (and other) policies.
- Agencies can take disciplinary action if these policies are breached. Corrupt misuse of resources can result in disciplinary measures including dismissal and/or being investigated by the ICAC.
- Public sector policies are backed by NSW legislation, and NSW government policies (for example, the NSW Department of Premier and Cabinet's *Model Code of Conduct for NSW public agencies* and *The Model Code of Conduct for Local Councils in NSW*).

Where can I find out more about this?

To find out more about the proper use of resources, ask your manager and refer to your agency's policies. You can also contact the ICAC's Corruption Prevention Advice Line or visit our website www.icac.nsw.gov.au to access ICAC publications. Call (02) 8281 5999 (toll free: 1800 463 909) during business hours to be transferred to the advice line.

ICAC publications

Copies of these publications are posted on the ICAC website at www.icac.nsw.gov.au.

No excuse for misuse: Preventing the misuse of council resources, discussion paper 3, Independent Commission Against Corruption, Sydney, May 2002.

Managing risk: reducing corruption risks in local government, guidelines: 2, No excuse for misuse, Preventing the misuse of council resources, Independent Commission Against Corruption, Sydney, November 2002.

No excuse for misuse: A snapshot guide, Independent Commission Against Corruption, Sydney, November 2002.

Managing conflicts of interest in the public sector: Guidelines and Toolkit, Independent Commission Against Corruption and Queensland Crime and Misconduct Commission, Sydney and Brisbane, November 2004.

Other references

Inappropriate use of council resources, NSW Department of Local Government Circular 06-64, 2006, www.dlg.nsw.gov.au/Files/Circulars/06-64.pdf

Model Code of Conduct for NSW public agencies, NSW Department of Premier and Cabinet, Sydney, 1997, www.premiers.nsw.gov.au/our_library/conduct/Model Code of Conduct.pdf

The Model Code of Conduct for Local Councils in NSW, NSW Department of Local Government, January, 2005, www.dlg.nsw.gov.au/Files/Information/04-63 Model Code of Conduct for Local Councils.pdf

Personnel Handbook, NSW Department of Premier and Cabinet, Sydney, September 2005, www.premiers.nsw.gov.au/TrainingAndResources/Publications/personnelhandbook.htm

Policy and Guidelines for the use by staff of communication devices, NSW Department of Premier and Cabinet, Sydney, January 1999, www.premiers.nsw.gov.au/our_library/conduct/compol.htm

Legislation

All current NSW legislation is posted on www.legislation.nsw.gov.au

Independent Commission Against Corruption Act 1988.

Protected Disclosures Act 1993.

Public Sector Employment and Management Act 2002.

Endnotes

- 1 The principal officer of every NSW government authority is required (by section 11 of the ICAC Act) to report to the Commission any matter that he or she suspects on reasonable grounds concerns or may concern corrupt conduct.
- 2 "Use of official facilities and equipment", *Model Code of Conduct for NSW public agencies*, NSW Department of Premier and Cabinet, Sydney, 1997, p. 6.
- 3 "Personal Use of Communication Devices", Part 2 of *Policy and Guidelines for the use by Staff of Communication Devices*, NSW Department of Premier and Cabinet, January 1999. This states, in part, that "Employees using communication devices for personal reasons should ensure that such use is infrequent and brief".
- 4 Section 42 of the *Public Sector Employment and Management Act 2002* sets out the definition of "disciplinary action".
- 5 "Use of official facilities and equipment", Chapter 8.8, *NSW Government Personnel Handbook*, Sydney, September 2005.
- 6 Protected disclosures can also be made to the ICAC, the NSW Ombudsman, and the NSW Audit Office.

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ICAC tip sheet series

Tip sheets provide readily accessible and practical advice on managing and/or preventing particular types of corrupt conduct. More detailed advice can generally be found in an ICAC guideline publication on the relevant topic. The ICAC's investigation reports also provide useful corruption prevention advice that is often widely applicable across the NSW public sector. To access the full range of ICAC publications go to www.icac.nsw.gov.au/go/publications-and-resources and follow the links.