

# SUPPORTING IMPLEMENTATION AND PROVIDING GUIDANCE:

How the Ombudsperson assisted  
public bodies to meet their  
responsibilities under the  
*Public Interest Disclosure Act*



**OMBUDSPERSON**  
BRITISH COLUMBIA

PIDA Special Report No. 2  
August 2025


As an independent officer of the Legislature, the Ombudsperson investigates complaints of unfair or unreasonable treatment by provincial and local public authorities and provides general oversight of the administrative fairness of government processes under the *Ombudsperson Act*. The Ombudsperson conducts three types of investigations: investigations into individual complaints; investigations that are commenced on the Ombudsperson's own initiative; and investigations referred to the Ombudsperson by the Legislative Assembly or one of its committees.

Under the *Public Interest Disclosure Act* (PIDA) the Ombudsperson investigates allegations from current and former public sector employees of wrongdoing in or relating to a public body covered by the Act as well as complaints of reprisal.

The Ombudsperson has a broad mandate to investigate allegations of wrongdoing or complaints of reprisal involving provincial ministries; provincial boards and commissions; Crown corporations; health authorities; schools and school boards; and colleges and universities. A full list of the public bodies covered by PIDA can be found on our office's website. The Office of the Ombudsperson also provides advice to those public bodies and their employees about the Act and the conduct of wrongdoing investigations.

We offer educational webinars, workshops and individual consultation with public bodies to support fairness and continuous improvement across the broader provincial and local public sector.

For more information about the Office of the Ombudsperson and for copies of published reports, visit [bcombudsperson.ca](http://bcombudsperson.ca).



Our office is located on the traditional lands of the Lək'wəŋən (Lekwungen) People and ancestors and our work extends across the homelands of the First Nations Peoples within what we now call British Columbia. We honour the many territorial keepers of the lands and waters where we work.



**OMBUDSPERSON**  
BRITISH COLUMBIA

August 2025

The Honourable Raj Chouhan  
Speaker of the Legislative Assembly  
Parliament Buildings  
Victoria BC V8V 1X4

Dear Mr. Speaker,

It is my honour to present PIDA Special Report No. 2, *Supporting implementation and providing guidance: How the Ombudsperson assisted public bodies to meet their responsibilities under the Public Interest Disclosure Act*.

The report is presented pursuant to section 40 of the *Public Interest Disclosure Act*.

Yours sincerely,

Jay Chalke  
Ombudsperson  
Province of British Columbia





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# MESSAGE FROM THE OMBUDSPERSON

When BC's *Public Interest Disclosure Act* (PIDA) came into force in December 2019, it became the province's general whistleblowing legislation. The new law took precedence over existing internal policies, and public bodies were required to adapt procedures accordingly.

From the outset, we understood that PIDA's success would be grounded not just in effective investigation and operationalization of the Act but in the workplace culture of the public bodies covered.

A decision was jointly taken early on that, while the Ministry of Attorney General would have the policy responsibility for the Act and Regulations, including any amendments, our office would be responsible for supporting public bodies to prepare for and implement the Act.

From 2019 to 2024, we worked diligently to support the roughly 200 public bodies covered by the Act with the goal that those public bodies would create an environment where their employees felt informed, protected, and supported to speak up. We proactively engaged in outreach, training, and resource development to support this goal across each sector.

Our approach to supporting public bodies was based on fostering a culture of integrity, transparency, and a high standard of ethics necessary for the effective operation of the Act.

We continue to be the primary point of contact for public bodies covered by the Act, and a resource for those with a responsibility under it.

Yours sincerely,



Jay Chalke  
Ombudsperson  
Province of British Columbia



**SUPPORT WE  
PROVIDED**

The background of the slide is composed of several large, overlapping triangles in three colors: dark blue, light blue, and green. The dark blue triangle is in the top left, the light blue triangle is in the bottom left, and the green triangle is on the right side. The text "SUPPORT WE PROVIDED" is written in white, bold, uppercase letters in the top left corner, within the dark blue triangle.

# INTRODUCTION

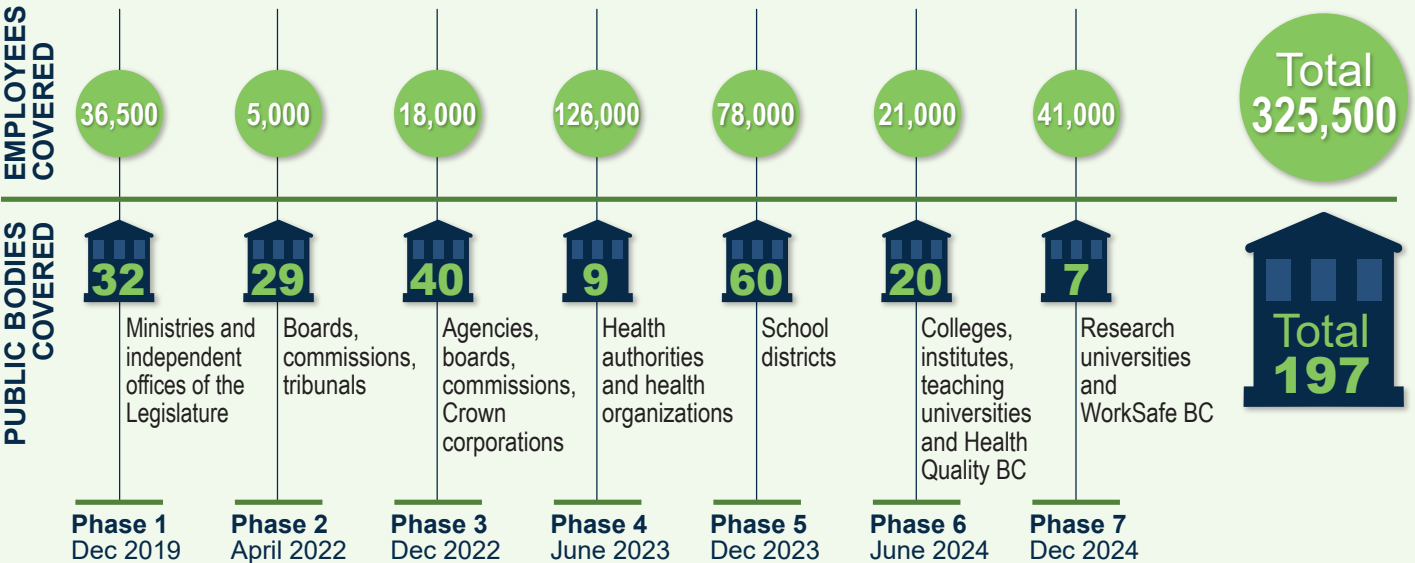
Prior to PIDA coming into force, we conducted extensive research and consultation to refine our understanding and to develop our practice to be in the best position possible to take on our new mandate. We:

- examined whistleblower frameworks from across Canada and internationally, drawing insights from Australia, Ireland, and the United Kingdom
- adapted leading global whistleblowing guidelines to apply them in accordance with BC law
- referenced the CSA Group's (formerly the Canadian Standards Association) whistleblowing systems guidance and met with its lead author, Sandy Boucher, to obtain perspectives on policy and procedure

- reviewed the work of the Centre for Free Expression at Toronto Metropolitan University and the analysis it commissioned by Ian Bron of whistleblowing legislation across Canada, including BC
- consulted with Canadian academic experts, including Professor Carroll Boydell from Kwantlen Polytechnic University
- sought the advice of federal, provincial and territorial Public Interest Disclosure Commissioners from across Canada with experience administering comparable laws in their jurisdictions

The insights and learning guided the development of an operational process based on best practices and careful interpretation of the legislation. We shared our knowledge with public bodies as they implemented PIDA and as they raised awareness about the foundational elements of the Act among their employees.

## Number of organizations and employees covered by PIDA



## PHASE 1: INITIAL IMPLEMENTATION

### Provincial government ministries and offices of the Legislature

After the Act was passed but before it came into force, we met with the executive leadership team of every ministry to discuss the application of the Act and to learn of any challenges they anticipated. We provided guidance about the role of a public body's leaders under PIDA. We worked with the BC Public Service Agency and the Ministry of Attorney General to ensure consistent understanding of the Act's provisions and to develop and deliver a broad training program tailored to various roles. The training included:

- rights and protections for employees
- specialized instruction for supervisors on handling disclosures appropriately

- leadership-focused training in fostering a speak-up culture, and the basics of managing disclosures for executives and ethics advisors/designated officers

For the offices of the Legislature, we created an ongoing forum where designated officers and deputies could discuss ethical practices, share challenges, and learn from one another.

Phase one set a strong foundation, both operationally and culturally, for the broader application of PIDA across BC's public sector.

## PHASES 2-7: EXPANDING PIDA'S REACH

### Crown corporations, tribunals, agencies, boards, commissions, health authorities, school districts, and post-secondary institutions

In July 2021, the Attorney General announced that the Act would be expanded to additional public bodies in a series of seven phases, through 2024, giving more public sector employees rights under the Act.<sup>1</sup>

Based on our role supporting employees, developing training and assisting with implementation, the Ministry of Attorney General proposed, and our office agreed, that we would formally serve as the primary implementation support for public bodies coming under the Act.

The next six phases took place twice a year during 2022, 2023, and 2024, respectively. We assumed the lead role in providing training, support, and guidance to the newly covered public bodies.

In preparation for each phase, we:

- met individually with the chief executives and implementation teams of each public body coming under the Act to:
  - explain legislative obligations in detail
  - provide tailored advice based on sector, size, and internal structures

<sup>1</sup> Ministry of Attorney General, "[Province expands whistleblower protections to public sector](#)," news release, July 29, 2021.  
PIDA 5-YEAR REVIEW



- support the development of internal disclosure procedures and designated officer roles
- engaged with employer associations and sectoral umbrella organizations to support a consistent approach
- met with unions and employee associations to ensure they were aware of their role in providing advice to employees about making disclosures
- met with legal organizations to ensure the legal community understood PIDA's protections, including the legislated role of lawyers in providing protected advice to potential disclosers

We tailored our resources and support, recognizing that each sector had unique operational realities. For example:

- In the health sector, we supported the creation of a health authority leadership working group to coordinate a consistent approach to implementation.
- In the K-12 education sector, we worked with the BC Public School Employers' Association to coordinate messaging to school districts and to support consistency in the development of PIDA procedures.
- In the post-secondary sector, we worked alongside the Research Universities' Council of BC to facilitate collaboration and knowledge-sharing.

To support sector-specific needs, we contracted specialists familiar with the unique structures and dynamics of the different sectors. This helped to ensure that our office's response to requests for support from each sector was suited to their needs and challenges.

## PIDA DAY CONFERENCE

To reinforce the principles underlying PIDA, we began hosting an annual PIDA Day conference.<sup>2</sup> The inaugural conference was held in 2019 and provided an important space for reflection, learning, and shared commitment to public sector integrity. Two of the conferences took place during the pandemic and thus were held virtually. The others have been in person to allow for informal collaboration and relationship building. Regularly attracting more than 100 attendees from across the BC public sector, the annual event provides attendees with opportunities to learn from each other's experiences as well as from a wide array of expert speakers and panelists.

The six conferences to date have brought together employers, academics, whistleblowers, and advocates to engage in conversations about policy, ethical leadership, whistleblowing culture, and the challenges and risks faced by those who speak up.

<sup>2</sup> See Appendix A for more information on the six PIDA Day conferences held from 2019 - 2024.



# OUR TRAINING AND GUIDANCE RESOURCES

Over the course of five years, we have developed and published a comprehensive suite of resources to support public bodies and employees at every level.

## Online resources

Our website acts as a centralized support hub for public bodies covered by PIDA and their current and former employees. Please see Appendix B at the end of this report for these and other resources created by our office. Links to these resources are also set out in Appendix B.

**For chief executives:** checklists for successful implementation of PIDA, including critical responsibilities both during and after the rollout, and model policies and procedures for the management of disclosures and requests for advice

**PIDA: CHECKLIST FOR CHIEF EXECUTIVES**

As a Chief Executive of an eligible public body, the Public Interest Disclosure Act (PIDA) requires you to take key steps.

**Appoint a Designated Officer**

- The Chief Executive must appoint at least one senior official to be a Designated Officer.
- Designated Officers are responsible for responding to requests for advice, receiving disclosures and investigating disclosures of wrongdoing.
- The Chief Executive may appoint a different person for each task.

**Establish and Maintain Internal PIDA Procedures**

Procedures should cover how to:

- Receive and review disclosures, and set time periods for action to be taken.
- Respond to requests for advice about reporting wrongdoing or making a reprisal complaint.
- Assess the risk of reprisal against disclosures received and collected.
- Protect the identity of employees who report wrongdoing or seek advice.
- Appropriately collect and protect personal information.
- Refer the disclosure.
- Investigate other wrongdoings that may be uncovered.

□ Provide appropriate parties with notice of decisions and summary reports of investigations.

□ Report the outcomes of investigations, including any findings of wrongdoing, the reasons supporting the findings and relevant recommendations.

**Small public bodies**

□ Consult with the Ombudsperson to determine whether developing internal procedures would be impractical based on the size of the organization.

□ If following consultation with the Ombudsperson, the organization elects not to establish PIDA procedures, the Chief Executive will be notified by the Designated Officer and must conduct investigations in consultation with the Ombudsperson.

**Educate Employees**

Employees must have information about PIDA and how to make a disclosure of wrongdoing. Ensure employees receive training and resources that cover:

- Basic information about PIDA and what wrongdoing is.
- PIDA protections: confidentiality and prohibitions on reprisal.
- How to make a disclosure or get advice.
- What they can expect from an investigation as a discloser or a witness.
- How to make a reprisal complaint to the Ombudsperson.

BC OMBUDSPERSON PIDA RESOURCES

**PIDA INVESTIGATIONS: INFORMATION FOR CHIEF EXECUTIVES**

**The Ombudsperson's role under PIDA**

The Office of the Ombudsperson is an independent office of the legislature mandated under the Public Interest Disclosure Act (PIDA) to investigate allegations of wrongdoing from public sector employees. Public sector employees have the choice of reporting wrongdoing to the Ombudsperson or to their supervisor or the Designated Officer within their organization.

Employees can also make a complaint to the Ombudsperson if they have been reprisal against for reporting wrongdoing, seeking advice or co-operating with an investigation. The Ombudsperson is the only avenue for receiving and investigating complaints of reprisal under PIDA.

The Ombudsperson conducts fair and impartial investigations and makes effective recommendations for corrective measures when necessary.

**What to expect from a PIDA investigation by the Ombudsperson**

A PIDA investigation by the Ombudsperson will typically follow these steps:

1. **Notice of the investigation is provided.** If the Ombudsperson decides to investigate an alleged wrongdoing or reprisal, the Ombudsperson will notify the Chief Executive of the decision. The identity of the discloser will not be provided.
2. **Ombudsperson investigators conduct the investigation.** Investigators will request documents and other evidence about the alleged wrongdoing or reprisal. They may also interview the discloser, respondents and witnesses. Supervisors may need to provide employees with time during work hours and access to files so they can fully participate in the investigation.
3. **Ombudsperson investigators analyze data during a PIDA investigation by the Ombudsperson.** Investigators will review the information obtained during the investigation and engage external expertise if necessary.
4. **The Ombudsperson concludes the investigation, reports on any findings and makes recommendations.** The Ombudsperson will determine whether there are findings of wrongdoing or reprisal. The Ombudsperson can make recommendations regardless of whether wrongdoing or reprisal is found. A summary report is provided to the discloser and any respondents. A full report is given to the Chief Executive. The Ombudsperson may issue a public report and/or comment publicly if it is in the public interest. The identity of the discloser and any alleged wrongdoers, regardless of whether wrongdoing is found, is not included in public reports.

**The Chief Executive's role during a PIDA investigation by the Ombudsperson**

You will be notified if the Ombudsperson starts an investigation in relation to the public body for which you are the Chief Executive. You are responsible for adhering to PIDA's confidentiality and reprisal protection provisions during the course of an investigation.

In addition, you are required to comply with the Ombudsperson's requests and allow our office to complete a thorough investigation.

The Ombudsperson has the authority to gather information and speak to witnesses under section 15 of the Ombudsperson Act.

Remember that PIDA has very specific requirements and protocols. Your usual organizational procedures may not be appropriate during a PIDA investigation, for example, if they are inconsistent with PIDA.

BC OMBUDSPERSON PIDA RESOURCES

**PIDA IMPLEMENTATION: TIMELINE FOR CHIEF EXECUTIVES**

The tasks below outline recommended preparations and ongoing activities for public bodies in British Columbia who will be covered by the Public Interest Disclosure Act (PIDA). Items that are required by the Act include a timeline with the relevant section. Timelines and implementation activities are intended as general guidance and may vary by organization. Public bodies can contact the Office of the Ombudsperson for further information.

**1 YEAR**

**Before implementation**

- Learn about the Public Interest Disclosure Act and encourage your senior leadership to do so as well.
- Review existing internal policies on how employees can raise concerns about wrongdoing and identify any areas that will need to be updated with the implementation of PIDA.
- Identify who will be responsible in your organization for overseeing the implementation of PIDA and any other key players who might be involved.
- Start creating or improve your organization's "speak up" culture by:
  - telling employees how that they are welcome to share their concerns and will not be penalized for doing so.
  - telling supervisors, managers and executives how that they are expected to welcome and listen to concerns of their staff.

**6 MONTHS**

**Before implementation**

- Select one or more senior officials to be a Designated Officer for your organization. "Some organizations designate ethics advisors, risk control managers, human resource directors, disclosers or vice presidents to be Designated Officers under PIDA. Designated Officers have various responsibilities including providing advice, receiving disclosures and investigating disclosures of wrongdoing."
- Draft procedures for your organization that contain all of the requirements listed in section 9 of PIDA and amend any existing policies or practices as necessary. For example, your procedures must include guidance on how to:
  - assess the risk of reprisal to disclosers
  - receive and review disclosures
  - ensure confidentiality
  - protect the identity of employees who seek advice or make a disclosure

\* PIDA s. 10(1)  
\* PIDA s. 10(4)  
\* PIDA s. 7

BC OMBUDSPERSON PIDA RESOURCES

**PIDA: INFORMATION FOR DIRECTORS OF GOVERNMENT BODIES**

**Public Interest Disclosure Act**

The Public Interest Disclosure Act (PIDA) is a whistleblower protection legislation for current and former public sector employees in British Columbia. It provides a clear process for reporting wrongdoing relating to a public body and mechanisms to investigate and address wrongdoing when found.

PIDA also provides reprisal against employees who report wrongdoing, who request advice under PIDA or who cooperate with a PIDA investigation. PIDA first covered ministries and offices of the legislature in 2018 and was rolled out to further public sector organizations, referred to as "government bodies", over a five-year period which ended in December 2024.

**Directors under PIDA**

Under section 2(a)(i) of PIDA, directors and officers of government bodies are defined as employees. Government bodies are listed in the PIDA legislation and are distinct from government ministries and offices of the legislature.

The inclusion of directors in PIDA's definition of "employee" means that current or former directors on boards of governance for government bodies covered by PIDA are able to request advice and make disclosures under PIDA.

Like all employees, directors who want to request advice or make a disclosure under PIDA have a choice. They can call in to do so to the Office of the Ombudsperson or to their organization's Designated Officer. By requesting advice or making a disclosure through the Ombudsperson or the Designated Officer, directors are covered by PIDA's confidentiality and reprisal protections.

**Responsibilities of Chief Executives and Designated Officers under PIDA**

Under PIDA, the Chief Executive of a public body must appoint at least one senior official to be a Designated Officer. Designated Officers are responsible for responding to requests for advice, receiving disclosures and investigating disclosures of wrongdoing under PIDA. If no senior official is appointed, by default the Chief Executive performs the role of the Designated Officer.

**Confidentiality**

There are provisions protecting the identity of employees who seek advice about making a disclosure or make a disclosure under PIDA. It is an offence for supervisors or Designated Officers to breach PIDA's confidentiality provisions.

Everyone in receipt of a report of wrongdoing or request for advice under PIDA must keep the identity of the person involved confidential. They must take steps to ensure that they do not inadvertently enable the identification of the employee as someone who reported wrongdoing or sought advice.

If a director receives information about an ongoing PIDA investigation, or information that identifies an employee as someone who has sought advice or made a disclosure, they must not share that information with anyone else. The director should also take steps to remind the source of that information about the confidentiality provisions of PIDA.

See the Ombudsperson website for the list of organizations covered under PIDA.

BC OMBUDSPERSON PIDA RESOURCES

**PIDA IMPLEMENTATION: INFORMATION FOR SMALL PUBLIC BODIES**

**Background**

- The Public Interest Disclosure Act (PIDA) requires that every Chief Executive of a public body:
  - establish procedures under section 9 for managing disclosures from their employees
  - designate at least one senior official as a Designated Officer (DO) to receive and investigate disclosures.

**Comparison between section 10(2) exempt public bodies and non-exempt public bodies**

	REGULAR PUBLIC BODIES	SECTION 10(2) EXEMPT
Section 9 procedures (required)	Yes	No
Must designate at least one Designated Officer	Yes	If no designation, Chief Executive is the DO by default
Authorized to receive disclosures?	Yes	Yes
Authorized to provide advice to employees?	Yes	Yes
Authorized to investigate disclosures?	Yes, in accordance with their s.9 procedures	Yes, in consultation with the Ombudsperson

**Who should seek an exemption under section 10(2)?**

Any Chief Executive of a public body who believes that it is not practical due to the size of the organization to designate a DO or establish procedures under section 9 of PIDA.

Considerations about size may include the number of employees, budget or capacity of the organization.

NOTE: The Ombudsperson has developed sample section 9 procedures that organizations may wish to adapt or adopt after their seeking exemption.

