

PIDA FAQs: DISCLOSURES AND REPRISAL COMPLAINTS TO THE OMBUDSPERSON

These Frequently Asked Questions (FAQs) refer to the procedures that apply to disclosures to the Ombudsperson. Check with your organization about their internal PIDA procedures.

These FAQs also refer to procedures that apply to allegations of reprisal.

About PIDA

What is the *Public Interest Disclosure Act*?

The *Public Interest Disclosure Act* (PIDA) is BC's whistleblower protection legislation for current and former employees of eligible public bodies. PIDA provides mechanisms for investigating allegations of wrongdoing and where wrongdoing is found, the means to address it. PIDA also provides protection for public sector employees who speak up about serious or systemic wrongdoing within a public body.

What is the role of the Office of the Ombudsperson under PIDA

The Office of the Ombudsperson is an independent office of the legislature mandated under the *Public Interest Disclosure Act* to investigate allegations of wrongdoing from public sector employees.

The Ombudsperson also investigates complaints from employees who believe they have been retaliated against for reporting wrongdoing, seeking advice, or cooperating with an investigation under PIDA.

The Ombudsperson conducts fair and impartial investigations and makes effective recommendations for corrective measures when wrongdoing or reprisal is found.

The Office of the Ombudsperson can also provide advice about PIDA to employees and public bodies.

PIDA Protections

What protections does PIDA provide for employees?

PIDA prohibits reprisal against employees who report wrongdoing, ask for advice about reporting wrongdoing or making a reprisal complaint, or cooperate with an investigation. Reprisal can include demotion, disciplinary measures, termination of employment or any measure that adversely affects an employee's employment or working conditions.

PIDA requires that every person involved in receiving, reviewing and investigating disclosures must carry out those functions in an expeditious, fair and proportionate manner as appropriate in the circumstances.

Employees can make a complaint to the Ombudsperson if they experience reprisal .

What privacy and confidentiality protections does PIDA provide?

If an employee reports wrongdoing, the Act requires that their personal information and identity will be kept confidential to the extent possible. The Ombudsperson conducts investigations in private and the identity of the person who made the report will not be included in the Ombudsperson's report.

The Freedom of Information and Protection of Privacy Act provides that investigative records of the Ombudsperson are exempt from disclosure. This means that members of the public cannot access the office's records that relate to a report of wrongdoing or reprisal complaint through a freedom of information request.

Who can report wrongdoing under PIDA?

An employee or former employee of an eligible public body can report wrongdoing. Employees can report wrongdoing that has happened in the past, is currently taking place or that they believe is about to happen. An employee can report wrongdoing regardless of whether they are a permanent, temporary, casual, part-time or full-time employee.

Former employees can only report wrongdoing that they discovered, or that occurred, while they were employed.

We may ask you to substantiate that you are an employee or former employee in order to determine that you are eligible to report wrongdoing under the Act.

I am a contractor. Am I protected under PIDA?

Contractors are protected from reprisal under the Act. PIDA prohibits persons from cancelling contracts, withholding payment, or refusing to enter into future contracts because a contractor or their employees cooperated with a PIDA investigation.

The Ombudsperson can NOT investigate complaints of reprisal from contractors. Contractors who believe that they have experienced reprisal may wish to seek legal advice.

Can I report wrongdoing that happened a long time ago?

Yes. PIDA does not have any time restrictions. However, it may not be possible to investigate wrongdoing that happened a very long time ago if evidence or witnesses are no longer available or there would be no useful purpose in an investigation.

How can I report wrongdoing?

Employees can report wrongdoing

1. to their supervisor or the Designated Officer in their workplace; OR
2. to the Office of the Ombudsperson

Employees can choose where to report wrongdoing. Employees do not have to exhaust other options before coming to the Office of the Ombudsperson.

If you want to discuss your concerns or learn more about the Ombudsperson's investigation process, contact our office to speak with an Ombudsperson Officer.

If you want to learn more about your organization's investigation process, contact the Designated Officer in your workplace.

Can I report wrongdoing to the media?

In most circumstances, PIDA does not cover reports of wrongdoing to the media. However, if an employee believes that there is an imminent, substantial and specific danger to people or the environment, and the employee has consulted with and obtained the consent of the appropriate protection official, an employee can make a public disclosure.

Protection officials are

- the provincial health officer (for a health-related matter);
- the provincial administrator as defined in section 1 (1) of the *Emergency and Disaster Management Act*; or
- the police, for any other matter.

PIDA does not authorize employees to report wrongdoings publicly without FIRST obtaining the consent of the appropriate protection official. After making a public disclosure, employees must also make a disclosure through the regular means by reporting to their supervisor, Designated Officer or the Ombudsperson.

The Ombudsperson and Designated Officers may also make reports to protection officials if they learn of substantial or specific danger.

Do I have to talk to my supervisor before reporting wrongdoing?

No. Employees can report wrongdoing without first raising their concerns with their supervisor or employer.

I committed to confidentiality when I started my job. What happens if I break this commitment?

PIDA allows employees to share otherwise confidential information for the purpose of reporting wrongdoing, except information that is protected by solicitor-client privilege or another rule of privilege. Reporting wrongdoing under the Act is consistent with an employee's employment obligations.

Can I report wrongdoing anonymously?

Yes, employees can report wrongdoing anonymously. We may investigate anonymous reports if there is enough information for the allegations of wrongdoing to be properly assessed.

However, we are required to determine if an anonymous report is made by an employee or former employee so we may ask the anonymous reporter to provide certain information so we can determine this.

We encourage employees who fear identifying themselves to contact our office to discuss our investigation process and the protections that the Act provides. That contact may be anonymous if you prefer.

Investigations into Wrongdoing

What happens after I report wrongdoing?

An Ombudsperson Officer will contact you to get more information about your report. Your report will be assessed to determine whether it is eligible for investigation under the Act, and if it is, whether or not an investigation should proceed.

Each issue brought forward to our office will be assessed on its merits to determine if an investigation will be conducted.

You will be notified if we decide to investigate your report. If we decide not to investigate your report, we will provide you with reasons for our decision.

What happens at the end of an investigation?

At the end of an investigation, the Ombudsperson will provide a report to the Chief Executive of the public body. The report will set out the Ombudsperson's findings, including any recommendations for corrective measures. The Ombudsperson will monitor the implementation of any recommendations made. The Ombudsperson may make the report public or comment publicly if it is in the public interest. The identity of the discloser and alleged wrongdoer are not included in public reports.

If the Ombudsperson does not find that wrongdoing took place, the employee who made the report is still protected from reprisal.

The employee who made the report will receive a summary of the outcome of the investigation .

I am a witness in a PIDA case. Will what I say affect my employment?

PIDA prohibits reprisal against employees who co-operate with a PIDA investigation. If an employee experiences reprisal because they cooperated with an investigation under PIDA, they can make a reprisal complaint to our office.

We conduct our investigations in private, and we will only share information about your identity as necessary to further the investigation.

How do I contact the Ombudsperson?

As an employee, if you have questions about the Act, the role of our office, or if you need more information about how to make a disclosure you can speak to an Ombudsperson Officer directly by calling our office at 1-800- 567-3247, or via email at report@bcombudsperson.ca.