BC OMBUDSPERSON 1447 First Street, Victoria, BC V8W 2K7 1-800-967-3247 | ombudsperson.ca

**SAMPLE SECTION 9 PROCEDURES**

For Public Interest Disclosure Act Investigations

OMBUDSPERSON  
BRITISH COLUMBIA

**For designated officers:** an 80-page toolkit featuring everything designated officers need to conduct an appropriate assessment and investigation, including templates, checklists, guidance on maintaining confidentiality, how to draft findings, and step-by-step investigative best practices

**DESIGNATED OFFICER TOOLKIT**

FOR PUBLIC INTEREST DISCLOSURE ACT INVESTIGATIONS

November 2023

OMBUDSPERSON  
BRITISH COLUMBIA

## For supervisors: guidance documents and confidentiality tips to help supervisors handle disclosures appropriately and sensitively

**PIDA: SUPERVISOR RESPONSIBILITIES**

Supervisors in eligible public bodies have new responsibilities under the Public Interest Disclosure Act (PIDA). Under PIDA, your employees can come to you to report wrongdoing (also called making a disclosure) or request advice. These activities are protected under PIDA. It is an offence to commit reprisal against an employee who reports wrongdoing, makes a reprisal complaint, participates in a PIDA investigation or seeks advice under PIDA. The guidelines below outline what to do when an employee seeks assistance from you under PIDA. Your organization may have issued its own guidelines. Seek support about your role from the Designated Officer in your organization.

**Handling PIDA interactions**

- Keep the identity of employees who come to you under PIDA confidential.
- Only share the identity of employees who report wrongdoing with your Designated Officer when providing with the disclosure. Do not share this information with anyone else.
- Hold conversations about PIDA matters in a private area.
- Provide employees with information about the different avenues for reporting wrongdoing.
- Keep files related to PIDA in a secure place.
- Provide employees with information about how to make a reprisal complaint to the Ombudsman.

• Remind employees about the protections under PIDA. If they make a disclosure, their identity is protected to the extent possible and they can file a complaint with the Ombudsman if they experience reprisal.

• Assure the employee that their concerns will be taken seriously but do not promise that they will be investigated. Disclosures are assessed against PIDA criteria to determine whether they will be investigated.

• Do not give your opinion about whether or not an employee's allegations are eligible for investigation under PIDA, but do provide the employee with information about how wrongdoing is defined.

• If you are unsure about what to do, contact your Designated Officer or the Ombudsman.

**Procedures for managing reports of wrongdoing from employees**

- Immediately after receiving a report of wrongdoing from an employee, provide it to the Designated Officer.
- Even if a report is incomplete, provide it to the Designated Officer. The Designated Officer can contact the employee for more information.
- PIDA allows for anonymous disclosures. Even if you are unsure whether an anonymous report is from an employee, provide it to the Designated Officer.

**Important:** Submit the disclosure to the Designated Officer regardless of whether you think it qualifies as wrongdoing.

BC Ombudsman PIDA Resources

**PIDA: INFORMATION FOR SUPERVISORS – CONFIDENTIALITY**

PIDA has strict confidentiality requirements. As a supervisor, you will have access to sensitive information when employees come to you for advice or to report wrongdoing. This information can only be shared in accordance with section 6 of PIDA.

The tips below are to assist you in determining what information to keep confidential. Your organization may issue its own tips. Seek support about your role from the Designated Officer in your organization.

**Why the secrecy?**

**Confidentiality is important because it:**

- Protects the employee from reprisal under PIDA.
- Protects the privacy of the alleged wrongdoer during the investigation.
- Encourages employees to speak up about wrongdoing by creating a safe environment.

**When can I share PIDA?**

If an employee reports wrongdoing to you, you must take that information to your Designated Officer.

**Tips**

- If an employee comes to you for advice, do not share their identity. Only tell the Designated Officer if the employee chooses to report wrongdoing.
- If you need help responding to a report of advice, you can ask your Designated Officer who keeps the employee's identity confidential.

• Typical information-sharing practices do not apply to PIDA. Do not share sensitive information with anyone other than the Designated Officer, not even human resources or your manager.

• Hold conversations related to PIDA in private. Other people should not overhear requests for advice or reports of wrongdoing.

• Keep notes, files, emails and documents accounts secure. Be careful not to leave any confidential information in a shared location.

**Are there any exceptions to my obligations of confidentiality?**

Under PIDA, you can share personal information that is needed in a report of wrongdoing for the purposes of the Act. That means you can share information contained in the disclosure with the Designated Officer, but not anyone else.

You can only share information that could reveal the identity of an employee who seeks advice or reports wrongdoing in the following circumstances:

- The employee has given you permission in writing.
- For the purposes of PIDA.
- For the purposes of the Act, such as to prevent serious risk of harm; or
- The personal information has previously been lawfully disclosed.

**More information**

Contact your Designated Officer for more information about your responsibilities under PIDA.

BC Ombudsman PIDA Resources

## For employees: FAQs explaining what constitutes wrongdoing, how disclosures are made, protections available, and what to expect during an investigation

**PIDA: RECOGNIZING WRONGDOING**

Employees of eligible public bodies can report concerns about wrongdoing under the Public Interest Disclosure Act (PIDA). Public sector employees have an important role to play in protecting the public interest by reporting their concerns of wrongdoing. This guide will help you understand if you have identified a possible wrongdoing.

**What is wrongdoing?**

In broad terms, wrongdoing is any unlawful act that damages significantly from generally accepted behavior. However, only certain types of wrongdoing qualify under PIDA.

To be considered wrongdoing under PIDA, the conduct must fit one of these elements:

- Occur "in or relating to" a ministry, office of the legislature or a government body (public sector organizations) and;
- Meet the criteria for at least one type of wrongdoing as defined in section 7(1) of PIDA (discussed below).

**What does "in or relating to" mean?**

Under PIDA, wrongdoing can take place directly within an eligible public body or related to their function. The wrongdoing must be related to an eligible public sector organization.

To be considered "related to" an eligible public body, there must be a **real and substantial connection between the wrongdoing and that organization**.

An assessment of whether there is a real and substantial connection will depend on the specific context and facts.

**Types of wrongdoing**

**A) Offences**

**PIDA definition:** "To tell a serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada."

What it means: A serious action or failure to act that also is a crime or an offence.

**B) Danger to people or the environment**

**PIDA definition:** "To tell an act or omission that creates a substantial and specific danger to the health or safety of persons, or to the environment, other than a danger that is inherent in the performance of an employee's duties or functions."

What it means: An action or failure to act that is dangerous to a person's health or safety or to the environment. The danger will be considered substantial if it can be identified as well as when it is likely to occur.

Example: Danger that is a typical part of someone's job.

**C) Misuse of public funds**

**PIDA definition:** "To tell a serious misuse of public funds or public assets."

What it means: Government money or resources are being used for their intended purpose, are being wasted, or are used in a way which is not normally expected or required. The misuse must be serious. Serious misuse may include misuse that is recurrent, systemic, deliberate, undertaken by a person at a senior level, or involving a high dollar value.

BC Ombudsman PIDA Resources

**PIDA FAQs: DISCLOSURES AND REPRISAL COMPLAINTS TO THE OMBUDSPERSON**

These Frequently Asked Questions (FAQs) refer to the procedures that apply to disclosures to the Ombudsman. 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 sector organizations.

Visit our website to view the organizations covered under PIDA.

**What is the role of the Office of the Ombudsman?**

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

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

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

The Office of the Ombudsman 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, seek advice about reporting wrongdoing or making a reprisal complaint, or cooperate with an investigation. Reprisal can include dismissal, 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 conduct their functions in an open, honest, fair and proportionate manner as appropriate in the circumstances.

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

**What are confidentiality obligations under PIDA?**

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

The Freedom of Information and Protection of Privacy Act provides that investigation reports of the Ombudsman 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.

BC Ombudsman PIDA Resources

**PIDA INVESTIGATIONS: INFORMATION FOR WITNESSES**

**The Public Interest Disclosure Act (PIDA) is a whistleblower protection legislation for current and former employees of eligible public bodies in British Columbia. It provides public sector employees with a clear process for reporting wrongdoing relating to a government organization, and mechanisms to investigate and address wrongdoing when found.**

**PIDA also prohibits reprisal against employees who report concerns of wrongdoing, who seek advice under PIDA, or who cooperate with a PIDA investigation.**

**The Ombudsman**

The Ombudsman is an officer of the legislature, independent from the government. The Office of the Ombudsman conducts investigations privately and confidentially under the authority of the Ombudsman Act and the Public Interest Disclosure Act. The Ombudsman issues a public report each year summarizing the office's work under PIDA.

**Under the Public Interest Disclosure Act the Ombudsman is required to:**

- conduct fair and impartial investigations into reports of wrongdoing and reprisal and make recommendations for corrective measures;
- provide advice to employees who are considering making a report; and
- provide assistance to public bodies with their responsibilities under PIDA.

**Commonly-asked questions**

**What does the Ombudsman investigate under PIDA?**

Under PIDA, the Ombudsman investigates reports of serious wrongdoing from current and former employees of eligible public bodies. The Ombudsman also investigates reports of reprisal from employees who believe they have been retaliated against for seeking advice, making a report of wrongdoing, or cooperating with an investigation.

**Why have I been asked to attend an interview?**

Interviews are an important source of information for our investigations. We have asked you to attend an interview because we believe you could provide relevant information for our investigation.

**Can I bring someone with me to the interview?**

Usually, interviews are limited to the witness and investigators. Our investigations and interviews are confidential. To the extent possible, we will not share any of the information you provided to us with others.

In some cases, witnesses would like to attend such interviews with another person, such as legal counsel, union representatives, friend, family member, or other support person. We consider such requests on a case-by-case basis. If you are participating in an interview by teleconference, you must be alone unless you have requested that someone attend with you.

If you want someone to attend the interview with you, please discuss this with the investigator as early as possible, and at least 5 days in advance of your interview.

BC Ombudsman PIDA Resources

**PIDA: INFORMATION FOR EMPLOYEES OF SMALL PUBLIC ORGANIZATIONS**

**Responsibilities of public sector organizations**

The Public Interest Disclosure Act (PIDA) is a whistleblower protection legislation for current and former employees of eligible public sector organizations in BC. PIDA requires that every Chief Executive of a public sector organization covered by PIDA:

- designate at least one senior official as a designated officer to respond to requests for advice and receive and investigate disclosures; and
- establish procedures for managing disclosures of wrongdoing from their employees.

**Exemptions for small public sector organizations**

PIDA provides that the two requirements listed above do not apply to small organizations where the organization, in consultation with the BC Ombudsman, determines it is not practical to apply these requirements. Small organizations include those with few employees or insufficient resources to appropriately manage disclosures of wrongdoing.

While small organizations may be "exempt" from the two requirements, these organizations must still be prepared to manage requests for advice and disclosures, and must inform their employees of their process for doing so.

**PIDA processes in exempt public sector organizations**

Small organizations may be exempt from one or both of the two requirements listed above.

Small organizations exempt from the two requirements must still be prepared to manage requests for advice and disclosures, and must inform their employees of their process for doing so.

**Contacting the Ombudsman**

Employees and officials who have questions about PIDA, the role of the office, or who need more information about how to make a disclosure, can speak to a member of our public interest disclosure team directly by calling our office at 1-800-567-3247, or contacting us via email at [report@ombudsman.bc.ca](mailto:report@ombudsman.bc.ca).

BC Ombudsman PIDA Resources

**PIDA AND OTHER COMPLAINT MECHANISMS**

What can an employee do if they are concerned about a problem in their workplace?

PIDA is one of many complaint processes available to public service employees, and does not replace other mechanisms. It is an additional, optional pathway for reporting serious wrongdoing that is in the public interest. It is not meant as a complaint mechanism for personal employment disputes or public policy grievances.

**Employees have several pathways to report concerns in their workplaces. Some common pathways include:**

- Health and safety concerns – Workplace BC
- Disputes about workplace conditions – human resources, union or employee association representatives
- Program operation concerns – Program Managers, Directors
- Offences – law enforcement

**What makes PIDA unique from other complaint processes?**

- Under PIDA, employees always have a choice as to where they disclose wrongdoing. They can make a disclosure internally to their supervisor or DO, or externally to the Ombudsman.
- Unlike many other complaint mechanisms, PIDA highly protects employees from reprisal and includes strong confidentiality provisions.
- PIDA allows for anonymous disclosures.

• PIDA is only available to employees or former employees of eligible public bodies. It is not available to contractors, volunteers or members of the public.

• PIDA investigations result in findings and recommendations. Recommendations may address individual circumstances or issues with policy, practice or systems.

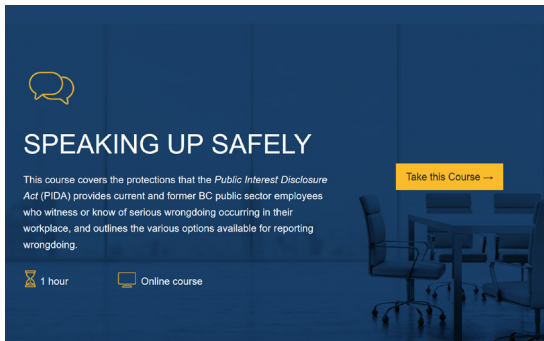
**How does PIDA relate to other complaint processes?**

- Making a disclosure under PIDA does not replace mandatory reporting obligations under other legislation or policy, unless the legislation or policy explicitly says so. Examples of a reporting obligation include a person's duty to report child abuse under section 84 of the CMIA, Family Community Services Act or a public service employees duty to report responding under section 33.2 of the Financial Administration Act.
- PIDA is a stand-alone process. Employees do not need to exhaust any other complaint mechanism other than making a disclosure of wrongdoing under PIDA.
- PIDA is not an appeal mechanism. But, if an employee has raised their concerns elsewhere, they can still make a disclosure under PIDA.
- The DO may decide to investigate if, after assessing a disclosure, they conclude that the alleged wrongdoing has already been or is being appropriately investigated or otherwise dealt with.
- PIDA investigations are not intended to compromise other investigations. The Ombudsman or a DO may postpone or suspend their own PIDA investigation if they

BC Ombudsman PIDA Resources

## eLearning courses and webinars

In addition to the above materials, we have created training materials to support public bodies in learning about their roles, responsibilities and the protections provided under PIDA. All of these resources are available to public bodies at no charge.



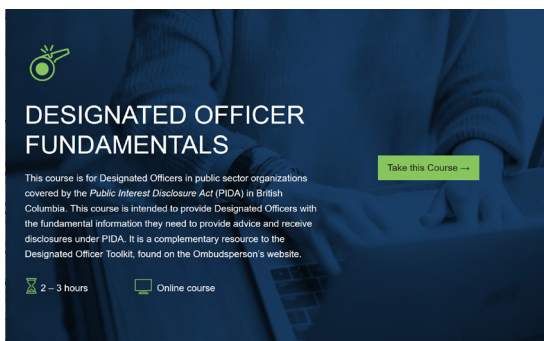
### Speaking Up Safely:

One-hour eLearning course covering the protections the Act provides to current and former public sector employees and outlining the various options for reporting wrongdoing



### Supervisor Responsibilities:

30-minute webinar covering supervisors' responsibilities under the Act and practical tools to help supervisors fulfill their roles



### Designated Officer Fundamentals:

Online course that provides the fundamental information designated officers need to provide advice and receive disclosures under PIDA (complementary resource to the *Designated Officer Toolkit*)



## Assisting chief executives with their roles under PIDA

Our office directly supported public bodies to implement PIDA in advance of their coming under the legislation. We also provided ongoing support and became a primary resource for public bodies over time.

A significant portion of this work was informing chief executives of their specific obligations under the Act, which include:

- ensuring staff are informed about PIDA, including about how to request advice and make a disclosure either internally or to the Ombudsperson
- appointing one or more senior officials to be designated officers to receive requests for advice and manage disclosures
- developing procedures for managing disclosures
- reporting annually about disclosures and investigations

## Chief executives' responsibilities under the Act to promote a speak-up culture

1

Inform their employees about the Act and how to request advice or make a disclosure or a complaint about a reprisal

2

Appoint at least one senior official to be a designated officer to receive requests for advice and receive and investigate disclosures by employees

3

Establish procedures to manage requests for advice and disclosures by employees

4

Report annually about disclosures and investigations



## Answering public body questions

During our conversations with public bodies, we have learned of some of the challenges faced by them in the implementation process. These include how to:

- align pre-existing whistleblowing or speak-up policies and practices with PIDA requirements
- determine the most accessible or otherwise appropriate internal senior official(s) to act as a designated officer
- clearly communicate the options for raising concerns under PIDA and the different complaint mechanisms available to employees
- ensure supervisors are aware of PIDA and their responsibility to help employees navigate PIDA and to receive and forward disclosures
- ensure an appropriate administrative process to receive requests for advice and manage disclosures

### How we helped

To assist public bodies to overcome some of the obstacles faced, we developed and shared several resources, including:

- template disclosure management procedures to assist with developing procedures that fit with their needs
- an online course for employees and a webinar to inform them of their responsibilities
- an extensive toolkit to support designated officers to effectively assess disclosures and conduct investigations

We continue to assist public bodies following implementation of the Act by providing bi-annual training, and question and answer sessions, as well as by responding to requests in a timely manner.

Public bodies regularly email us questions about PIDA. We make ourselves available to answer these questions as they arise and have incorporated the information we share into our *Designated Officer Toolkit* and the *Designated Officer Fundamentals* course. Some of the most common questions include:

- how long to retain PIDA records (requests for advice, disclosures)
- when to report annually on the disclosures made within the public body and any investigations
- what information to include in the annual report
- who to make a designated officer for the receipt of disclosures
- whether outside legal counsel or an outside organization can be a designated officer
- whether there can be more than one designated officer
- whether a public body can follow up on concerning matters if raised in an employee's request for advice about PIDA
- whether a disclosure can be investigated under another complaint mechanism if it is determined that the allegations, if proven, would not be a wrongdoing

# THE NEED FOR MORE TRAINING

The background of the slide is composed of several large, overlapping triangles in three colors: dark blue, light blue, and green. The dark blue triangle is in the upper left, the light blue triangle is in the lower left, and the green triangle is on the right side. The triangles meet at sharp angles, creating a dynamic, geometric pattern.

Public bodies' awareness of PIDA is fundamental to the framework's success. For a public body to learn about serious wrongdoing, employees must feel confident enough to speak up. For wrongdoing to be addressed, supervisors and designated officers must understand their roles. For this reason, our office spent significant time supporting public bodies to meet their obligations under the Act. While some public bodies have worked to successfully implement PIDA, more work is required.

## Training is needed for supervisors and designated officers about their responsibilities under PIDA

Some public bodies are doing a good job of informing **employees** about the Act by establishing annual training for staff or requiring new employees to take our online *Speaking Up Safely* course. However, in our experience there remains a gap in training for those with responsibilities under the Act, specifically **designated officers** and **supervisors**.

Designated officers are responsible for giving advice to employees about PIDA, determining whether they can or should investigate disclosures, and if appropriate, conducting the investigation. Disclosure matters are often complex and the assessment of whether to investigate can be time consuming and challenging. Conducting an effective investigation is even more challenging than the assessment and requires extra attention to ensure confidentiality and fairness to those alleged to have engaged in wrongdoing.

Likewise, supervisors are responsible for giving advice to employees about PIDA and forwarding disclosures to a designated officer. Their primary responsibility is to ensure the confidentiality of the discloser's identity while ensuring the appropriate person is aware of the allegation.

The number and type of supervisors across the public sector are significant and varied. Supervisors are key to the success of the framework because they tend to be accessible and often have a close relationship with their employees. It is a natural first step for employees to talk to their supervisor about concerns. Unfortunately, this presents a risk if the supervisor is not familiar with PIDA or its expectations regarding confidentiality.

We have witnessed supervisors take a disclosure and send it up the regular reporting chain to their manager, rather than to the designated officer, sharing the identity of the discloser in the process. On occasion, the supervisor's manager was the alleged wrongdoer. A supervisor's management of disclosures is a significant point of risk in the process.

There is a tendency for all employees, including supervisors and designated officers, to report directly to the person above them: employee to supervisor, supervisor to manager, manager to senior manager, etc. This reporting "ladder" seems to be ingrained in many employees and public bodies – but this approach does not align with PIDA. The confidentiality of disclosers is a

key protection; information about them and their disclosure should only be shared between a supervisor and designated officer.

The low number of internal disclosures across the public sector (i.e., disclosures made to supervisors or designated officers), compared to those our office has received thus far, may in part suggest limited supervisor or designated officer awareness of PIDA. The low numbers may also result from:

- a failure to identify employee concerns as disclosures
- disclosures being diverted to other more familiar complaint processes

We have supported public bodies to address the challenges of training supervisors and designated officers. Based on our experience we believe it is not enough for PIDA to obligate chief executives to simply inform employees about the Act. We believe that effective implementation of PIDA requires chief executives to train supervisors and designated officers in the requirements of their roles (this issue is further addressed in *Special Report No.5: Proposed amendments – 6.1 Require training for supervisors and designated officers*).



# APPENDICES

**Appendix A – PIDA Day agendas**

**Appendix B – PIDA resources**

# APPENDIX A – PIDA DAY AGENDAS

## PROMOTING INTEGRITY IN THE PUBLIC SECTOR

BC's new *Public Interest Disclosure Act*

### CONFERENCE AGENDA

November 19, 2019

*Delta Ocean Pointe – Harbour Room*

**8:00 am Registration Opens**

**9:00 am Welcome & Opening Remarks**  
Jay Chalke, BC Ombudsperson

**9:15 am BC's New Law**  
Remarks by the Honourable David Eby

**9:30 am Through the Looking Glass: Public Interest Disclosure in BC & Beyond**  
Jay Chalke, BC Ombudsperson

**10:00 am Networking & Coffee Break**

**10:30 am BC Public Service's Approach to Implementing PIDA**  
Okenge Yuma Morisho, Deputy Minister, Public Service Agency  
Kurt Sandstrom, Assistant Deputy Minister, Ministry of Attorney General  
Neilane Mayhew, Deputy Minister, Ministry of Mental Health & Addictions  
*Moderated by Carol Bellringer, Auditor General of BC*

**11:15 am The First Two Years: PID Implementation in Quebec**  
Hélène Vallières, Deputy Ombudsman, Le Protecteur du Citoyen

**12:00 pm Buffet Lunch**

**1:00 pm PID Lessons from the Private Sector**  
Sandy Boucher, Senior Manager, Fraud & Corruption Investigator, Grant Thornton LLP

**1:45 pm Perspectives on Whistleblowing**  
Carroll Boydell, Professor of Criminology, Kwantlen Polytechnic University & Researcher, BC Freedom of Information & Privacy Association  
Edgar Schmidt, Whistleblower & Former Department of Justice Lawyer, Government of Canada  
Andrew MacLeod, Reporter, The Tyee  
*Moderated by John Greschner, Deputy Ombudsperson, BC Ombudsperson*

**3:00 pm Closing Remarks**  
Jay Chalke, BC Ombudsperson

*A fair process for all*



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BC'S ANNUAL PUBLIC INTEREST DISCLOSURE CONFERENCE  
ENCOURAGING A **SPEAK UP** CULTURE IN THE WORKPLACE  
**CONFERENCE AGENDA**

Friday, December 4, 2020

9:00 am **Welcome & Opening Remarks**  
Jay Chalke, BC Ombudsperson

9:05 am **Building a Positive & Engaging Culture: Ending the Sound of Silence**  
Keynote Speaker: Craig Dowden, PhD

10:00 am **Break**

10:15 am **Strengthening Ethics in the BC Public Service**  
Angela Weltz, Director, Policy & Research,  
BC Public Service Agency

10:45 am **Extending Whistleblower Protection in BC: Where Next for PIDA?**  
Kurt Sandstrom, Assistant Deputy Minister,  
Ministry of Attorney General

11:10 am **Turning One: Using the New Law to Support a Speak-Up Culture**  
Jay Chalke, BC Ombudsperson

11:40 am **Conference Close**

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*Speak Up. Safely.*

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# LESSONS IN WHISTLEBLOWING: THE PAST, PRESENT & FUTURE

## CONFERENCE AGENDA

Friday, December 3, 2021  
via Zoom

**9:00 AM INDIGENOUS WELCOME**

**9:15 AM WELCOME & OPENING REMARKS**  
Jay Chalke, Ombudsperson

**9:30 AM KEYNOTE ADDRESS: IGNORING WHISTLEBLOWERS, THE LONG-TERM CONSEQUENCES**  
Dr. Cindy Blackstock, Executive Director, First Nations Child & Family Caring Society

**10:30 AM COFFEE BREAK**

**10:45 AM INTERACTIVE SESSIONS, INCLUDING:**

- Workshop for Designated Officers in the Public Service  
*Presented by Bobbi Sadler, Deputy Minister & Head of the Public Service Agency & Jay Chalke, Ombudsperson*
- Workshop for Leaders of Organizations Coming Under PIDA in 2022
- Workshop for Civil Society & Other Organizations

**11:45 AM WORKSHOP DEBRIEF**

**12:00 PM CLOSING ACTIVITY & REMARKS**

*Agenda is subject to change*

*Registration is limited*

For more information email: [JPollock@bcombudsperson.ca](mailto:JPollock@bcombudsperson.ca)



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## Whistleblowers and Public Integrity Conference

November 8-9, 2022

JW Marriott Parq Hotel, 39 Smithe St, Vancouver

Tuesday, November 8<sup>th</sup>

All sessions in Kitsilano Ballroom unless noted

0730 Continental breakfast

0830 Conference opening

**Debbie Sparrow** will welcome attendees to the territory on behalf of the people of Musqueam. Debbie is an acclaimed artist and weaver, and has been deeply involved with the revival of Musqueam weaving for many years.

Attendees will hear remarks of welcome from **Peter German**, KC, President of the Vancouver Anti-Corruption Institute, and from the Right Honourable **Kim Campbell**, Conference Chair, who will open the Conference.

0915 Keynote address

**Alexandra Wrage** will deliver remarks addressing “The Whistleblower’s Dilemma.” Ms. Wrage is the founder of TRACE International, a non-profit international business association dedicated to anti-bribery, compliance and good governance. A moderated question and discussion period will follow.

1015 Network break

1030 Session 1: Whistleblowing in the Canadian context

In this session, a panel will explore different aspects of whistleblowing in the Canadian context. Panellists include **Brock Martland**, KC, of Martland and Saulnier, senior commission counsel for the Inquiry into Money Laundering in British Columbia; **Shin Imai**, Professor Emeritus at Osgoode Hall and Director of the Justice and Corporate Accountability Project; and **Enza Uda**, an award-winning journalist and producer with CBC Radio whose credits include The Current and Go Public. A moderated question and discussion period will follow.

1200 Lunch

A buffet lunch will be served in the main meeting room.





- 1300 Session 2: Case studies of whistleblowing concerning public bodies  
This session will explore several recent examples in which public institutions in Canada were the subject of whistleblower reports, reflecting on the circumstances, the initial institutional response, and the case as it played out. Panellists include **Chris Ewaniuk**, Manager of Investigations for the Office of the Alberta Public Interest Commissioner; and Associate Professor **Charis Kamphuis**, Faculty of Law, Thompson Rivers University. A moderated question and discussion period will follow.
- 1430 Network break
- 1445 Session 3: The personal pressures and challenges of whistleblowing  
This session will explore the personal costs, incentives and obstacles which whistleblowers encounter as ordinary people entering extraordinary circumstances. Panellists include **Dr. Meghan van Portfliet**, Lecturer in Management at Cork University Business School, Ireland; and **Jennifer Khor**, Project Manager, SHARP Workplaces with the Community Legal Assistance Society BC, and BC representative of the Can't Buy My Silence campaign to combat the misuse of non-disclosure agreements. A moderated question and discussion period will follow.
- 1615 Housekeeping and close of Day 1 sessions
- 1730 Reception (Fairview Ballroom Lobby)
- 1830 Dinner (Fairview Ballroom)  
Attendees will hear remarks by **Jim Wasserstrom**, co-founder of the Integrity Fellowship and Sanctuary, which provides a temporary safe haven, protection and support for international whistleblowers and anti-corruption activists in extremis. Mr. Wasserstrom, a former diplomat and international anticorruption advocate, will be introduced by **Alexandra Wrage**, a fellow Integrity Sanctuary co-founder.

### Wednesday, November 9<sup>th</sup>

- 0730 Continental breakfast
- 0830 Session 4: Comparative whistleblower protections and incentives in Canada and the US  
This session will situate BC's whistleblower protection legislation in Canadian context, and will highlight measures to incentivize whistleblowing elsewhere in Canada and in the United States (in these latter cases, in the area of securities regulation). Panellists include Dr. **Carroll Boydell**, Professor of Criminology at Kwantlen Polytechnic University; **Christine Tabbert**, Deputy Director of Operations, Enforcement Division, Ontario Securities Commission; and **Nolan Fuller**, Attaché IRS Criminal Investigations, United States Embassy, Ottawa. A moderated question and discussion period will follow.



1000 Network break

1015 Session 5: How not to respond: lessons from the UK financial sector  
Attendees will hear from the British author **Oliver Bullough**. Mr. Bullough is a regular commentator on issues of corruption and financial integrity, and is the author of *Moneyland: Why Thieves and Crooks Now Rule the World and How to Take It Back*, published in 2018 by Profile. A moderated question and discussion period will follow.

1115 Session 6: Beyond the metropolis: whistleblowers in rural and northern communities  
This panel will examine aspects of whistleblowing in Indigenous and rural communities and other areas remote from large urban centres, where smaller populations may create an alternative dynamic. Panellists include President **Eva Clayton**, Vice-President **Brian Tait** and Secretary-Treasurer **Charles Morven** of Nisga'a Lisims Government, in a discussion moderated by **Jason Pedlar**, Yukon Ombudsman and Information and Privacy Commissioner.

1215 Lunch  
A buffet lunch will be served in the main meeting room.

1315 Session 7: Finding the right response, part 1 – The role of Designated Officers  
In this session, panellists will explore the role and responsibilities of the Designated Officer in cases of public interest disclosure, from the perspective of government and of the office of the Ombudsperson. Panellists include **Bobbi Sadler**, Deputy Minister and Head of the Public Service Agency of British Columbia; and **Jay Chalke**, KC, Ombudsperson for British Columbia. A moderated question and discussion period will follow.

1415 Session 7: Finding the right response, part 2 – Outsourced investigations  
This session features exploration of the primary options for organizations seeking to outsource investigations following whistleblower reports, including retaining counsel to investigate or engaging forensic accounting services. Panellists include **Marshal Wong**, Senior Manager Advisory for KPMG Vancouver; and **D. Ross McGowan**, partner with Borden Ladner Gervais. A moderated question and discussion period will follow.

1515 Break

1530 Session 8: Looking forward as whistleblowing law and practice evolves  
A moderated roundtable drawn from assembled experts will consider the key challenges and tensions regarding whistleblowing in British Columbia and Canada. Interventions from the floor will be encouraged, reflecting on lessons from our two days together.



1615 Closing

The Right Honourable **Kim Campbell**, Conference Chair, will offer her reflections on the two days of discussion. **Peter German**, KC will then offer remarks of appreciation on behalf of the hosts and the organizing committee.

1630 Conference adjourns



## PIDA Day 2023

### Agenda

*November 23<sup>rd</sup> – Hyatt Regency Hotel*

*All events in the Georgia Ballroom, Convention Level, Third Floor*

7:30 Registration and breakfast

8:30 Opening

The opening will include a territorial welcome and prayer from an Elder of Ts'leil-Waututh Nation, greetings from the BC Ombudsperson, **Jay Chalke**, KC, and introductory remarks on goals for the day from the facilitator, Dr. **Allan Castle**.

*Enduring questions:* Attendees will be encouraged to record questions or observations about public interest disclosure and the PIDA process during the day, which may be broader issues or questions not fully addressed during the substantive sessions, using the **Slido** web app. Selected questions will form the basis of an interdisciplinary roundtable discussion in the day's final session. Login with code #1903 681 at [slido.com](https://slido.com) or scan the QR code at right at any point in the day to submit a question.



9:00 Session 1: A PIDA Primer

Attendees will hear an overview of the development and phased implementation of the Public Interest Disclosure Act, presented by the Office of the Ombudsperson and the BC Public Service Agency.

Presenters will include:

- **Stewart Cavers**, Acting Director Public Interest Disclosure, Office of the BC Ombudsperson
- **Angela Weltz**, Executive Director Policy and Research and Corporate Ethics Advisor, BC Public Service Agency

A facilitated question-and-answer period will follow.

9:30 Session 2: Public interest disclosure and ethical leadership

This session, a facilitated panel discussion, focuses on necessary conditions within the workplace for 'speak-up culture' to flourish, a culture amenable to appropriate public



interest disclosure. Topics to be addressed include but are not limited to the role of ethical leadership; the intersectional nature/gendered experience of speaking up; and reinforcing a healthy culture around public interest disclosure.

Panelists will include:

- **Deb Godfrey**, Deputy Minister, BC Public Service Agency
- **Angela Weltz**, Executive Director Policy and Research and Corporate Ethics Advisor, BC Public Service Agency
- **Emily Ohler**, Chair, BC Human Rights Tribunal
- **Eric Harris**, Chair, Providence Health Care Board of Directors

A paper on 'Ethical Leadership and Speak-Up Culture' is included with the advance materials. The panel will be followed by a facilitated question & answer period.

#### 10:45 Break

#### 11:00 Session 3: Speaking up within the community

This session, a facilitated panel discussion, brings Indigenous perspectives to bear on the principles underlying public interest disclosure, 'speak-up culture,' and received (colonial) adversarial models of addressing wrongdoing.

Panelists will include

- **Chief Jen Thomas**, Ts'leil Waututh Nation
- **Chief Ian Campbell**, Squamish Nation
- **Patrick Kelly**, Leq:amel Nation

The panel will be followed by a facilitated question & answer period.

#### 12:00 Lunch

A buffet lunch will be served.

#### 13:00 Session 4: Case study

Participants will hear a case review of the Alberta Public Interest Commissioner's recent report on wrongdoing within Alberta Health Services-Correctional Health Services. The report on the investigation [may be found here](#).

Presenter: **Bianca Austin**, Investigator, Alberta Public Interest Commissioner

The presentation will be followed by a facilitated question & answer period.



**14:00 Session 5: Organizational culture and readiness**

This session concerns practical steps which leaders and organizations can take to reinforce a healthy culture around public interest disclosure, such as process implementation, training or professional development. Issues to be addressed include but are not limited to prevention, diversion and de-escalation; creating space and time for early resolution; the organizational psychology of fielding complaints and potential disclosures; building trust in the PIDA process; and understanding and socializing the PIDA standard of 'wrongdoing.'

Panelists will include:

- **Marie-Noelle Savoie**, Vice President of Legal, Compliance and Security and Chief Compliance Officer, BC Lottery Corporation
- **Kevin Thien**, Chief Human Resources Officer, BC Financial Services Agency
- **Jon Evans**, Assistant Professor, Organizational Behaviour and Human Resources Division, Sauder School of Business, UBC
- **Theodora Borissov**, Director, Internal Audit and Integrated Risk Management, BC Energy Regulator

The panel will be followed by facilitated question & answer period.

**15:15 Break**

**15:30 Session 6: 'Enduring questions' roundtable discussion**

The final session brings together representatives of different organizations or sectors in a moderated roundtable. Panelists will be asked to reflect on questions and observations submitted by participants. The moderator will also invite further comment and questions from the floor.

- **Jay Chalke**, KC, BC Ombudsperson
- **Trevor Sanderson**, Director, Internal Audit, University of Victoria
- **Nitin Khare**, Executive Director Internal Audit & Enterprise Risk, Vancouver Coastal Health
- **Chris Beneteau**, Executive Director, Employee Relations & Sector Initiatives, BC Public School Employers Association
- **Rav Thind**, Executive Director, Internal Audit Services, Fraser Health
- Moderated by **Angela Weltz**

**16:30 Closing remarks and appreciation**

**16:45 Adjourn**





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## PIDA Day 2024

October 25<sup>th</sup>, Oceanview Suite, Pan Pacific Hotel, Vancouver

### Agenda

7:30 Registration and Light Breakfast

8:30 Opening

- Welcome to Musqueam, Squamish and Tsleil-Waututh Territory
- Introduction: Dr. Allan Castle, facilitator
- Welcoming remarks: Jay Chalke, KC, British Columbia Ombudsperson

9:00 Session 1: Keynote – Reflections On Public Interest Disclosure And Public Integrity

- Joe Friday, Former Public Sector Integrity Commissioner of Canada 2015-2023
- Facilitated Q&A period

9:45 Break

10:00 Session 2: Connecting with Employees about PIDA

- Roundtable: Leah Hollins, Chair, Island Health; Aaron Antifaeff, Island Health; Katie Cobban, Post-Secondary Employers Association; Angela Weltz, BC Public Service Agency
- Facilitated Q&A period

11:00 Session 3: Public Interest and Accountability in Nisga'a Lisims

- Chaired by Patrick Kelly, Leq:amel First Nation
- Remarks: Andrew Robinson, Chief Executive Officer, Nisga'a Lisims Government; Amanda Miller, Legal Counsel, Nisga'a Lisims Government
- Facilitated Q&A period

12:00 Lunch

1:00 Session 4: Mental Health, Ostracism and Reprisal: Human Impacts of Public Interest Disclosure

- Remarks: Professor Carroll Boydell, Kwantlen Polytechnic University; Dr. Jennifer Fraser, author of *The Bullied Brain*
- Facilitated Q&A period



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**1:45 Session 5: Case Study of a Public Interest Disclosure Investigation**

- Brad Moss, Citizens' Representative, Newfoundland and Labrador
- Facilitated Q&A period

**2:30 Break**

**2:45 Session 6: Supporting the Five-Year Review of the *Public Interest Disclosure Act***

- Remarks from Jay Chalke, KC; Stewart Cavers; Rose Camara; Harrison Davis; Colin McPherson, Office of the BC Ombudsperson: "PIDA Implementation Experience and Patterns to Date"
- Small group discussion: Participants discuss their own experience and/or generate questions for an expert panel on PIDA
- Facilitated expert panel Q&A with Ombudsperson and staff

**4:15 Appreciation and Closing Remarks**

- Stewart Cavers, Office of the BC Ombudsperson

**4:30 Adjourn**

## Venue information

### Location

The Pan Pacific Hotel is located at Canada Place; the hotel's address is #300, 999 Canada Place, Vancouver, BC V6C 3B5. The meeting will occur in the **Oceanview Suite**. On entering the hotel at street level, take the escalator, elevator and/or stairs to **Restaurant "R" Level**. Signs will direct you to the meeting room.

### Transit

The Pan Pacific is a short walk from the Vancouver SeaBus terminal, the Vancouver Harbour floatplane terminal, and Waterfront Station.

### Parking

Those arriving by personal vehicle can park below the Pan Pacific in the Indigo lot. Self-park is recommended; valet parking is offered by the hotel but is very expensive. Several other public parking lots are available near the hotel; the typical rate is approximately \$30 a day.

# APPENDIX B – PIDA RESOURCES

## PIDA resources on the Ombudsperson's website

### eLearning courses and webinar

[Speaking Up Safely](#)

[Fairness 101](#)

[Webinar: Supervisor Responsibilities Under PIDA](#)

### For employees

[Recognizing Wrongdoing Guide](#)

[PIDA FAQs](#)

[Information For Witnesses](#)

[PIDA and Other Complaint Mechanisms Information](#)

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[Chief Executive Responsibilities](#)

[Chief Executive Implementation Timeline](#)

[Guidance for Small Public Bodies](#)

[Sample Section 9 Procedures](#)

[Guide for Directors of Government Bodies](#)

### For designated officers

[Designated Officer Toolkit](#)

The following stand-alone resources are provided as a part of the Toolkit:

#### ***Assessing disclosures and requests for advice***

[Designated Officer Responsibilities](#)

[PIDA and Other Complaint Mechanisms](#)

[Assessing Wrongdoing](#)

[Reprisal Risk Assessment Guide](#)

[Reprisal Risk Assessment Tool](#)

#### ***Investigating disclosures***

[Investigation Plan Checklist](#)

[Interview Planning Checklist](#)

[Sample Information for Investigation Participants](#)

#### ***Writing investigative reports***

[A Word About Reasons](#)

[How to Formulate Findings and Recommendations](#)

[Preliminary Investigation Report Outline](#)

# PIDA: RECOGNIZING WRONGDOING

Employees of eligible public bodies can report concerns about wrongdoing under the *Public Interest Disclosure Act* (PIDA).

Public sector employees have an important role to play in protecting the public interest by reporting their concerns of wrongdoing. This guide will help you understand if you have identified a possible wrongdoing

## What is wrongdoing?

In broad terms, wrongdoing is any unethical act that diverges significantly from generally accepted behaviour. However, only certain types of wrongdoing qualify under PIDA.

To be considered wrongdoing under PIDA, the conduct must have both of these elements

1. Occur “in or relating to” a ministry, office of the legislature, or government body (public sector organization) and,
2. Meet the criteria for at least one type of wrongdoing as outlined in section 7(1) of PIDA (described below)

## What does “in or relating to” mean?

Under PIDA, wrongdoing can take place directly within an eligible public body or related to their function. The wrongdoing must be related to an eligible public sector organization.

To be considered “related to” an eligible public body, there must be a **real and substantial connection between the wrongdoing and that organization**.

An assessment of whether there is a real and substantial connection will depend on the specific context and facts.

## Types of wrongdoing

### A) Offences

**PIDA definition:** 7(1)(a) *a serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada;*

- What it means: A serious action or failure to act that is also a crime or an offence.

### B) Danger to people or the environment

**PIDA definition:** 7(1)(b) *an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of an employee’s duties or functions;*

- What it means: An action or failure to act that is dangerous to a person’s health or safety or to the environment. The danger will be considered substantial if it is serious and likely to result in real harm. The danger will be considered specific if the actual threat can be identified as well as when it is likely to occur.
- Exception: Danger that is a typical part of someone’s job.

### C) Misuse of public funds

**PIDA definition:** 7(1)(c) *a serious misuse of public funds or public assets;*

- What it means: Government money or resources are not being used for their intended purpose, are being wasted, or are used in a way which is not normally expected or required. The misuse must be serious. Serious misuse may include misuse that is recurrent, systemic, deliberate, undertaken by a person at a senior level, or involving a high dollar value.

### D) Mismanagement

**PIDA definition:** 7(1)(d) *gross or systemic mismanagement;*

- What it means: Gross mismanagement means management of a government resource (example: staff, contract, project) that is highly inappropriate, irresponsible, reckless, deliberate, involving a significant resource, etc. Systemic mismanagement means mismanagement that is broad, longstanding, recurrent or inherent to the organization's culture.

### E) Directing wrongdoing

**PIDA definition:** 7(1)(e) *knowingly directing or counselling a person to commit a wrongdoing described in paragraphs (a) to (d).*

- What it means: Telling someone else to do one of the acts or omissions listed above in A,B,C or D. It does not matter whether the individual acts on the instructions.

## Who can report wrongdoing?

You must be a current or former employee of an eligible public body to report wrongdoing. You can report wrongdoing that happened in the

past, current wrongdoing or wrongdoing that may happen in the future. PIDA does not have any time limits. You have the option of making a report anonymously. You can report wrongdoing to you supervisor, your organization's Designated Officer or to the Ombudsperson.

# 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 sector organizations.

Visit our website to view the [organizations covered under PIDA](#).

#### 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.

### 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.

## 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.

### 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](mailto:report@bcombudsperson.ca).

# PIDA INVESTIGATIONS: INFORMATION FOR WITNESSES

The **Public Interest Disclosure Act** (PIDA) is whistleblower protection legislation for current and former employees of eligible public bodies in British Columbia. It provides public sector employees with a clear process for reporting serious wrongdoing relating to a government organization, and mechanisms to investigate and address wrongdoing when found.

PIDA also prohibits reprisal against employees who report concerns of wrongdoing, who seek advice under PIDA or who cooperate with a PIDA investigation. Employees can report wrongdoing within their organization or to the Office of the Ombudsperson.

## The Ombudsperson

The Ombudsperson is an officer of the legislature, independent from the government. The Office of the Ombudsperson conducts investigations privately and confidentially under the authority of the *Ombudsperson Act* and the *Public Interest Disclosure Act*. The Ombudsperson issues a public report each year summarizing the office's work under PIDA.

Under the *Public Interest Disclosure Act* the Ombudsperson is required to

- conduct fair and impartial investigations into reports of wrongdoing and reprisal and make recommendations for corrective measures;
- provide advice to employees who are considering making a report; and
- provide assistance to public bodies with respect to their responsibilities under PIDA.

## Commonly-asked questions

### What does the Ombudsperson investigate under PIDA?

Under PIDA, the Ombudsperson investigates reports of serious wrongdoing from current and former employees of eligible public bodies. The Ombudsperson also investigates reports of reprisal from employees who believe they have been retaliated against for seeking advice, making a report of wrongdoing, or cooperating with an investigation.

### Why have I been asked to attend an interview?

Interviews are an important source of information for our investigations. We have asked you to attend an interview because we believe you could provide relevant information for our investigation.

### Can I bring someone with me to the interview?

Usually, interviews are limited to the witness and investigators. Our investigations and interviews are confidential. To the extent possible, we will not share any of the information you provided to us with others.

In some cases, witnesses would like to attend an interview with another person, such as legal counsel, union representative, friend, family member, or other support person. We consider such requests on a case-by-case basis. If you are participating in an interview by teleconference, you must be alone unless you have requested that someone attend with you.

If you want someone to attend the interview with you, please discuss this with the investigator as early as possible, and at least 5 days in advance of your interview.

### **Do I have to attend the interview?**

Yes. You have been issued a summons, which requires you attend. Section 15 of the *Ombudsperson Act* allows the Ombudsperson to require a person to provide information. The Ombudsperson may summons a person to attend for questioning under oath, in the same manner as a court of law [sections 15(b) and (d)].

We will do our best to schedule your interview so that it is least disruptive to your regular routine as possible. We will make every reasonable effort to confirm a date and time for the interview that is convenient for you.

### **Where will the interview be held?**

Interviews will be held in a mutually agreed upon location, by video call or by teleconference, depending on what is appropriate for the circumstances.

If you are located in Victoria, interviews may be held at our office at 947 Fort Street. Our office is fully wheelchair accessible and is close to many bus routes. Convenient parking is available on Fort Street or in a private lot across from our office, accessible from View Street.

### **What can I expect at the interview?**

Interviews are typically conducted by two experienced investigators. The investigators will provide you with some introductory information, and will discuss the need for confidentiality with you as well as PIDA's reprisal protections. You will have an opportunity to ask questions about the process.

We will try to provide you with enough context and information so that you can answer our questions. You should answer questions as clearly and with as much detail as possible. Please ask us if you need time to think over your response, whether on-the-spot or through a short break. If we ask you about events that happened a long time ago, you are welcome to refer to your own documents or other records during your interview to refresh your memory.

If you don't know the answer to a question, please do not speculate. It is okay if you don't know the answer or need to rely on other information or documents. We will do our best to provide you with what you need.

If you require any special accommodations for your interview, please let us know in advance so that they can be arranged. If you need to take a break during the interview, or would like to consult legal counsel, please let the investigators know.

### **Do I have to answer all of the questions?**

Yes. You must answer questions truthfully and as completely as possible. Obstructing an Ombudsperson investigation, willingly making a false statement, or misleading Ombudsperson staff are considered offences under PIDA.

### **Will I be under oath?**

Yes. You will be interviewed under oath. Prior to the interview, we will confirm with you whether you would like to make a solemn affirmation or swear an oath on a religious text. If you intend to swear an oath, please let the investigator know which religious text you intend to use.

Interviews by teleconference are also conducted under oath. If you will be swearing an oath on a religious text, please have the religious text of your choice available for the interview.

### **How do I prepare for an interview by video call or teleconference?**

If you are scheduled to participate in an interview by video call or teleconference, try to find a private, quiet setting where you can talk. You should be alone for the interview, unless you have requested that someone be with you. Please ensure that nobody can overhear your conversation. If you have difficulty finding an appropriate space, let us know.



### Will the interview be recorded?

Yes. We will record the interview to ensure we have an accurate record of what you and we have said. We will store this recording confidentially in accordance with the *Ombudsperson Act* and PIDA. To maintain confidentiality and preserve the integrity of the investigation, we will not provide you with a copy of the recording at the conclusion of the interview. However, you may take notes during the interview to assist you in providing a full and complete response to our questions.

### Will the information I provide be shared with anyone else?

All Ombudsperson investigations are conducted privately. PIDA has its own confidentiality provisions and it also incorporates those of the *Ombudsperson Act*. Section 9(6) of the *Ombudsperson Act* states:

An investigation under this Act must be conducted in private unless the Ombudsperson considers that there are special circumstances in which public knowledge is essential in order to further the investigation.

We maintain all information provided to our office in confidence in accordance with section 9 of the *Ombudsperson Act* and section 6 of PIDA. In general, we may only disclose investigative information outside our office if it is necessary

- to further an investigation;
- in relation to an offence under the *Ombudsperson Act* or under PIDA; or
- to establish grounds for conclusions and recommendations made in a report.

All records that our office obtains during an investigation are exempt from the *Freedom of Information and Protection of Privacy Act*, and therefore cannot be obtained by anyone through an access to information request or by any other means.

### I am concerned that I may face retaliation for providing information to the Ombudsperson. How am I protected?

PIDA prohibits acts of retaliation (also called reprisal) taken against people who seek advice, make disclosures or participate in PIDA investigations. Reprisal includes disciplinary measures, termination or demotion, change in work location or hours, suspension, or any measure that adversely affects the employee's employment or working conditions, including actions of colleagues [PIDA section 31]. PIDA also protects against threats of reprisal and directing/counselling others to commit reprisal.

PIDA also prohibits reprisal against a contractor's current or potential contract with a public body [PIDA section 32].

A person who contravenes section 31 or 32 is guilty of an offence under PIDA and is liable, on conviction, of a fine up to a maximum of \$100,000.

Do not take any adverse measures against anyone you think may be the discloser or anyone who participates in our investigation.

If you believe that you have faced reprisal as a result of your cooperation in our investigation, please let us know immediately. Only the Ombudsperson has the authority to investigate reprisal complaints under PIDA. Your employer cannot investigate an allegation of reprisal under PIDA.

### Why do I have to provide records?

Records are important because they can contain details that may be overlooked in an interview. Records also help us verify information provided in an interview. If we believe you may have relevant records, we will ask you to provide them to us in advance so that we can review them before your interview. We may also require you to produce additional documents during or after your interview.

### **Will I have access to government records or records from other witnesses to prepare for my interview?**

We share records with witnesses if they are necessary to understand and answer our questions. We will determine this on a case-by-case basis, in accordance with the confidentiality requirements of the *Ombudsperson Act* and PIDA.

We will try to provide you with access to such records in advance of the interview to allow you to prepare. Any documents that we provide you will be subject to terms and conditions designed to maintain the confidentiality of those documents, preserve the integrity of the investigation and ensure that the documents are only used for the purpose of your participation in this investigation.

### **I am a former public sector employee. Can you provide me with access to all my government email or records?**

As indicated above, we will determine on a case-by-case basis what records to share with witnesses to further the investigation. We do not act as a conduit for documents between public bodies and another party. If there are records that you believe will assist you to answer our questions, please let us know.

### **Can I disclose information that is confidential or privileged?**

Every person required to give evidence during an investigation by the Ombudsperson must do so despite any *Public Service Act* oath, or other statutory prohibition on disclosing confidential information [PIDA section 3 and *Ombudsperson Act* section 19].

The only exception to the disclosure requirement is privileged information – information that a person could refuse to disclose in court on the ground of “privilege” [*Ombudsperson Act* section 20]. If you have received legal advice, this is considered “solicitor-client privilege” and you are not obliged to share this information.

If we intend to ask you to disclose any government legal advice you received in your public service capacity, we will first obtain permission to acquire that information through the Ministry of the Attorney General. We will inform you prior to the interview if permission to disclose specific privileged information has been granted. You will then have the chance to contact the Ministry of Attorney General for more information before answering the questions.

### **Is funding available for legal support?**

No. PIDA does not provide for funding for legal support, and the Ombudsperson does not reimburse legal fees paid by witnesses.

If you believe you will incur other expenses in order to attend an interview or to comply with a request for documents, please let us know.

### **Procedural fairness**

PIDA investigations are intended to be conducted in a procedurally fair way and according to the principles of natural justice.

If you are accused of wrongdoing, you will

- know the allegations against you, even if you don't know who made them;
- have the opportunity to respond to the allegations by telling your side of the story and providing evidence; and
- know the outcome of the investigation and reasons for any decisions that impact you.

### **What happens after the interview?**

You will be reminded to not discuss the interview with anyone else, including other witnesses or potential witnesses. This is to protect the integrity of the investigation.

If we require any additional information after the interview has concluded, we will contact you. We may ask you to attend another interview to answer further questions. We may also require you to provide additional records.



Under PIDA, the Ombudsperson is required to report the results of the investigation to the Chief Executive of the public body in question. Before our report is finalized, we will – in accordance with section 17 of the *Ombudsperson Act* – notify anyone who the Ombudsperson determines may be adversely affected by the report or any recommendations made in the report, and give them an opportunity to make representations to our office. If the Ombudsperson determines that such representations or evidence should be made by the witness in person, the witness will be entitled to have legal counsel accompany them.

The Ombudsperson may report publicly about an investigation when the Ombudsperson deems it in the public interest. The Ombudsperson will make this determination on a case-by-case basis. Public reports cannot reveal the identity of the person who reported wrongdoing, the alleged wrongdoer of the investigation or unreasonably invade a person's privacy. Investigative findings are made public by delivering a report to the Legislative Assembly.

### Useful Resources

- [BC Ombudsperson website](#)
- [Public Interest Disclosure Act](#)
- [Ombudsperson Act](#)

# PIDA AND OTHER COMPLAINT MECHANISMS

What can an employee do if they are concerned about a problem in their workplace?

PIDA is one of many complaint processes available to public service employees, and does not replace other mechanisms. **It is an additional, optional pathway for reporting serious wrongdoing that is in the public interest.** It is not meant as a complaint mechanism for personal employment disputes or public policy grievances.

**Employees have several pathways to report concerns in their workplace. Some common pathways include:**

- Health and safety concerns → WorkSafe BC
- Disputes about workplace conditions → human resources, union or employee association representatives
- Program operation concerns → Program Managers, Directors
- Offences → law enforcement

**What makes PIDA unique from other complaint processes?**

- Under PIDA, employees always have a choice as to where they disclose wrongdoing. They can make a disclosure internally to their supervisor or DO, or externally to the Ombudsperson.
- Unlike some other complaint mechanisms, PIDA legally protects employees from reprisal and includes strong confidentiality provisions.
- PIDA allows for anonymous disclosures.

- PIDA is only available to employees or former employees of eligible public bodies. It is not available to contractors, volunteers or members of the public.
- PIDA investigations result in findings and recommendations. Recommendations may address individual circumstances or issues with policy, practice or systems.

**How does PIDA relate to other complaint processes?**

- Making a disclosure under PIDA does not replace mandatory reporting obligations under other legislation or policy, unless the legislation or policy explicitly says so. Examples of a reporting obligation include a person's duty to report child abuse under section 14 of the *Child, Family and Community Service Act*, or a public service employee's duty to report mispending under section 33.2 of the *Financial Administration Act*.
- PIDA is a stand-alone process. Employees do not need to exhaust any other another complaint mechanism before making a disclosure of wrongdoing under PIDA.
- PIDA is not an appeal mechanism. But, if an employee has raised their concerns elsewhere, they can still make a disclosure under PIDA.
- The DO may decline to investigate if, after assessing a disclosure, they conclude that the alleged wrongdoing has already been (or is being) appropriately investigated or otherwise dealt with.
- PIDA investigations are not intended to compromise other investigations. The Ombudsperson or a DO may postpone or suspend their own PIDA investigation if they

believe it may compromise another investigation process or if the alleged wrongdoing is also being investigated for the prosecution of an offence.

- The Ombudsperson or DO may also require that another investigation by a public body (other than a PIDA investigation) be suspended or postponed if there is *prima facie* evidence that the investigation was undertaken with the intention of compromising an investigation under PIDA.

If the Ombudsperson or DO believes that a disclosure could be more appropriately investigated through another mechanism, they may refer it to another organization. The potential for this referral should be discussed with the discloser first. If the discloser has concerns about the referral, the basis for the concern should be considered when making the decision. The final referral decision rests with the Ombudsperson or the DO. If the disclosure, in whole or in part, has been referred, the discloser must be informed.

### **What is the role of a DO in helping employees decide whether to make a disclosure?**

- To help employees understand the pathways available to them for dealing with their concerns, including information about what PIDA is and how to access it.
- To avoid encouraging or discouraging employees from making a disclosure. To protect employees from reprisal for making a disclosure even if:
  - the employee is mistaken about the allegation,
  - the allegation is assessed not to be wrongdoing, and/or
  - the DO determines investigation is not warranted.

# PIDA: INFORMATION FOR EMPLOYEES OF SMALL PUBLIC ORGANIZATIONS

## Responsibilities of public sector organizations

The *Public Interest Disclosure Act* (PIDA) is whistleblower protection legislation for current and former employees of eligible public sector organizations in BC<sup>1</sup>. PIDA requires that every Chief Executive of a public sector organization covered by PIDA:

1. designate at least one senior official as a designated officer to respond to requests for advice and receive and investigate disclosures; and
2. establish procedures for managing disclosures of wrongdoing from their employees.

## Exemptions for small public sector organizations

PIDA provides that the two requirements listed above do not apply to small organizations where the organization, in consultation with the BC Ombudsperson, determines it is not practical to apply these requirements. Small organizations include those with few employees or insufficient resources to appropriately manage disclosures of wrongdoing.

While small organizations may be “exempt” from the two requirements, these organizations must still be prepared to manage requests for advice and disclosures, and must inform their employees of their process for doing so.

## PIDA processes in exempt public sector organizations

Small organizations may be exempt from one or both of the two requirements listed above.

<sup>1</sup> See the Ombudsperson website for the list of [organizations covered under PIDA](#)

If a small organization has not appointed a designated officer, the Chief Executive automatically becomes responsible for the requirements associated with this position. In this situation, employees who wish to make a disclosure within their organization can take their allegations to their supervisor – who will pass it to the Chief Executive – or the employee can go directly to the Chief Executive. The disclosure should be managed according to the organization’s PIDA procedures.

In an organization where it has been determined impractical to have PIDA procedures, employees can still choose to take their disclosure to their supervisor, the designated officer, or the Chief Executive. However, we suggest to those organizations without procedures that they contact the Ombudsperson immediately upon receipt of disclosures before beginning any assessment. Further, that organization’s management of PIDA investigations must be completed in consultation with, or referred to, the BC Ombudsperson.

Regardless of whether an organization has received an exemption, employees are always able to contact the Ombudsperson to request advice or make a disclosure under PIDA. Employees with concerns about their organization’s handling of a request for advice or a disclosure, can also contact the Ombudsperson with their concerns.

## Contacting the Ombudsperson

Employees and officials who have questions about PIDA, the role of our office, or who need more information about how to make a disclosure, can speak to a member of our public interest disclosure team directly by calling our office at 1-800-567-3247, or contacting us via email at [report@bcombudsperson.ca](mailto:report@bcombudsperson.ca).

# PIDA: SUPERVISOR RESPONSIBILITIES

Supervisors in eligible public bodies have new responsibilities under the *Public Interest Disclosure Act* (PIDA). Under PIDA, your employees can come to you to report wrongdoing (also called making a disclosure) or request advice. These activities are protected under PIDA. It is an offence to commit reprisal against an employee who reports wrongdoing, makes a reprisal complaint, participates in a PIDA investigation or seeks advice under PIDA.

The guidelines below outline what to do when an employee seeks assistance from you under PIDA. Your organization may have issued its own guidelines. Seek support about your role from the Designated Officer in your organization.

## Handling PIDA interactions

- Keep the identity of employees who come to you under PIDA confidential.
- Only share the identity of employees who report wrongdoing with your Designated Officer when providing them with the disclosure. Do not share this information with anyone else.
- Hold conversations about PIDA matters in a private area.
- Provide employees with information about the different avenues for reporting wrongdoing.
- Keep files related to PIDA in a secure place.
- Provide employees with information about how to make a reprisal complaint to the Ombudsperson.

- Remind employees about the protections under PIDA. If they make a disclosure, their identity is protected to the extent possible and they can file a complaint with the Ombudsperson if they experience reprisal.
- Assure the employee that their concerns will be taken seriously but do not promise that they will be investigated. Disclosures are assessed against PIDA's criteria to determine whether they will be investigated.
- Do not give your opinion about whether or not an employee's allegations are eligible for investigation under PIDA, but do provide the employee with information about how wrongdoing is defined.
- If you are unsure about what to do, contact your Designated Officer or the Ombudsperson.

## Procedures for managing reports of wrongdoing from employees

- Immediately after receiving a report of wrongdoing from an employee, provide it to the Designated Officer.
- Even if a report is incomplete, provide it to the Designated Officer. The Designated Officer can contact the employee for more information.
- PIDA allows for anonymous disclosures. Even if you are unsure whether an anonymous report is from an employee, provide it to the Designated Officer.

**Important:** Submit the disclosure to the Designated Officer regardless of whether you think it qualifies as wrongdoing.

## Responding to requests for advice

- Document requests for advice from employees and maintain a record of your response. Keep these records separate from all employee personnel files.
- Keep the identity of an employee who requests advice confidential, including from the Designated Officer.
- Employees may seek advice anonymously.

If employees are considering making a disclosure to the media, advise them to familiarize themselves with PIDA's requirements for urgent public disclosures. Employees who go to the media without following appropriate protocols may not be protected by PIDA.

- Where relevant, provide information about what constitutes wrongdoing but do not provide the employee with an analysis about whether or not their allegations may be eligible for investigation under PIDA.
- When responding to requests for advice about reprisal complaints, remember only the Ombudsperson can investigate these. Your organization is not able to respond to PIDA reprisal complaints.

## Confidentiality

PIDA contains protections for the identity of employees who report wrongdoing or seek advice under PIDA. Supervisors should:

- Keep the identity of the employee confidential to the extent possible. Take steps to ensure that you do not inadvertently enable the identification of an employee who reported wrongdoing or sought advice.
- The identity of the discloser or person seeking advice can generally only be shared with the employee's express written consent, or for the purposes of the Act or another lawful purpose.

Supervisors may share the identity of an employee who has made a disclosure with the Designated Officer for the purposes of the Act. However, supervisors generally must not share the identity of employees who ask for advice.

- If you are unsure about whether you can share information that you received from an employee under PIDA, contact your Designated Officer for guidance.



# PIDA: INFORMATION FOR SUPERVISORS – CONFIDENTIALITY

PIDA has strict confidentiality requirements. As a supervisor, you will have access to sensitive information when employees come to you for advice or to report wrongdoing. This information can only be shared in accordance with section 6 of PIDA.

The tips below are to assist you in determining what information to keep confidential. Your organization may issue its own tips. Seek support about your role from the Designated Officer in your organization.

## Why the secrecy?

### Confidentiality is important because it:

- Protects the employee from reprisal
- Protects the privacy of the alleged wrongdoer during the investigation
- Encourages employees to speak up about wrongdoing by creating a safe environment

## When can I share PIDA

If an employee reports wrongdoing to you, you must take that information to your Designated Officer.

## Tips

- If an employee comes to you for advice, do not share their identity. Only tell the Designated Officer their identity if the employee chooses to report wrongdoing.
- If you need help responding to a request for advice, you can ask your Designated Officer while keeping the employee's identity confidential.

- Typical information-sharing practices do not apply to PIDA. Do not share the identity of employees who have reported wrongdoing under PIDA with anyone other than the Designated Officer, not even human resources or your manager.
- Hold conversations related to PIDA in private. Other people should not overhear requests for advice or reports of wrongdoing.
- Keep notes, files, emails and electronic documents secure. Be careful not to leave any confidential information in a shared location.

## Are there any exceptions to my obligations of confidentiality?

Under PIDA, you can share personal information that is included in a report of wrongdoing for the purposes of the Act. That means you can share the information contained in the disclosure with the Designated Officer, but not anyone else.

You can only share information that could reveal the identity of an employee who seeks advice or reports wrongdoing in the following circumstances:

- If the employee has given you permission in writing;
- For the purposes of PIDA;
- For another lawful purpose, such as to prevent serious risk of harm; or
- The personal information has previously been lawfully published.

### More information

Contact your Designated Officer for more information about your responsibilities under PIDA.



# PIDA: CHECKLIST FOR CHIEF EXECUTIVES

As a Chief Executive of an eligible public body, the *Public Interest Disclosure Act* requires you to take key steps.

## Appoint a Designated Officer

- ☐ The Chief Executive must appoint at least one senior official to be a Designated Officer.
- ☐ Designated Officers are responsible for responding to requests for advice, receiving disclosures and investigating disclosures of wrongdoing.
- ☐ The Chief Executive may appoint a different person for each task.

## Establish and Maintain Internal PIDA Procedures

Procedures should cover how to:

- ☐ Receive and review disclosures, and set time periods for action to be taken
- ☐ Respond to requests for advice about reporting wrongdoing or making a reprisal complaint
- ☐ Assess the risk of reprisal against disclosers
- ☐ Ensure the confidentiality of information received and collected
- ☐ Protect the identity of employees who report wrongdoing or seek advice
- ☐ Appropriately collect and protect personal information
- ☐ Refer the disclosure
- ☐ Investigate other wrongdoings that may be uncovered

- ☐ Provide appropriate parties with notice of decisions and summary reports of investigations
- ☐ Report the outcomes of investigations, including any findings of wrongdoing, the reasons supporting the findings and relevant recommendations

## Small public bodies

- ☐ Consult with the Ombudsperson to determine whether developing internal procedures would be impractical based on the size of the organization.
- ☐ If, following consultation with the Ombudsperson, the organization elects not to establish PIDA procedures, the Chief Executive will by default be the Designated Officer and must conduct investigations in consultation with the Ombudsperson

## Educate Employees

Employees must have information about PIDA and how to make a disclosure of wrongdoing. Ensure employees receive training and resources that cover

- ☐ Basic information about PIDA and what wrongdoing is
- ☐ PIDA's protections: confidentiality and prohibitions on reprisal
- ☐ How to make a disclosure or get advice
- ☐ What they can expect from an investigation as a discloser or a witness
- ☐ How to make a reprisal complaint to the Ombudsperson

## Train Supervisors and Designated Officers

Supervisors and Designated Officers must understand their responsibilities when responding to requests for advice from employees and receiving disclosures of wrongdoing.

Ensure they receive training and resources that cover:

- ☐ Confidentiality: PIDA has strict confidentiality provisions and the identity of the person seeking advice or making a disclosure is protected.
- ☐ Security: PIDA files and communications should be kept in a safe place.
- ☐ Documentation: Interactions with disclosers and employees seeking advice should be documented.
- ☐ PIDA processes: Supervisors and Designated Officers must understand how to provide advice to employees, manage disclosures and protect disclosers from reprisal.

Ensure **Designated Officers** receive training and resources that cover:

- ☐ Procedural fairness in investigations: Investigations should be fair, thorough, timely and impartial.
- ☐ Assessment of reprisal risk: The risk of reprisal should be thoroughly assessed and appropriate mitigation strategies applied.

## Publish Annual Report

Chief Executives are required to publish annual reports on their activities under PIDA. The reports must include:

- ☐ The number of investigations started, the number of disclosures made about the organization internally and the number of disclosures received by the Ombudsperson about the organization to the extent known. In cases where wrongdoing was found, include a description of the wrongdoing, any recommendations made, any corrective action taken or reasons why no action was taken.
- ☐ Reports cannot include the identity of the discloser, alleged wrongdoer or any information that unreasonably invades someone's privacy.

## Encourage Employees to Speak Up

- ☐ Cultivate a culture where employees feel that it is safe to speak up by:
  - emphasizing how seriously the organization takes disclosures of wrongdoing, and
  - setting the tone that reprisal will not be tolerated in the organization
- ☐ Emphasize that employees have a choice about where to report wrongdoing, either internally or to the Ombudsperson, whichever they prefer.

# PIDA INVESTIGATIONS: INFORMATION FOR CHIEF EXECUTIVES

## The Ombudsperson's role under PIDA

The Office of the Ombudsperson is an independent office of the legislature mandated under the *Public Interest Disclosure Act* (PIDA) to investigate allegations of wrongdoing from public sector employees. Public sector employees have the choice of reporting wrongdoing to the Ombudsperson or to their supervisor or the Designated Officer within their organization.

Employees can also make a complaint to the Ombudsperson if they have been reprimanded against for reporting wrongdoing, seeking advice or co-operating with an investigation. The Ombudsperson is the only avenue for receiving and investigating complaints of reprisal under PIDA.

The Ombudsperson conducts fair and impartial investigations and makes effective recommendations for corrective measures when necessary.

## The Chief Executive's role during a PIDA investigation by the Ombudsperson

You will be notified if the Ombudsperson starts an investigation in relation to the public body for which you are the Chief Executive. You are responsible for adhering to PIDA's confidentiality and reprisal protection provisions during the course of our investigation.

In addition, you are required to comply with the Ombudsperson's requests and allow our office to complete a thorough investigation. The Ombudsperson has the authority to gather information and speak to witnesses under section 15 of the *Ombudsperson Act*.

Remember that PIDA has very specific requirements and protocols. Your usual organizational procedures may not be appropriate during a PIDA investigation, for example, if they are inconsistent with PIDA.

## What to expect from a PIDA investigation by the Ombudsperson

A PIDA investigation by the Ombudsperson will typically follow these steps

- 1. Notice of the investigation is provided.** If the Ombudsperson decides to investigate an alleged wrongdoing or reprisal, the Ombudsperson will notify the Chief Executive of the decision to investigate and the focus of investigation. The identity of the discloser will not be provided.
- 2. Ombudsperson investigators conduct the investigation.** Investigators will request documents and other evidence about the alleged wrongdoing or reprisal. They may also interview the discloser, respondents and witnesses. Supervisors may need to provide employees with time during work hours and access to files so they can fully participate in the investigation.
- 3. Ombudsperson investigators analyze the evidence.** Investigators will review the information obtained during the investigation and engage external expertise if necessary.
- 4. The Ombudsperson concludes the investigation, reports on any findings and makes recommendations.** The Ombudsperson will determine whether there are findings of wrongdoing or reprisal. The Ombudsperson can make recommendations regardless of whether wrongdoing is found. A summary report is provided to the discloser and any respondents. A full report is given to the Chief Executive. The Ombudsperson may issue a public report and/or comment publicly if it is in the public interest. The identity of the discloser and any alleged wrongdoer, regardless of whether wrongdoing is found, is not included in public reports.

**“Dos and Don’ts” for Chief Executives**

DO	DON'T
<b>Facilitating the Ombudsperson’s investigation</b>	
Do accommodate the requests of Ombudsperson investigators	Don’t create barriers for Ombudsperson investigators
Do allow employees to attend interviews and assemble evidence during work time	Don’t penalize employees for participating in an investigation
Do address any urgent matters related to the allegations as lawfully required	Don’t start an investigation that will interfere with the Ombudsperson’s work
<b>Maintaining confidentiality during an Ombudsperson investigation</b>	
Do only share information as allowed by PIDA	Don’t share information according to your typical organizational practices (for example, consulting with senior leadership or talking about it with your colleagues)
Do keep the identity of the discloser confidential if you know or suspect it	Don’t share the identity of the suspected discloser with anyone else in your organization, including other senior leadership
Do respect PIDA’s provisions regardless of the anticipated outcome of the investigation	Don’t disregard PIDA’s reprisal and confidentiality provisions because you do not believe the allegations are founded
<b>Reprisal protections</b>	
Do cultivate a culture where employees are encouraged to raise concerns	Don’t facilitate an organizational culture where employees are discouraged from speaking up
Do be aware that reprisal can occur from peers as well as superiors	Don’t assume only managers could commit reprisal
Do ensure all staff members are aware of PIDA’s reprisal and confidentiality protections	Don’t neglect to educate staff about reprisal and confidentiality
Do continue to provide performance-based feedback to your employees per your normal practise	Don’t treat anyone differently because of their involvement in a PIDA investigation

**Useful resources**[\*Public Interest Disclosure Act\*](#)[Ombudsperson Designated Officer Responsibility Fact sheet](#)[BC Ombudsperson website](#)[Tips on Confidentiality](#)

# PIDA IMPLEMENTATION: TIMELINE FOR CHIEF EXECUTIVES

The tasks below outline recommended preparations and ongoing activities for public bodies in British Columbia who will be covered by the *Public Interest Disclosure Act* (PIDA). Items that are required by the Act include a footnote with the relevant section. Timelines and implementation activities are intended as general guidance and may vary by organization. Public bodies can contact the Office of the Ombudsperson for further information.

## 1 YEAR

### Before implementation

- ☐ Learn about the *Public Interest Disclosure Act* and encourage your senior leadership to do so as well.
- ☐ Review existing internal policies on how employees can raise concerns about wrongdoing and identify any areas that will need to be updated with the implementation of PIDA.
- ☐ Identify who will be responsible in your organization for overseeing the implementation of PIDA and any other key players who might be involved.
- ☐ Start creating or improve your organization's "speak up" culture by:
  - letting employees know that they are welcome to share their concerns and will not be penalized for doing so
  - letting supervisors, managers and executives know that they are expected to welcome and listen to concerns of their staff

## 6 MONTHS

### Before implementation

- ☐ Select one or more senior officials to be a Designated Officer for your organization.<sup>1</sup> Some organizations designate ethics advisors, risk control managers, human resource directors, deputies or vice presidents to be Designated Officers under PIDA. Designated Officers have various responsibilities including providing advice, receiving disclosures and investigating disclosures of wrongdoing.<sup>2</sup>
- ☐ Draft procedures for your organization that contain all of the requirements listed in section 9 of PIDA and amend any existing policies or practices as necessary.<sup>3</sup> For example, your procedures must include guidance on how to:
  - assess the risk of reprisal to disclosers
  - receive and review disclosures
  - ensure confidentiality
  - protect the identity of employees who seek advice or make a disclosure

<sup>1</sup> PIDA s.10(1)

<sup>2</sup> PIDA s.10(4)

<sup>3</sup> PIDA s.9

- refer a disclosure to another authority for investigation
- investigate disclosures
- report outcomes of investigations
- report outcomes to the discloser and other appropriate persons
- ☐ The Ombudsperson can provide sample PIDA procedures for your organization, which you may choose to adopt as is or adapt to your organization's particular needs.

### For small organizations

- ☐ Consult with the Ombudsperson if you believe that appointing a Designated Officer or establishing your own procedures would be impractical due to the size of your organization.<sup>4</sup>
- ☐ If, following consultation with the Ombudsperson, your organization elects not to designate a senior official as a Designated Officer, the Chief Executive will be considered the Designated Officer by default.<sup>5</sup>
- ☐ Designated Officers of organizations without PIDA procedures must consult with the Ombudsperson in the investigation of disclosures.<sup>6</sup>

3 MONTHS

### Before implementation

- ☐ Finalize your PIDA procedures.
- ☐ Address any practical matters related to PIDA, for example, ensuring your electronic file storage is secure, there are confidential spaces available for PIDA conversations, and disclosure forms are available.
- ☐ Establish a system to keep track of PIDA activities for your annual reports.
- ☐ Ensure that supervisors and Designated Officers receive training and resources on their upcoming responsibilities under PIDA. The Ombudsperson has an eLearning course, educational webinars and tip sheets on PIDA that you are encouraged to use.
- ☐ Update your onboarding materials and welcome orientations to include information about PIDA.

<sup>4</sup> PIDA s.10(2)

<sup>5</sup> PIDA s.10(3)

<sup>6</sup> PIDA s.19(2)b



### 2 MONTHS

#### Before implementation

- ☐ Educate your employees about PIDA. To the extent possible, educate former employees as well. This includes providing basic information about:
  - what is considered wrongdoing under the Act
  - how to ask for advice
  - how to make a disclosure
  - what to expect from a PIDA investigation
  - how to make a reprisal complaint to the Ombudsperson
  - reprisal and confidentiality protections
- ☐ Provide employees with access to the Ombudsperson's online course, Speaking up Safely, which was developed to help employees and former employees understand PIDA and how it applies to them.
- ☐ Ensure employees know who their Designated Officers are and how to access your organization's PIDA procedures. You may wish to post PIDA resources on your intranet, have posters in common areas and/or distribute hand-outs to your staff.

### AFTER

#### Implementation/ongoing activities

- ☐ Prepare annual reports on your organization's PIDA activities and publish them on your website. If your organization does not have a website, contact the Ombudsperson and they will post your annual report on [www.bcombudsperson.ca](http://www.bcombudsperson.ca).<sup>7</sup> These annual reports must include:<sup>8</sup>
  - the number of investigations started
  - the number of disclosures made about the organization internally and the number of disclosures received by the Ombudsperson about the organization, to the extent known
  - in cases where wrongdoing was found, a description of the wrongdoing, any recommendations made, and any corrective action taken or reasons why no action was taken

Note: Annual reports cannot include the identity of the discloser, alleged wrongdoer or any information that unreasonably invades someone's privacy.<sup>9</sup>

<sup>7</sup> PIDA s.38,39

<sup>8</sup> PIDA s.38(2)

<sup>9</sup> PIDA s.38(4)



### 1 YEAR

#### After implementation

- ☐ Review your organization's section 9 procedures and make any necessary changes. Arrange for ongoing training for your supervisors and Designated Officers.
- ☐ Continue to educate employees about PIDA.
- ☐ Ensure files are stored securely, particularly in times of staff turnover.
- ☐ Continue to cultivate a culture where speaking up is encouraged by emphasizing how seriously the organization takes disclosures of wrongdoing and setting the tone that reprisal will not be tolerated.

### RESOURCES

- [BC Laws: \*Public Interest Disclosure Act\*](#)
- Ombudsperson free [virtual courses for employees and supervisors](#)
- [Ombudsperson Fact Sheets](#)
- Sample section 9 procedures (email requests to [report@bcombudsperson.ca](mailto:report@bcombudsperson.ca))
- [Ombudsperson website](#)

# PIDA IMPLEMENTATION: INFORMATION FOR SMALL PUBLIC BODIES

## Background

- *The Public Interest Disclosure Act* (PIDA) requires that every Chief Executive of a public body
  - establish procedures under section 9 for managing disclosures from their employees
  - designate at least one senior official as a designated officer (DO) to receive and investigate disclosures.
- Section 9 procedures must include provisions for assessing reprisal risk for disclosers; receiving and reviewing disclosures; confidentiality; collection and protection of personal information; and reporting out on disclosures received and investigations completed.
- PIDA provides that the above requirements do not apply to small organizations, where the organization, in consultation with the Ombudsperson under section 10(2), determines it is not practical to apply these requirements.

## Comparison between section 10(2) exempt public bodies and non-exempt public bodies

	REGULAR PUBLIC BODIES	SECTION 10(2) EXEMPT
Section 9 procedures required?	Yes	No
Must designate at least one designated officer?	Yes	If no designation, Chief Executive is the DO by default
Authorized to receive disclosures?	Yes	Yes
Authorized to provide advice to employees?	Yes	Yes
Authorized to investigate disclosures?	Yes, in accordance with their s.9 procedures	Yes, in consultation with the Ombudsperson

## Who should seek an exemption under section 10(2)

- Any Chief Executive of a public body who believes that it is not practical due to the size of the organization to designate a DO or establish procedures under section 9 of PIDA
- Considerations about size may include the number of employees, budget or capacity of the organization
- NOTE: the Ombudsperson has developed sample section 9 procedures that organizations may wish to adapt or adopt rather than seeking exemption

## How to seek an exemption under section 10(2)

- Contact the Director of Public Interest Disclosure with a request or any questions at 1-800-567-3247 or [report@bcombudsperson.ca](mailto:report@bcombudsperson.ca)



OMBUDSPERSON  
BRITISH COLUMBIA

# SAMPLE SECTION 9 PROCEDURES

For *Public Interest Disclosure Act*  
Investigations



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## INTRODUCTION

### Purpose

Every Chief Executive of a government body is required to develop procedures for managing disclosures under the *Public Interest Disclosure Act* (PIDA).

The following procedures are established to fulfill the **[insert Chief Executive]** responsibilities under section 9 of PIDA. These procedures reflect the guiding principle in PIDA that

disclosures must be managed in an expeditious, fair and proportionate manner.

Note: the Ombudsperson has distinct PIDA procedures. Employees making requests for advice or reports or wrongdoing to the Ombudsperson can contact them for more information.

### Scope

These procedures apply to disclosures received under PIDA from employees and former employees of **[insert government body]** and to

referred disclosures from the Ombudsperson or a Designated Officer.

### Accessibility Statement

In consideration of

- The *Canadian Charter of Human Rights*;
- The *Canadian Human Rights Act*;
- The *Employment Equity Act*; and
- The *Accessible Canada Act*.

The **[insert government body]** believes that fairness must be available to everyone by supporting the creation of accessible policies, procedures and tools. We are committed to increasing the accessibility of our Public Interest Disclosure policies, procedures and tools to all our employees and former employees regardless of their education, literacy, disabilities, ethnic origin and race, family status, gender, sexual orientation, and socio-economic status.

Our policies and procedures take a Gender Based Analysis (GBA+) lens to

- Ensure accessibility to all our employees;
- Keep abreast of the legal aspects of accessibility to the best of our ability;
- Level power-relations that ensure fair investigations and outcomes; and
- Ensure accessibility is a continuous improvement process.



## Definitions

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“**Act**” or “**PIDA**” means the *Public Interest Disclosure Act*

“**Chief Executive**” means the [insert officer]

“**Designated Officer**” means the [insert senior official]

“**Discloser**” means an employee or former employee of the [insert government body] who makes a disclosure of wrongdoing or seeks advice about making a disclosure under the Act

“**Disclosure**” means a disclosure made by a discloser in accordance with the Act

“**Employee**” means an employee of the [insert government body] and includes former employees

“**Public Body**” means a ministry, office or government body as defined in the Act

“**Reprisal**” means reprisal as defined in section 31(1) of the Act

“**Respondent**” means a person alleged or found to have committed wrongdoing

“**Wrongdoing**” means wrongdoing as defined in section 7(1) of the Act

## A. DISCLOSURE PROCEDURES

### Designated Officer

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1. The [insert Chief Executive] designates [insert senior official(s)] for receiving requests of advice, receiving disclosures and investigating disclosures under PIDA (or designates [insert senior official] for receiving requests of advice, [insert senior official] for receiving disclosures and [insert senior official] for investigating disclosures, in the case of multiple Designated Officers with different roles.)
2. A Designated Officer may delegate their authority to staff or a contractor to assess and investigate disclosures at their discretion and as required in the circumstances.

### Requests for Advice

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3. An employee who is considering making a disclosure under PIDA may seek advice about doing so from:
  - a. their union representative or employee association representative;
  - a. a lawyer;
  - b. their supervisor;
  - c. a Designated Officer; or
  - d. the Ombudsperson.
4. The supervisor or Designated Officer may require the employee to make the request for advice in writing.<sup>1</sup>
5. Supervisors and Designated Officers will document all requests for advice received under PIDA, and maintain a written record of the advice provided.

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<sup>1</sup> PIDA, s. 11

6. Supervisors and Designated Officers are to clarify that a request for advice is being made under PIDA in cases where there is ambiguity.
7. Employees may wish to specify that they are requesting advice under PIDA.
8. Employees who seek advice from the people set out above are protected from reprisal under PIDA. No person can adversely affect a person's employment or working conditions because the employee sought advice about making a disclosure.
9. This protection applies whether or not the employee decides to make a disclosure.

## Making a Disclosure

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10. Employees can report allegations of wrongdoing under PIDA by making a disclosure to their supervisor, Designated Officer or the Ombudsperson. Allegations made to other persons are not covered by PIDA. In limited circumstances, employees may make public disclosures: see paragraphs 23-28.
11. Employees can make disclosures of wrongdoing as defined in section 7(1) of PIDA:

This Act applies to the following wrongdoings in or relating to a ministry, government body or office, including wrongdoings that occurred before the coming into force of this Act:

  - a. a serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada;
  - b. an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of an employee's duties or functions;
  - c. a serious misuse of public funds or public assets;
  - d. gross or systemic mismanagement;
  - e. knowingly directing or counselling a person to commit a wrongdoing.
12. Employees can make disclosures, in good faith, about wrongdoings that they reasonably believe have occurred or are about to occur. Employees can make disclosures about wrongdoings that occurred before PIDA was in force, as long as the wrongdoing occurred or the employee learned of the wrongdoing during their employment.

If an employee makes a disclosure to their supervisor, the supervisor must forward it to a Designated Officer as soon as possible. If a Designated Officer is the subject of the allegations, the supervisor will forward the disclosure to the other Designated Officer, if there is one. If an alternative Designated Officer is not available, the supervisor may suggest the disclosure be submitted to the Ombudsperson.
13. Employees who wish to make a disclosure must do so in writing. Employees are encouraged to use the **Disclosure Form**.<sup>2</sup> Disclosures must include the following information, if known:
  - a. A description of the wrongdoing;
  - b. The name(s) of the person alleged

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<sup>2</sup> Appendix A

- i. to have committed the wrongdoing, or
  - ii. to be about to commit the wrongdoing;
  - c. the date(s) of the wrongdoing;
  - d. whether the information or conduct that is being disclosed relates to an obligation under another enactment and, if so, a reference to the enactment;
  - e. whether the wrongdoing has already been disclosed under PIDA or another enactment;
  - f. if paragraph (e) applies, the name of the person to whom the disclosure was made and the response, if any, that has been received.<sup>3</sup>
14. Employees can also make disclosures to their supervisor or a Designated Officer by email or mail. Employees are encouraged to note that they are making a public interest disclosure and to ensure that their disclosure includes the required information.
15. If an initial disclosure is not made in writing, the supervisor or Designated Officer will assist the employee to document their disclosure using the **Disclosure Form**.

## Anonymous Disclosures

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16. Employees who wish to make a disclosure may do so anonymously. However, an anonymous disclosure cannot be considered if the Designated Officer cannot determine whether the discloser is an employee or former employee of **[insert government body]**.
17. A Designated Officer will consider anonymous disclosures only where there is a reasonable basis to believe the discloser is an employee or former employee.
18. Anonymous disclosers should ensure that they have provided adequate particulars about the allegations to allow the Designated Officer to assess whether the allegations warrant investigation under PIDA. Anonymous disclosers should consider providing contact information so that the Designated Officer can follow up to obtain more information about the disclosure as needed.
19. Employees are encouraged to bring forward their disclosures and to identify themselves in doing so. Designated Officers will provide anonymous disclosers with the following information:
- They will only share the discloser's identity with their express permission or for a lawful purpose
  - Making an anonymous disclosure does not mean that their employer or colleagues will not suspect who made the disclosure
  - PIDA provides protection from reprisal for disclosers, and the **[insert Chief Executive]** does not tolerate retaliation against disclosers
  - Without knowing the identity of the discloser, the Designated Officer cannot conduct a reprisal risk assessment or take measures to mitigate any risk of reprisal to the employee

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<sup>3</sup> PIDA, s. 15

- If the anonymous discloser does not provide their contact information, the Designated Officer may not have sufficient information to assess their disclosure
  - Anonymous disclosers may not receive information about the conduct of any investigation into the disclosure, including notice of the investigation and a summary of the results
20. If the Designated Officer is unable to establish that an employee made the disclosure, the Designated Officer will close the file.

## Multiple Disclosers

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21. If multiple disclosers come forward at the same time regarding the same alleged wrongdoing, the Designated Officer may assess and investigate the disclosures together as a single matter.
22. The fact that multiple disclosers have come forward about the same alleged wrongdoing will not be shared with the other disclosers. Each discloser will have protections from reprisal under PIDA and will be interviewed separately.

## Public Disclosures

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23. Section 16 of PIDA provides that an employee may make a public disclosure where they “reasonably believe that a matter constitutes an imminent risk of a substantial and specific danger to the life, health or safety of persons, or to the environment.”<sup>4</sup> An employee must take the following steps prior to making an urgent public disclosure:
- Consult the relevant protection official, as follows:
    - In respect of a health-related matter, the Provincial Health Officer
    - the provincial administrator as defined in section 1(1) of the *Emergency and Disaster Management Act*
    - In any other case, the appropriate police force
  - Receive direction from the protection official about whether to make the disclosure, and if so, on what conditions; and
- Where the protection official approves the disclosure, make the disclosure in accordance with any conditions the protection official imposes.
24. There are a number of limits on the kind of information that an employee can share when making a public disclosure. Employees must not share information that is subject to a restriction under an enactment of BC or Canada. This means employees must not share information that they are prohibited from sharing under a statutory oath or any statute or other regulation.
25. In addition, PIDA does not authorize the release of information in a public disclosure that is:
- Protected by solicitor-client privilege
  - Protected by any common law rule of privilege, or
  - Subject to public interest immunity, including cabinet privilege

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<sup>4</sup> PIDA, s. 16(2)

26. If the protection official directs the employee not to make the disclosure public, the employee must not make it public. The protections for employees in PIDA may not apply to employees who do not follow the protection official's advice.
27. Immediately after making the disclosure public, the employee must advise their supervisor or Designated Officer about the public disclosure and then make the

disclosure to their supervisor, Designated Officer or the Ombudsperson.

28. If the Designated Officer investigates a disclosure following a public disclosure, they will contact the protection official to gather information regarding the steps that the protection official has taken in response to the subject matter of the disclosure. The Designated Officer will consider the information obtained when assessing whether further investigation is warranted.

## Reprisal

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29. Reprisal is prohibited under PIDA. Reprisal is defined in section 31(1) of PIDA as follows:

**31** (1) A person must not take any of the following measures of reprisal against an employee, or counsel or direct that any of the following measures of reprisal be taken against an employee, by reason that the employee has, in good faith, sought advice about making a disclosure, made a disclosure or cooperated with an investigation under this Act:

- a disciplinary measure;
- a demotion;
- a termination of employment;
- any measure that adversely affects the employee's employment or working conditions;
- a threat to take any of the measures referred to in paragraphs (a) to (d).

30. Employees are protected from reprisal when they do any of the following acts:

- Seek advice about making a disclosure
- Make a disclosure
- Cooperate with a PIDA investigation (collectively, "Protected Acts")

31. Employees are protected from any person taking an adverse measure against them which impacts their employment because they did a Protected Act under PIDA. An adverse measure can include termination, suspension and demotion, as well as subtler measures like bullying, ostracizing or a workplace transfer.
32. No person can take a reprisal against an employee, including supervisors, co-workers, senior executive or alleged wrongdoers.
33. The Ombudsperson is responsible for investigating complaints of reprisal from public bodies under PIDA's jurisdiction. If an employee believes that a reprisal has been taken against them, they may contact the Ombudsperson's office to make a complaint.

## B. ASSESSMENT PROCEDURES

34. The Designated Officer is responsible for receiving disclosures and assessing whether they are made by an employee and meet the threshold for wrongdoing.
35. The Designated Officer will conduct this initial assessment prior to determining whether an investigation is warranted.

### Initial Interview

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36. The Designated Officer will confirm receipt of a disclosure to an employee within **[2 business days]**. The Designated Officer will conduct an initial interview with a discloser as soon as possible after receipt of a disclosure. The interview, and any subsequent interviews, will be conducted in a manner and place that maintains the confidentiality of the identity of the discloser.
37. The purpose of the interview is to gather more information about the nature of the disclosure and to assess whether it meets the threshold for wrongdoing. The interview is also intended to inform the Designated Officer's assessment of the urgency of the matter, as well as an initial consideration of any risk of reprisal to the discloser.

### Risk Assessments

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38. The Designated Officer is responsible for conducting two types of risk assessments: an urgency assessment and a reprisal risk assessment. Both assessments will be conducted as soon as practicable. The assessments are then conducted throughout the life of a file, but in particular, as new information is received indicating the presence of a risk or when the file moves to a new phase (from assessment, to investigation, to reporting).
  - urgent public disclosure unless information indicates that any serious risk has already been addressed. An urgent response may also be required where:
    - The alleged wrongdoing has not occurred and there is an opportunity to intervene before it occurs
    - There is a high risk that evidence will be lost or destroyed
    - There is an imminent risk of significant financial harm
    - There is a high risk of reprisal for the discloser (see **Reprisal Risk Assessment Tool**<sup>5</sup>)
40. Where a matter poses a risk of significant harm to the environment or the health or safety of persons, the Designated Officer will consider whether the public interest reporting provision in section 25 of the *Freedom of*

#### **Urgency Assessment**

39. The Designated Officer will assess whether the disclosure raises a matter which requires an urgent response. Urgent responses may be required where the subject matter of the disclosure indicates a serious risk to life, public health or safety, or the environment. This includes disclosures made following an

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<sup>5</sup> See Appendix B



*Information and Protection of Privacy Act* may be applicable. Where the Designated Officer believes section 25 may apply, the Designated Officer will consult the Chief Executive.

### **Reprisal Risk Assessment**

41. Employees are protected from reprisal under PIDA for making a disclosure, requesting advice about making a disclosure or cooperating with a PIDA investigation.

42. The Designated Officer must conduct a reprisal risk assessment when they receive a disclosure. The reprisal risk assessment is intended to ensure any risks of reprisal are identified and managed to the extent possible.
43. The Designated Officer will use the **Reprisal Risk Assessment Tool**<sup>6</sup> for more information about when and how to assess the risk of reprisal and how to manage that risk.

## **Gathering Information**

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44. The Designated Officer is responsible for reviewing the employee's disclosure form or other written submission to ensure it meets the content requirements in section 15 of PIDA.
45. If the content requirements are not met, the Designated Officer will identify the information that is outstanding and ask the discloser to provide that additional information, if known. See **Practice Directive: Interpreting Wrongdoing**<sup>7</sup> for the type of information needed to complete an assessment.
46. If the employee makes their disclosure verbally, the Designated Officer will require the employee to follow-up with a written disclosure, as described in paragraph 15, above.

## **Assessing the Disclosure**

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47. The Designated Officer will assess the disclosure to confirm the following:
- a. the discloser is an employee or former employee<sup>8</sup> of the **[insert government body]**;
  - b. the alleged wrongdoing occurred in or relating to a public body;
  - c. the allegations meet the threshold of wrongdoing for at least one of sections 7(1)(a) to (e); and
  - d. the disclosure is in writing and contents of the disclosure meet the requirements of section 15.
48. In determining whether the allegations meet the threshold for wrongdoing, the Designated Officer should consult **Practice Directive:**

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<sup>6</sup> See Appendix B

<sup>7</sup> See Appendix C

<sup>8</sup> If the employee is a former employee, the alleged wrongdoing must have occurred or been discovered during the employee's employment: PIDA, s. 2(a)(ii)



**Interpreting Wrongdoing**<sup>9</sup>, which sets out the test and considerations for each type of wrongdoing.

49. If the Designated Officer determines that the allegations, if proven, would meet the threshold of wrongdoing, the Designated Officer will also consider whether there is a reasonable basis to support an investigation.

The Designated Officer will assess whether the discloser has provided some evidence that could support a conclusion that the alleged wrongdoing occurred. Mere speculation on the part of the discloser without any evidentiary support does not suffice.

## Deciding Whether to Investigate

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50. Once the assessment of a disclosure is complete, the Designated Officer must determine whether or not to investigate. The Designated Officer will decide whether to investigate within **[30 days]** of receipt of the disclosure.
51. If the Designated Officer concludes that the assessment will require more than **[30 days]**, they will notify the Chief Executive of the delay, reasons for the delay, and the expected date on which the assessment will be complete and a decision made.

## No Investigation

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52. If the disclosure is not made by an employee or former employee, or if the wrongdoing alleged does not relate to a public body, the Designated Officer must refuse to investigate under PIDA.
53. If the disclosure does not meet the threshold for wrongdoing under section 7, or there is no reasonable basis to support an investigation, the Designated Officer must refuse to investigate under PIDA.
54. Where the disclosure meets the assessment criteria, the Designated Officer must consider whether they are prohibited from investigating under PIDA.<sup>10</sup>
55. The Designated Officer is prohibited from investigating if the disclosure relates primarily to:
  - a. a dispute between an employee and the **[insert government body]** respecting their employment;
  - b. a matter relating to law enforcement;
  - c. a matter relating to the prosecution of an offence; or
  - d. an adjudicative function of a court, tribunal or other statutory decision maker, including a decision, or the processes or deliberations that have led to or may lead to a decision, by the court, tribunal or other statutory decision maker.

If any of the above circumstances apply, the Designated Officer must not investigate the disclosure.

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<sup>9</sup> See Appendix C

<sup>10</sup> PIDA, s. 9(2)(g)(ii)

56. If the Designated Officer determines they are not prohibited from investigating, they will consider whether they should exercise their discretion to refuse to investigate applying the following discretionary considerations<sup>11</sup>:
- The disclosure does not provide sufficient details or particulars about the wrongdoing;
  - The disclosure is frivolous or vexatious;
  - The disclosure was not made in good faith;
  - The investigation of the disclosure would serve no useful purpose or could not be reasonably conducted because the length of time that has passed between the date of when the subject matter of the disclosure arose and the date of the disclosure;
  - The disclosure relates solely to a public policy decision.
  - The disclosure has been referred to another appropriate authority for investigation; or
  - The disclosure has already been or is being appropriately investigated.
57. The Designated Officer may seek additional sources of information to assist in determining whether or not an investigation is appropriate.
58. The Designated Officer will notify the discloser of a decision not to investigate the disclosure, and will provide reasons for their decision in writing.
59. Where the Designated Officer decides not to investigate, the Designated Officer will consider whether there are other mechanisms available for addressing the discloser's concerns, and provide that information to the discloser as appropriate.

## Referral to the Ombudsperson

60. Where the Designated Officer determines that the disclosure is eligible for investigation under PIDA, the Designated Officer will consider whether the disclosure, in whole or in part, would be more appropriately investigated by the Ombudsperson. In assessing whether to refer a disclosure to the Ombudsperson, the Designated Officer will consider:
- the level and position of the alleged wrongdoer(s)
  - potential conflicts of interest or perceptions of conflict
  - the likelihood of voluntary compliance of witnesses
  - whether the disclosure involves sensitive political or social issues
  - implications to the public interest
  - the risk of reprisal to the discloser
  - any other relevant factors that arise on the facts of the case
61. The Designated Officer will consult with the Chief Executive prior to referring a disclosure to the Ombudsperson, and make the referral at the direction of the Chief Executive, unless the disclosure is about the Chief Executive.
62. The Designated Officer will always refer disclosures involving the Chief Executive to the Ombudsperson.

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<sup>11</sup> PIDA, s. 9(2)(g)(ii)

63. The Designated Officer will inform the discloser in writing of a referral to the Ombudsperson.

## Report to Law Enforcement

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64. The Designated Officer may report an alleged offence relating to a request for advice, a disclosure or a reprisal complaint under the Act to a law enforcement agency if they have reason to believe an offence may have been committed. The offence may be reported regardless of whether the disclosure is determined to meet the threshold for wrongdoing or whether the Designated Officer decides to investigate the allegations. In assessing whether to make a report, the Designated Officer will consider the seriousness of the allegations and whether the alleged offence may be a criminal offence.
65. The victim of any alleged offence will be consulted prior to a report being made, unless consultation poses health and/or safety concerns. Designated Officers may also wish to consider concerns about reporting to law enforcement in cases where persons involved belong to communities or groups that have historically been overpoliced.
66. The Designated Officer will not report an offence without first consulting the Chief Executive, unless the Chief Executive is implicated in the alleged offence.
67. The Designated Officer will provide no more information to law enforcement than is necessary to make the report.

## Postponing or Suspending an Investigation

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68. The Designated Officer may postpone or suspend an investigation if they:
- report an alleged offence to law enforcement prior to, or during an investigation;
  - consider that investigation may compromise another investigation; or
  - become aware that the alleged wrongdoing being investigated is also being investigated in the prosecution of an offence.
69. The Designated Officer must consult with the Chief Executive prior to postponing or suspending an investigation, unless the Chief Executive is implicated in the wrongdoing.
70. The discloser must be notified of the decision to postpone or suspend an investigation, unless the Designated Officer considers that the notification would compromise another investigation.

## C. INVESTIGATION PROCEDURES

71. If the Designated Officer decides a disclosure warrants investigation under PIDA, the Designated Officer must investigate in accordance with Part C of

these procedures, and in accordance with the principles of procedural fairness and natural justice.

### Notifying Parties

#### ***Notice to Discloser***

72. The Designated Officer must notify the discloser of the decision to investigate.<sup>12</sup> The notification may be brief and may be provided orally or in writing. The notification will include the scope of the investigation. If only part of the disclosure will be investigated, the Designated Officer will provide the discloser reasons for their decision not to investigate the remaining portions of the disclosure.

#### ***Notice to Chief Executive***

73. Generally, the Designated Officer will provide notice to the Chief Executive of the decision to investigate. Notice may be delayed until an appropriate time if the Designated Officer considers that notification may compromise the investigation or expose the discloser to reprisal.

74. If the Chief Executive is alleged to be responsible for the wrongdoing, the Designated Officer will notify the chair of the board of directors, or an executive officer or a person occupying a comparable position with respect to **[insert government body]**, and the minister responsible, if applicable.

#### ***Notice to Respondents***

75. The Designated Officer will notify any respondents that their conduct is the subject of an investigation at an appropriate time, taking into account the need to protect the integrity of the investigation and the respondents' rights to procedural fairness. Respondents will in all cases receive notice of the allegations prior to being interviewed.

### Requiring Another Body to Suspend or Postpone an Investigation

76. PIDA does not limit the authority of a public body to undertake other investigations while a Designated Officer investigates a disclosure of wrongdoing. However, where there is prima facie evidence that a public body undertook an investigation in order to compromise an investigation of a disclosure under PIDA, the Designated Officer may

require the public body to suspend or postpone its investigation.<sup>13</sup>

77. The Designated Officer will not suspend or postpone another investigation without first consulting the Chief Executive, except in circumstances where the Chief Executive is implicated in the wrongdoing.

<sup>12</sup> PIDA, s. 9(2)(g)(i)

<sup>13</sup> PIDA, s. 18

## Maintaining Confidentiality

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78. Designated Officers and supervisors may collect, use and disclose personal information for the purpose of PIDA where the personal information is included in a disclosure or is for the purpose of an investigation or report.
79. Information about the identity of the discloser is confidential. No person may share personal information about a discloser that could enable the identification of the discloser as the person who made the disclosure, unless
  - a. The provision or use of the information is for the purposes of the Act, including as necessary to effectively manage the disclosure in accordance with PIDA and the principles of natural justice and procedural fairness;
  - b. The provision or use of the information is in connection with another lawful purpose;
  - c. The discloser has given express consent, in writing, to the release or use of the personal information; or
  - d. The personal information has previously been lawfully published.
80. Where necessary to effectively carry out an investigation, a Designated Officer may share that the employee who made the disclosure was a witness and a source of evidence. Wherever possible, the Designated Officer will not share or confirm that the employee made the disclosure.
81. The Designated Officer will explain the confidentiality provisions in the Act to the discloser.
82. Information and documents obtained in the disclosure process will be stored in a safe and secure manner and must be protected from unauthorized access, use and disclosure.

## Obtaining Documentary and Written Evidence

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83. The Designated Officer will seek to obtain information in the order, format and fashion that they determine is most appropriate and effective. They may contact whomever is most appropriate to obtain records related to the allegations.

## Conducting Interviews

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### **General**

84. Interviews of disclosers, respondents and witnesses will be conducted in the order and format (i.e. in-person, telephone or video) appropriate for the circumstances. Efforts should be made to accommodate the individual's preferences and accessibility needs.
85. Interviewees will be provided notice of an interview date, time and place along with the general nature of the interview. Interviews may be held outside the workplace as necessary to maintain confidentiality and the integrity of the investigation.
86. In some cases, it may be necessary for the Designated Officer to provide the interviewee with copies of documents in advance of the interview, including where doing so will

enhance the effectiveness of the interview and/or to accommodate the interviewee's needs.

87. The Designated Officer will remind each witness of the prohibition in section 6(3) of PIDA and explain the prohibition against reprisal in section 31(1) of PIDA.

### **Respondent Interviews**

88. Respondents are afforded a high level of procedural fairness. They must be provided notice that they are under investigation and the opportunity to respond to the allegations against them. If documents will be discussed in an interview with a respondent, the Designated Officer will consider providing advance opportunity for the respondent to review the documents unless they have reason to believe that doing so could compromise the investigation.
89. If, during an interview of a witness, the Designated Officer receives information that raises concerns that the witness may be implicated in a wrongdoing, they must stop the interview and inform the person of this concern. The person will then be treated as a respondent and provided the

same level of procedural fairness provided to all respondents. The interview will be rescheduled to allow sufficient time for the person to prepare for the interview and seek advice should they choose.

### **Presence of Third Parties**

90. Interviewees are permitted to have a support person present during the interview, such as a family member or friend. Requests for the attendance of a union representative or lawyer will be considered on a case by case basis.
91. Interviewees must obtain permission for any third party to attend at least **[5 days]** in advance of the scheduled interview. Third parties may not be permitted in an interview in the following circumstances:
- They are a witness or respondent in the investigation
  - They were not requested by the interviewee to attend
  - They did not receive permission to attend, or
  - Their presence would present a conflict of interest or jeopardize the integrity of the investigation

## **Investigating Other Wrongdoings**

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92. If, during an investigation, the Designated Officer reasonably believes that another wrongdoing has been committed, the Designated Officer may investigate that wrongdoing.<sup>14</sup> The same policies and procedures that apply to disclosures, with necessary modifications, will apply to other potential wrongdoings identified during the course of an investigation.

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<sup>14</sup> PIDA s. 9(2)(h)



## Discontinuing an Investigation

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93. At any time after an investigation has commenced, the Designated Officer may discontinue an investigation for the reasons set out in paragraphs 55-56 above. If the Designated Officer decides not to complete

an investigation after it has begun, the discloser must be notified of the decision to discontinue the investigation. Notice will be provided in writing, setting out the reasons for discontinuing the investigation.

## Timelines

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94. Investigations will be completed and a draft report prepared within **[four months]** from the decision to investigate. If the Designated Officer concludes that the investigation will require more than **[four**

**months]** to complete, they must notify the Chief Executive of the delay, reasons for the delay, and the expected date on which the investigation will be completed.

## D. REPORTING PROCEDURES

### Draft Investigation Report

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95. Upon conclusion of gathering, reviewing and analyzing evidence, the Designated Officer will prepare a draft investigation report. The report will include the allegations, applicable laws and policies, evidence, analysis, findings and any recommendations

to address findings of wrongdoing, as applicable.

96. Recommendations may be developed through a consultative process between the Designated Officer and the Chief Executive.

### Draft Report to Person(s) Adversely Affected

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97. In accordance with the principles of procedural fairness, the Designated Officer will provide all those who may be adversely affected by any findings or recommendations in the investigation report with the opportunity to make representations before it is finalized. Representations may be provided orally or in writing.
98. Generally, the Chief Executive, any respondents and other individuals who may be adversely impacted by the investigation report will be provided the opportunity to

make representations. The Designated Officer may provide a copy of the draft report, excerpts of the report, or a summary of evidence and findings as the context requires.

99. The Designated Officer will review and consider all representations received before finalizing the investigation report.



## Final Reports

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100. The final investigation report will be provided to the Chief Executive, unless the Chief Executive is implicated in founded wrongdoing. If the Chief Executive is implicated in founded wrongdoing, the report will be provided to the chair of the board of directors, an executive officer or a person occupying a comparable position with respect to **[insert government body]**; or, the minister responsible if applicable.
101. The final investigation report must include
- the findings;
  - the reasons to support the findings; and
  - any recommendations.
102. The Chief Executive will consider the findings and recommendations and take corrective measures to remedy the wrongdoing and any other deficiencies identified in the report. Where the Chief Executive declines to take corrective measures, they will set out the reasons for declining to do so in the annual report.<sup>15</sup>
103. The Designated Officer will provide a summary of the investigation report to the discloser. Where practicable, the Designated Officer will also provide a summary of the report to any person alleged or found to be responsible for wrongdoing. The kind of information and level of detail contained in the summary will be decided by the Designated Officer in consultation with the Chief Executive, on a case-by-case basis.

## Annual Reporting

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104. The Chief Executive, or delegate, will report annually on all disclosures of wrongdoing received and investigated with respect to **[insert government body]**. The annual report must include:
- the number of disclosures received, including referrals of disclosures, and the number acted on and not acted on;
  - the number of investigations commenced as a result of a disclosure;
  - in the case of an investigation that results in a finding of wrongdoing,
    - a description of the wrongdoing,
    - any recommendations, including those made by the Ombudsperson, and
    - any corrective action taken in relation to the wrongdoing or the reasons why no corrective action was taken;
  - any other information prescribed by regulation.<sup>16</sup>
105. The annual report must not include any information that would
- identify the discloser;
  - identify a respondent; or
  - unreasonably invade a person's privacy.<sup>17</sup>
106. The annual report will be made publicly available on the **[insert government body]**'s website [or on the Ombudsperson's website if the public body does not have one].<sup>18</sup>

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<sup>15</sup> PIDA, s. 38(2)(c)(iii)

<sup>16</sup> PIDA, s. 38(2)

<sup>17</sup> PIDA, s. 38(4)

<sup>18</sup> PIDA, s. 39

# APPENDICES

- A. Disclosure of Wrongdoing Form
- B. Reprisal Risk Assessment Tool
- C. Practice Directive — Interpreting Wrongdoing

## APPENDIX A: DISCLOSURE OF WRONGDOING FORM

*The Public Interest Disclosure Act allows current and former employees of eligible government bodies to report allegations of serious or systemic wrongdoing to their supervisor, Designated Officer, or to the Office of the Ombudsperson.*

*The Designated Officer will use the information provided when assessing whether to investigate your report. Please provide as much detail as possible. If you require assistance completing this form, please contact your supervisor or Designated Officer.*

### Contact Information

Name: \_\_\_\_\_

Email: \_\_\_\_\_

Preferred pronoun: \_\_\_\_\_

How would you like to be contacted? \_\_\_\_\_

Address where we may contact you: \_\_\_\_\_

Preferred contact time? \_\_\_\_\_

Telephone number: \_\_\_\_\_

May we leave a voice message? \_\_\_\_\_

**Important:** Reports under the Act may be made anonymously, but we may not be able to investigate without obtaining more information from you.

### Employment Information

1. Are you a current or former employee of [insert government body]?

☐ I am a current employee

☐ I worked there from \_\_\_\_\_ to \_\_\_\_\_

### Description of the wrongdoing

The *Public Interest Disclosure Act* applies to the following kinds of wrongdoing:

- a serious act or failure to act that, if proven, would constitute an offence under an enactment of British Columbia or Canada
- an act or failure to act that creates a substantial and specific danger to the life, health or safety of persons, or to

the environment, other than a danger that is inherent in the performance of an employee's duties or functions

- a serious misuse of public funds or public assets
- gross or systemic mismanagement
- knowingly directing or counselling a person to commit a wrongdoing described above

2. Please describe your concerns, keeping in mind how wrongdoing is defined, above. Explain how you learned about the wrongdoing and provide as much detail about the specific allegations as possible, including:

- Where the wrongdoing happened or is likely to happen

- Who committed or is about to commit wrongdoing (name, title and contact information)
- When the wrongdoing occurred or is expected to occur
- Please identify any applicable laws, Acts, Regulations or policies that may apply in relation to the wrongdoing

## Description of the wrongdoing (continued)

3. Have you already reported the wrongdoing to anyone in the organization or to an external party? Please provide details of who you reported to, when, and their response.

4. Do you know of any other organization that is addressing these allegations? Please provide details.

5. Do you consider the matter urgent? If so, please explain why.

**Evidence**

6. Please attach any documents, records, correspondence, recordings or other evidence that you have in your possession that support the allegations of wrongdoing.

**Declaration**

- ☐ I have provided this information in good faith and on the reasonable belief that it could show a wrongdoing has been or is about to be committed.

## APPENDIX B: REPRISAL RISK ASSESSMENT TOOL

### Reprisal Risk Assessment Tool for DO Use

Discloser:	
Designated Officer:	
Date:	

The DO will assess the risk of reprisal to the discloser and/or those cooperating with the investigation as soon as is practical after receiving a disclosure. The DO will exercise their discretion to revisit the assessment and note any changes before beginning an investigation, before notifying witnesses or respondent and conducting interviews and before sharing the results of an investigation, even in draft form.

#### Step 1. Identify the risk

##### Is the nature of the disclosure particularly egregious?

- ☐ Yes *Has the alleged wrongdoing taken place over a significant period of time? Is there more than one alleged wrongdoer?*  
☐ No  
☐ N/A

##### Is the discloser's identity known in the workplace?

- ☐ Yes *If yes, how did the identity of the discloser come to be known? Is this a cause for concern?*  
☐ No  
☐ Unknown

##### If "No" or "Unknown", could the discloser's identity become known?

- ☐ Yes *Has the discloser told anyone else that they were making a disclosure? Have they raised their concerns to others? Is the nature of the disclosure such that they may easily be identified? Is it possible to confidentially investigate the disclosure?*  
☐ No

##### Is the discloser in a vulnerable position?

- ☐ Yes  
☐ No

*Has the discloser expressed fear of reprisal? Does the respondent have seniority over the discloser or can they easily affect the discloser's working conditions? Is the discloser being performance managed? Are there effective supervisory arrangements to monitor the conduct of the respondent(s)? Is the discloser on contract or part-time?*

##### Will the respondent(s) have motivation to commit reprisal?

- ☐ Yes  
☐ No  
☐ Unknown

*Has the discloser told anyone else that the respondent suffer any adverse consequences as a result of an investigation? Will their identity remain confidential during the investigation? Will the respondent be removed from the workplace during the investigation?*

##### Are there any other dynamics suggesting the potential for reprisal?

- ☐ Yes  
☐ No  
☐ N/A

*Does the discloser have a support network in the organization? How closely connected is the discloser with the respondent(s)? Do the discloser and respondent(s) socialize outside of work? Is there a history of conflict in the workplace involving the discloser or respondent(s) and management or colleagues?*

If yes, describe

## Step 2. Risk analysis and evaluation

Using the information from the previous page, analyze the risk to assess the nature and likelihood of reprisal taking place.

### Reprisal measures

#### Given any risks identified, what form could reprisal potentially take?

*Some examples: discrimination, disadvantage or adverse treatment to the employee's career, a workplace transfer, damage to reputation, threats, bullying, harassment or torment, ostracism, significant undermining of the employee's authority, heavier scrutiny of work, unsafe or humiliating work, injury, or any other action which has a negative impact on employment or working conditions*

### Likelihood

#### What is the likelihood of reprisal occurring?

- *Which factors make reprisal more or less possible?*
- *The most significant indicators of high risk are:*
  - *past experiences of conflict, threats or reprisal in the workplace;*
  - *the likelihood that the confidentiality or anonymity of the discloser will not be maintained;*
  - *the significance of the wrongdoing, the number of people involved, and/or the status of the alleged wrongdoers; and*
  - *the vulnerability of the discloser in the workplace given their seniority, proximity to the alleged wrongdoer(s), or how physically isolated they may be.*

## Controls

**What measures or protective factors are already in place to protect the discloser and mitigate or prevent the risk?**

- *How effective are the measures likely to be?*
- *Are those measures sufficient to protect the discloser? If not, why and what else needs to be addressed?*

## Risk evaluation

DOs should select a risk rating based on a consideration of all the available information assessed above. Risk factors may be given more or less weight in the assessment depending on the circumstances. Some examples which may support the corresponding risk are below:

### ☐ Low risk

Confidentiality of the discloser can be maintained – The discloser has not raised concerns about reprisal – No concerns about historical conduct of parties involved – The discloser is not in a vulnerable position in the workplace – The discloser is not currently employed by the organization

### ☐ Medium risk

The discloser's anonymity may not be maintained – There is a potential for low level reprisal against the discloser such as workplace conflict, isolation – There are minor concerns about the historical conduct of the parties – There is a power imbalance between the parties – The discloser does not have significant social support in the workplace

### ☐ High risk

The discloser's identity is known or is likely to be known – Previous retaliatory threats may have occurred – There have been previous incidents of concern relating to the conduct of the parties – The discloser is vulnerable in the workplace – The matter of wrongdoing involves more than one party and/ or is egregious – There is a strong motivation for reprisal given the ramifications to the respondent(s) in a finding of wrongdoing



### Step 3. Risk management plan

Develop strategies to eliminate or minimize any risks posed. What actions will be taken? Who is responsible for the actions? What is the timing of such actions?

Possible strategies:

- Keep the identity of the discloser confidential
- Counsel the discloser on ways they can maintain confidentiality
- Develop a support strategy for the discloser and respondent(s)
- Communicate with the discloser and respondent(s) at regular intervals
- If conducting interviews in the workplace, interview all employees in a work unit so that neither the discloser nor other witnesses stand out or become easily identifiable as the source of information
- Be proactive by reinforcing the Act's prohibitions against reprisal with the respondent(s) and any person cooperating with an investigation
- If risk is high, consider consultation with legal counsel or the Office of the Ombudsperson regarding any additional means of protection at the employer's disposal
- Delay notification to the respondent(s) where natural justice permits
- Ensure the disclosure is dealt with in an appropriate timeframe

**Plan:**

## APPENDIX C: PRACTICE DIRECTIVE: INTERPRETING WRONGDOING

This practice directive sets out the [insert officer] approach to interpreting the meaning of “wrongdoing” under the *Public Interest Disclosure Act*.

Section 7(1) of PIDA defines wrongdoing as:

7(1) This Act applies to the following wrongdoings in or relating to a ministry, government body or office, including wrongdoings that occurred before the coming into force of this Act:

- (a) a serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada;
- (b) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of an employee’s duties or functions;
- (c) a serious misuse of public funds or public assets;
- (d) gross or systemic mismanagement;
- (e) knowingly directing or counselling a person to commit a wrongdoing described in paragraphs (a) to (d).

### Elements of wrongdoing

Section 7 sets out two main elements of wrongdoing:

- (1) The act or omission occurred in or relating to a ministry, office or government body (“public bodies”)
- (2) The act or omission meets the test for at least one type of wrongdoing

### Location of the wrongdoing

PIDA applies to wrongdoings “in or relating to” a public body. The term “relating to” extends the term “in”. It speaks to a real and substantial connection between the wrongdoing and the public body.

Usually, an alleged wrongdoing will be clearly “in” a public body. However, where it is unclear and/or a relationship to a public body is alleged, an assessment will be necessary to determine whether the wrongdoing relates to that public body. The test is whether there is a real and substantial connection between the wrongdoing and the public body.

An assessment of whether there is a real and substantial connection will be based on the specific context and facts, and in particular, on the nature of any relationship between the public body and other organization or actor and the nature of the alleged wrongdoing.

Factors that may assist in determining whether a wrongdoing occurred in relation to a public body include:

- Whether the organization or actor is an agent, delegate or service provider of the public body or otherwise contracted to perform a function of the public body
- Whether the public body provided all or part of the organization’s operating budget
- Whether the organization is required to adhere to the public body’s administrative or ethical rules
- Whether the public body has control of or audit responsibilities over the organization
- Whether the nature of the wrongdoing relates to the public body’s assets, programs, services or employees
- Whether the wrongdoing was carried out in the course of exercising the public body’s duty or authority

## Type of wrongdoing

An act or omission must also meet the test for at least one type of wrongdoing set out in section 7 to be considered a wrongdoing under PIDA. There are five types of wrongdoing and an act or omission may constitute more than one type.

Each of the following sections set out the type of wrongdoing, the essential components of that type (or the test to be met), and any considerations that may assist the assessment.

### 1. Offences

Section 7(1)(a) – a serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada

Both A and B, below, must be met for the conduct to fall into this category

- A The act or omission constitutes an offence under BC or federal law
- B The act or omission is serious. Consider:
  - Intention: was it deliberate; an abuse of power; discriminatory, done in bad faith, for a malicious purpose or for personal gain?
  - Gravity: was it a marked departure from normally recognized and accepted standards of conduct or ethical obligations? Did it disproportionately impact persons, communities or groups that have been historically marginalized (such as indigenous peoples, racialized people, women, LGBTQ2S+ people, immigrants, etc.)?
  - Position of alleged wrongdoer: is the person in a position with a high level of seniority, authority, responsibility or trust? Is there any imbalance in a power relationship?

- Consequences: did the conduct adversely impact the public body's employees, those who use its services, or other persons? Did the conduct impact the public body's ability to carry out its mission or public trust in the organization?

### Substantial and specific dangers

Section 7(1)(b) – an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of an employee's duties or functions

A and B, below, must be met for the conduct to fall into this category. If C is met, then the conduct is excluded from this category even if it meets A and B.

- A. The conduct creates a substantial danger. A substantial danger is a risk or situation that a similarly situated person/ an ordinary person in the same context a reasonable person would consider to be serious in nature. It would likely result in a real harm to the life, health or safety of a person or persons. Consider:
  - Would it have clearly resulted or is it reasonably likely to result in real harm to life, health or safety of a person or persons or to the environment?
  - What is the nature, level or severity of the danger?
- B. The conduct creates a specific danger. A specific danger is clearly identifiable, is an actual threat and has a reasonable expectation of occurrence within a foreseeable time. Consider:
  - What is the actual threat?
  - Who or what in particular is at risk?
  - Is it reasonably expected to occur? When?
  - How, in particular, was the danger created or did the harm occur?

- C. The danger is inherent in the performance of an employee's duties or functions. Consider:

- What kind or level of danger is normally expected of, essential to or characteristic of the job?
- Is the danger a marked departure from what is normally expected or to what normally occurs?

## 2. Serious misuse of public funds/assets

Section 7(1)(c) – a serious misuse of public funds or public assets

A, B and C, below, must be met for the conduct to fall into this category

- A. The funds or assets are public.
- B. The funds or assets were misused. Consider:
- How were they used and how was the use unauthorized or irregular?
  - What was normally expected or required in the circumstances?
- C. The misuse was serious. Consider:
- Was it deliberate; an abuse of power; discriminatory, done in bad faith, for a malicious purpose or for personal gain?
  - Is the person in a position with a high level of seniority, authority, responsibility or trust?
  - Was the conduct recurrent, frequent or systemic?
  - Did the conduct adversely impact the public body's ability to carry out its mission, its employees, those who use its services, or other persons or public trust in the organization?
  - Was the dollar value high or otherwise significant? Did the conduct disproportionately impact persons, communities or groups that have been historically marginalized?

## 3. Gross /systemic mismanagement

Section 7(1)(d) – gross or systemic mismanagement

A and B or A and C, below, must be met for the conduct to fall into this category

- A. A public resource was mismanaged. A public resource may include a contract, project, time, human resource, etc.
- B. The mismanagement was gross. "Gross" indicates a high or serious degree and something more than ordinary mismanagement. Consider:
- Is the person in a position with a high level of seniority, authority, responsibility or trust?
  - Was it deliberate, aggressive, reckless, an abuse of authority, unlawful, discriminatory, dishonest or in bad faith?
  - Was it for an improper purpose such as for personal gain or to promote private interests?
  - Did it disproportionately impact persons, communities or groups that have been historically marginalized?
  - Was it regarding matters of significant importance or involving significant government resources?
  - If there were errors, were the errors so serious that they are not debatable among reasonable people?
  - If there was negligence, was the conduct so reckless or indifferent to be considered gross?
  - Did it involve a serious or significant breach of a code of conduct or standard of ethics?
  - Did it create a substantial risk of significant adverse impact upon the ability of an organization, office, unit or staff member to carry out its mandate?

C. The mismanagement was systemic.

“Systemic” indicates a broad, longstanding, social, cultural or organizational issue. Consider:

- the history, frequency or recurrence of the conduct
- the number of people responsible for the conduct or affected by it
- the knowledge or acceptance of the conduct within the public body
- whether the conduct is inherent to the organization’s structure, policies or practices

#### 4. Directing or counselling a wrongdoing

Section 7(1)(e) - knowingly directing or counselling a person to commit a wrongdoing described in paragraphs (a) to (d)

A, B and C, below, must be met for the conduct to fall into this category

- A. A person directed or counseled another person to do something, whether an act or omission
- B. The act or omission constitutes a wrongdoing under 7(1)(a) to (d)
- C. The direction or counsel was clear and purposeful

Note: Counselling or directing someone else to do the act or omission is the wrongdoing. The person receiving the direction or counsel need not act, or intend to act, upon the instructions for this test to be met. The person directing or counseling the wrongdoing need not be in a supervisory role to the person receiving the direction or counsel.

## MAIL

PO Box 9039 Stn Prov Govt.  
Victoria, BC V8W 9A5

## TELEPHONE

Toll-free: 1.800.567.FAIR (3247)

## TRAINING/RESOURCES

[consult@bcombudsperson.ca](mailto:consult@bcombudsperson.ca)

## INDIVIDUAL ADVICE/SUPPORT

[report@bcombudsperson.ca](mailto:report@bcombudsperson.ca)

## IN PERSON

2<sup>nd</sup> Floor • 947 Fort Street • Victoria BC

## ONLINE

[bcombudsperson.ca](http://bcombudsperson.ca)



**OMBUDSPERSON**  
BRITISH COLUMBIA

# PIDA: INFORMATION FOR DIRECTORS OF GOVERNMENT BODIES

## **Public Interest Disclosure Act**

The *Public Interest Disclosure Act* (PIDA) is whistleblower protection legislation for current and former public sector employees in British Columbia<sup>1</sup>. It provides a clear process for reporting wrongdoing relating to a public body and mechanisms to investigate and address wrongdoing when found.

PIDA also prohibits reprisal against employees who report wrongdoing, who request advice under PIDA or who cooperate with a PIDA investigation.

PIDA first covered ministries and offices of the legislature in 2019 and was rolled out to further public sector organizations, referred to as “government bodies”, over a four-year period which ended in December 2024.

## **Directors under PIDA**

Under section 2(a)(i) of PIDA, directors and officers of government bodies are defined as employees. Government bodies are listed in the PIDA Regulation and are distinct from government ministries and offices of the legislature.

The inclusion of directors in PIDA’s definition of “employee” means that current or former directors on boards of governance for government bodies covered by PIDA are able to request advice and make disclosures under PIDA.

Like all employees, directors who want to request advice or make a disclosure under PIDA have a choice. They can opt to do so to the Office of the Ombudsperson or to their organization’s Designated Officer. By requesting advice or making a disclosure through the Ombudsperson or the Designated Officer, directors are covered by PIDA’s confidentiality and reprisal protections.

## **Responsibilities of Chief Executives and Designated Officers under PIDA**

Under PIDA, the Chief Executive of a public body must appoint at least one senior official to be a Designated Officer. Designated Officers are responsible for responding to requests for advice, receiving disclosures and investigating disclosures of wrongdoing under PIDA. If no senior official is appointed, by default the Chief Executive performs the role of the Designated Officer.

## **Confidentiality**

There are provisions protecting the identity of employees who seek advice about making a disclosure or make a disclosure under PIDA. It is an offence for supervisors or Designated Officers to breach PIDA’s confidentiality provisions.

Everyone in receipt of a report of wrongdoing or request for advice under PIDA must keep the identity of the person involved confidential. They must take steps to ensure that they do not inadvertently enable the identification of the employee as someone who reported wrongdoing or sought advice.

If a director receives information about an ongoing PIDA investigation, or information that identifies an employee as someone who has sought advice or made a disclosure, they must not share that information with anyone else. The director should also take steps to remind the source of that information about the confidentiality provisions of PIDA.

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<sup>1</sup> See the Ombudsperson website for the list of [organizations covered under PIDA](#)



## Information directors can expect to receive

Regular hierarchical lines of reporting within an organization do not apply under PIDA and directors are not entitled to receive information regarding requests for advice or disclosures made by employees of their organization. Further, PIDA prevents Designated Officers from sharing information about disclosures or the conduct of investigations except when following PIDA's reporting procedures.

At the conclusion of a PIDA investigation, the Designated Officer must produce an investigation report for the Chief Executive. This will include a finding of whether wrongdoing occurred and any recommendations to address issues of concern identified during the investigation. A Designated Officer's recommendations are not limited to a finding of wrongdoing but can address other concerning issues whether they are individual matters or those of policy, practice or systems within the organization.

A summary of the final investigation report may be shared with the directors of the organization. This summary should ensure no information is included which could lead to the identification of an employee as a discloser. Your organization may also want to determine the level of participation directors will have with any recommendations which flow from PIDA investigations.

If a Chief Executive is implicated in the wrongdoing, or if they have a real or perceived conflict of interest related to the disclosure, we recommend the organization consult with the Ombudsperson as soon as possible regarding the disclosure.

## Addressing concerns which are not appropriate for PIDA

Understandably, government bodies may want to address concerning matters raised during requests for advice or in disclosures if those

matters are determined by a Designated Officer to not warrant further action under PIDA. Directors may be involved in decisions regarding how to address those matters of concern outside of PIDA, whether through existing employment law mechanisms, their organization's standards of conduct investigations, or another avenue. However, PIDA's confidentiality provisions continue to apply. All measures must be taken to ensure that information which could identify the employee as someone who sought advice or made a disclosure is not shared during any follow-up process undertaken by the organization.

## Encourage employees to speak up

It is in the best interest of government bodies to encourage their employees to speak up about matters of wrongdoing; matters which may adversely impact public confidence in the organization, its finances, or the health and safety of its workplace. Directors can contribute to cultivating a culture where employees feel that it is safe to speak up by emphasizing how seriously the organization takes disclosures of wrongdoing; and setting the tone that reprisal will not be tolerated in the organization. In order to preserve the integrity of public sector organizations, it is essential that employees speak up about their concerns.

### Contacting the Ombudsperson

Employees and officials who have questions about PIDA, the role of our office, or who need more information about how to make a disclosure, can speak to a member of our public interest disclosure team directly by calling our office at 1-800-567-3247, or contacting us via email at [report@bcombudsperson.ca](mailto:report@bcombudsperson.ca).



OMBUDSPERSON  
BRITISH COLUMBIA

# DESIGNATED OFFICER TOOLKIT

FOR *PUBLIC INTEREST*  
*DISCLOSURE ACT*  
INVESTIGATIONS

November 2023

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# MESSAGE FROM THE OMBUDSPERSON

I am pleased to provide Designated Officers under the *Public Interest Disclosure Act* (PIDA) with this Toolkit.

Disclosing wrongdoing, or whistleblowing, is vital to ensuring the integrity and accountability of the public sector. PIDA provides a framework to protect employees and former employees who seek advice about how to make a disclosure or who make a disclosure of wrongdoing.

PIDA underpins the importance of supporting a speak-up culture so employees feel safe to identify potential wrongdoing. This supports accountability in the public sector; the safety of employees, the public, and the environment; the appropriate management of public resources; and continuous organizational development and improvement. Even disclosures that do not meet the threshold of wrongdoing are valuable because they can serve to highlight areas where improvement or change is needed.

As a Designated Officer under PIDA, you play a lead role in supporting a speak-up culture. Your conduct should promote a positive, safe environment for employees to speak up and instill confidence in employees that their concerns will be taken seriously and will be thoroughly assessed. You will assist your Chief Executive to ensure all employees in your organization are aware of their rights and responsibilities under PIDA and the protections available to them against reprisal. You will ensure the confidentiality of employees who approach you under PIDA and privately receive requests for advice and disclosures. You will provide advice to employees who request it and you will conduct

fair, confidential disclosure investigations. You will make responsive recommendations to address any problems you observe, to prevent future occurrences, and to instill confidence in the integrity of your organization.

Consider the gravity of an employee's decision to seek advice or disclose possible wrongdoing. Making a disclosure of wrongdoing is a serious step and disclosers may be concerned about the impact or outcome of making a disclosure. The alleged wrongdoer may be concerned about the outcome and any possible consequences they may experience. Investigation participants, such as witnesses, may feel nervous about the process. Other employees who are not directly involved may be impacted by changes resulting from a finding of wrongdoing.

In this light, investigating potential wrongdoing is a serious responsibility. That's why my office created this Designated Officer Toolkit, to assist you to plan, conduct and document procedurally fair investigations with sound decisions and clear reasons.

Thank you for being a Designated Officer. In doing so, you contribute to supporting a speak-up culture in BC's broader public sector.

Sincerely,

Jay Chalke  
Ombudsperson  
Province of British Columbia

### Role of the Ombudsperson

The Ombudsperson is an independent officer of the BC Legislature mandated under the *Public Interest Disclosure Act* (PIDA) to investigate allegations of wrongdoing from public sector employees. The Ombudsperson also investigates complaints from employees who believe they have been reprisal (retaliated) against for reporting wrongdoing, seeking advice about doing so, or cooperating with an investigation under PIDA. The Office of the Ombudsperson is playing a key role in supporting government to implement PIDA by assisting Chief Executives for public sector organizations as their workplaces come the Act, and will continue to serve as a resource to support public bodies to fulfil their roles and responsibilities under PIDA.

### Why we have created this toolkit for Designated Officers (DOs)

PIDA requires that Chief Executives for public sector organizations designate at least one senior official to be Designated Officer (DO) for receiving and investigating disclosures. In addition, every Chief Executive is required to develop procedures for providing advice about potential disclosures and managing disclosures under the Act. Our office developed a variety of resources to assist Designated Officers to conduct fair PIDA investigations while upholding the principles that underpin the Act. These resources include tools that can be used when preparing, conducting and finalizing an investigation under PIDA – such as checklists, templates, sample procedures and notification letters.

### Availability of the Office of the Ombudsperson for consultation

The Office of the Ombudsperson welcomes public sector organizations covered by PIDA to contact us for advice on the implementation of public interest disclosure programs or policy, to request assistance with an investigation, or to consult with us about the management of a report of wrongdoing. Our team is available to support public organizations to fulfill their role under PIDA and to improve their disclosure management practices by assisting in the resolution of issues and challenges relating to the Act.

## TOPIC 1.2: WHAT IS THE *PUBLIC INTEREST DISCLOSURE ACT*?

BC's PIDA came into force in December 2019. Over a five-year period, PIDA's jurisdiction will expand to cover more than 150 organizations, with 350,000 employees, within the broader public sector. PIDA provides a safe, legally protected way for current and former *employees* of these organizations to report serious or systemic issues of wrongdoing to their supervisor, a designated officer or to the Ombudsperson. PIDA applies to wrongdoing which took place before or after the Act came into force. It provides mechanisms for investigating allegations of wrongdoing. Where wrongdoing is found, it provides the means to address it.

PIDA prohibits reprisal against employees who ask for advice about disclosing wrongdoing, report wrongdoing, make 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, including reprisal by colleagues in the workplace. A complaint of reprisal can be made to the Ombudsperson. Reprisal is also an offence under the Act.

PIDA also includes strict confidentiality provisions for all parties involved.

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.

### Helpful tools for DOs

- The [Public Interest Disclosure Act](#)
- Basic information about PIDA can be found on the Office of the Ombudsperson website under [Frequently Asked Questions](#)

## TOPIC 1.3: DESIGNATED OFFICER RESPONSIBILITIES UNDER PIDA

Employees have a choice about seeking advice or making disclosures under PIDA - they can opt to do either with the Office of the Ombudsperson, with their employer's DO or with their supervisor. Additionally, employees can seek advice from their employee union or employee association representative, or their legal representative.

Under PIDA, the Chief Executive must appoint at least one senior official to be a DO. DOs are responsible for responding to requests for advice, receiving disclosures and investigating disclosures of wrongdoing. The Chief Executive may appoint a different person for each task.

### Designated Officers

#### ***Provide information and advice to employees and supervisors***

Employees may go to a DO for advice about making a disclosure or making a reprisal complaint. It is important to document these interactions. Seeking advice is protected under PIDA and employees can make a complaint to the Ombudsperson if they experience reprisal because of it.

Employees can also request advice and make disclosures to their supervisor. Supervisors should be reminded that they must provide disclosures they receive to the DO immediately



upon receipt. Supervisors may need assistance handling the requests for advice they receive from employees. When seeking assistance with handling a request for advice, supervisors should not provide a DO with identifying details about the employee. A DO can provide guidance to supervisors without knowing the identity of the employee who sought advice.

### ***Receive disclosures from employees and supervisors***

A DO may receive disclosures directly from employees or supervisors may provide a Designated Officer with disclosures they have received. Some Designated Officers may also be responsible for assessing and possibly investigating disclosures of wrongdoing. PIDA requires disclosures to be in writing. If the employee has difficulty submitting a written disclosure, a DO may assist them.

### ***Investigate***

If a DO determines an alleged wrongdoing is jurisdictional and the threshold test for wrongdoing may be met, it is time to investigate. A DO should follow their organization's internal procedures established under section 9 of PIDA. Below is a sample of section 9 procedures your organization may adapt or adopt.

### ***Mitigate reprisal risk***

DOs should familiarize themselves with the confidentiality provisions set out in section 6 of PIDA.

To mitigate reprisal risk, DOs must keep the identity of the employee who made the disclosure or requested advice confidential to the maximum extent possible. DOs must also assess the risk of reprisal to the employee and take steps to minimize or address any risks. When assessing risk, consider the employee's vulnerability in the workplace and the likelihood their identity will be known or assumed.

DOs should advise employees not to take any adverse measures against another employee whom they know or suspect has made a disclosure. Remind employees who seek advice or make a disclosure that they can make a reprisal complaint to the Ombudsperson if necessary.

### ***Maintain confidentiality***

DOs must keep the identity of the person who reported the wrongdoing or sought advice confidential to the extent possible to fulfill the purpose of PIDA, taking necessary steps to ensure that they do not inadvertently enable the identification of the discloser. For example, the DO must not provide briefings about PIDA matters to the Chief Executive or other management personnel while considering whether to investigate or when investigating a disclosure.

The identity of the person who reported wrongdoing or sought advice can generally only be shared with the employee's express written consent, or for the purposes of PIDA or another lawful purpose.

If an employee must be revealed as the source of evidence to comply with the principles of natural justice, wherever possible they should not be identified as the discloser.

### Best Practices for confidentiality during investigations.

- Interview witnesses discreetly.
- Give the discloser an alias (e.g., Witness C) for all documents that may be used in interviews.
- Include the discloser in the ordinary interview process if it would be expected that everyone in the workplace would be interviewed. Do so even if they have already been interviewed.
- Tell witnesses not to discuss their interview or evidence with colleagues.

(See Topic 4.3 Confidentiality)

### Reporting

At the conclusion of your investigation the DO must provide a report to your Chief Executive that includes

- Findings;
- The reasons supporting the findings, in cases where wrongdoing was found; and
- Any recommendations to address the findings.

If the investigation does not find that wrongdoing took place, the DO may make recommendations to address any other issues identified during the investigation.

DOs must also provide a summary report to the discloser and other appropriate persons. This may include those who are adversely affected by the report, such as the person alleged to have committed the wrongdoing.

### Helpful tools for DOs

- [Sample PIDA section 9 procedures](#)

## TOPIC 1.4: ABOUT THIS TOOLKIT

This toolkit provides guidance for Designated Officers (DO) when responding to requests for advice, receiving disclosures and conducting PIDA investigations within their organizations. PIDA covers many different types of public sector organizations in British Columbia and addresses a variety of situations that could meet the definition of wrongdoing. This information is intended as general information and each DO should take appropriate steps according to their unique organizational composition, the individuals involved and the subject matter of the

disclosure. Refer to each organization's section 9 PIDA procedures when addressing disclosures of wrongdoing or requests for advice.

Each module has sub-topics. Most modules list tools at the end of the topic that may be useful to DOs.

Please note that some tools are referenced in more than one topic. That is because the tools may be useful at different stages of a PIDA investigation.

## TOPIC 1.5: DESIGNATED OFFICER TOOLKIT NAVIGATION MAP

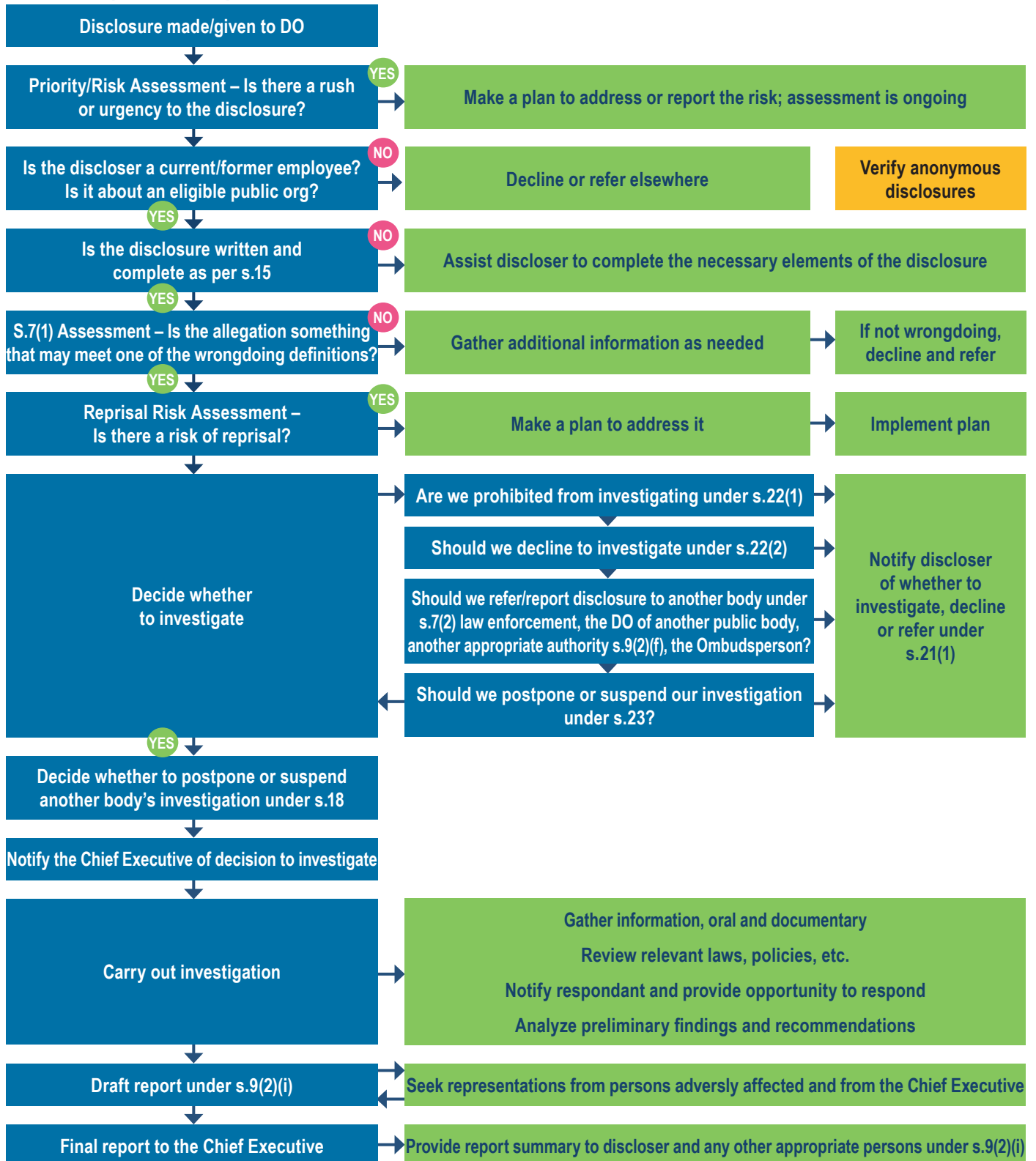
ACTION STEP	TOPICS	TOOLS
<b>PREPARE</b>	<b>Review investigative principles</b>	<ul style="list-style-type: none"> <li>• <a href="#">Quick Tips: Understanding Fairness</a></li> <li>• <a href="#">Quick Tips: Essentials of Procedural Fairness</a></li> <li>• <a href="#">Quick Tips: Exercising Discretion Fairly</a></li> <li>• <a href="#">Quick Tips: Reducing Bias in Decision Making</a></li> </ul>
<b>PLAN</b>	Decide issues/scope Identify sources of information Conduct urgency and reprisal risk assessments Plan communication with the parties Write the investigation plan	<ul style="list-style-type: none"> <li>• <a href="#">Reprisal risk assessment</a> (pg 21)</li> <li>• <a href="#">Interview planning checklist</a> (pg 60)</li> <li>• Sample notice and interview invitation letters (pgs <a href="#">46</a>, <a href="#">47</a>, <a href="#">58</a>)</li> <li>• <a href="#">Sample information for investigation participants</a> (pgs 61-64)</li> <li>• <a href="#">Investigation plan checklist</a> (pg 52-53)</li> </ul>
<b>INVESTIGATE</b>	Interviewing Analyzing Documenting Avoiding pitfalls	<ul style="list-style-type: none"> <li>• <a href="#">Assessing wrongdoing</a> (pg 32)</li> <li>• <a href="#">Quick Tips: Tips on Effective Communication</a></li> <li>• <a href="#">Quick Tips: 10 Tips on Making Fair Decisions</a></li> </ul>
<b>AFTER THE INVESTIGATION</b>	Writing the final reports Notifying parties of the results	<ul style="list-style-type: none"> <li>• <a href="#">Draft investigation report outline</a> (pg 75)</li> <li>• <a href="#">Formulating findings and recommendations</a> (pg 76)</li> <li>• <a href="#">A word about reasons</a> (pg 76)</li> <li>• <a href="#">Quick Tips: On Apologies: Leading Practices in Appeals</a></li> <li>• <a href="#">Sample letters to affected parties</a> (pgs 81, 82)</li> </ul>

# RECEIVING DISCLOSURES AND REQUESTS FOR ADVICE

# 2

## TOPIC 2.1: INTERNAL DISCLOSURE FLOWCHART

### Main steps/decision points in blue



## TOPIC 2.2: WHO CAN SEEK ADVICE OR MAKE A DISCLOSURE?

Under the *Public Interest Disclosure Act* (PIDA), “employees” may seek advice and make disclosures regarding alleged wrongdoing.

### PIDA definitions:

“Employee” means

- (a) an employee of a ministry, government body or office, and includes a person appointed under section 15 [appointment by Lieutenant Governor in Council] of the *Public Service Act*, or
- (b) a member of a class of persons prescribed by regulation;

“Government body” means an organization designated by regulation as a government body for the purposes of this Act;

Section 2 provides further interpretation of “employee”:

**2** For the purposes of this Act,

- (a) an employee includes
  - (i) a director or an officer, in respect of a government body, and
  - (ii) a former employee, if a wrongdoing occurred or was discovered when the employee was employed by the ministry, government body or office, as applicable.

### Who can report wrongdoing?

A person must be a current or former employee of an eligible public body to report wrongdoing. The term “employee” includes directors and officers. An employee can report wrongdoing that happened in the past, current wrongdoing or wrongdoing that may happen in the future. PIDA does not have any time limits. An employee

has the option of making a report anonymously. An employee can report wrongdoing to their supervisor, their organization’s DO or to the Ombudsperson.

### Anonymous disclosures

Employees who wish to make a disclosure may do so anonymously. However, an anonymous disclosure cannot be considered if the Designated Officer (DO) cannot determine whether the discloser is an employee or former employee.

As DO, consider anonymous disclosures only where there is a reasonable basis to believe the discloser is an employee or former employee. Anonymous disclosers should ensure that they have provided adequate particulars about the allegations to allow the DO to assess whether the allegations warrant investigation under PIDA. Anonymous disclosers should consider providing contact information so that the DO can follow up to obtain more information about the disclosure as needed.

Employees are encouraged to bring forward their disclosures and to identify themselves in doing so. As DO, provide anonymous disclosers with the following information so that the discloser can decide whether to reveal their identity to you:

- You will only share the discloser’s identity with their express permission or for a lawful purpose.
- Making an anonymous disclosure does not mean that their employer or colleagues will not suspect who made the disclosure.
- PIDA provides protection from reprisal for disclosers, and the Chief Executive does not tolerate retaliation against disclosers.
- Without knowing the identity of the discloser, you cannot conduct a reprisal risk assessment or take measures to mitigate any risk of reprisal to the employee.

- If the anonymous discloser does not provide their contact information, you may not have sufficient information to assess their disclosure.
- Anonymous disclosers may not receive information about the conduct of any investigation into the disclosure, including notice of the investigation and a summary of the results.

### **Multiple disclosers**

If multiple disclosers come forward at the same time regarding the same alleged wrongdoing, DOs may assess and investigate the disclosures together as a single matter.

The fact that multiple disclosers have come forward about the same alleged wrongdoing should not be shared with the other disclosers. Each discloser will have protections from reprisal under PIDA and will be interviewed separately.

## TOPIC 2.3: HOW TO RESPOND TO REQUESTS FOR ADVICE

Employees may come to the DO with requests for advice under PIDA. Requests for advice about making a disclosure or a reprisal complaint are protected acts under PIDA. This means that employees can make a reprisal complaint to the Ombudsperson if they experience adverse treatment because they requested advice under PIDA. When providing advice to employees, give general information about PIDA but do not assess particular allegations of wrongdoing at this time.

### **Considerations in responding to requests for advice:**

**1. Ask the employee if they are requesting advice under PIDA.** Because DOs occupy senior positions within their organizations, employees may come to them about making human resources, health and safety or program-area complaints. DOs should make a point of clarifying what complaint mechanism they are seeking advice about. If the employee is bringing up a topic that is in the public interest but doesn't mention PIDA, they should be informed that PIDA could be an option for their concern

### **2. Provide general information on PIDA and do not try to assess whether allegations would rise to the threshold of wrongdoing.**

Tell employees what is involved in making a disclosure of wrongdoing or a reprisal complaint, explain your organization's procedures for assessing and investigating disclosures and explain [how wrongdoing is defined under PIDA \(s.7\)](#). However, allegations of wrongdoing are often complex and may take time and research before (or if) they proceed to an investigation. Be careful not to make judgements in the moment and set up false expectations.

**3. Document the request.** It's important to maintain a confidential record of requests for advice and advice provided. This is important because:

- The organization may need employer records in the event a reprisal investigation goes forward.
- Having a sound, confidential and responsive system in place to receive requests for advice inspires employee confidence in the organization's speak-up culture. If DOs prefer to provide advice in writing, they can ask that employees request advice by email or create a form



they can fill out. Although advice can be provided in-person or by phone, written correspondence ensures documentation.

- If an employee experiences reprisal because they requested advice under PIDA, they can make a complaint to the Ombudsperson. However, there must be a direct link between participation in the protected act of seeking advice and the adverse treatment for a finding of reprisal to be made. Employees may need to prove their participation in a protected act when they make a reprisal complaint. Therefore, DOs should document requests through a form, tracking sheet or another method if there isn't a paper trail and consider corresponding in writing.

### **Acting on information acquired through requests for advice**

Employees may tell DOs information about their allegations when they make a request for advice. After receiving advice, the employee may or may not make a PIDA disclosure. It is also possible that they may make a disclosure to the Ombudsperson and the DO will not know about it.

If DOs learn about information that is concerning and is under their area of responsibility, they should still take steps to address it. When addressing the matter, the employee's identity should be protected.

### **Requests for advice about public disclosures**

PIDA allows for public disclosures, such as to the media, under the restricted circumstances set out in section 16 of PIDA. The employee must only do so if they "reasonably believe that a matter constitutes an imminent risk of a substantial and specific danger to the life, health or safety of persons, or to the environment".

If an employee does not follow the correct pathway when making a public disclosure, they will not be protected for reprisal under PIDA.

Advise any employees interested in making a public disclosure of the steps below.

- Employees must consult with the relevant protection official and *only make a public disclosure with the approval* of that protection official and following any conditions they set out.
  - Protection Officials are:
    - In respect of a health-related matter, the Provincial Health Officer
    - the provincial administrator as defined in section 1 (1) of the *Emergency and Disaster Management Act*
    - In any other case, the appropriate police force
- Employees cannot publicly disclose information that is subject to any restrictions under provincial or federal laws. They are also not allowed to share any information that is protected by solicitor-client privilege, common law rule of privilege or public interest immunity including cabinet immunity.
- Employees must report the disclosure of wrongdoing to their supervisor, Designated Officer or to the Ombudsperson immediately after making a public disclosure.
- If the disclosure is reported to the Designated Officer or the Ombudsperson following a public disclosure, they will consider what actions (if any) the protection official has taken when they investigate the allegations.

### **Helpful tools for DOs**

- [How wrongdoing is defined under PIDA \(section 7\)](#)
- [Fact sheet on recognizing wrongdoing for employees](#)

## Recognizing wrongdoing

Employees of eligible public bodies can report concerns about wrongdoing under PIDA.

Public sector employees have an important role to play in protecting the public interest by reporting their concerns of wrongdoing.

### What is wrongdoing?

In broad terms, wrongdoing is any unethical act that diverges significantly from generally accepted behaviour. However, only certain types of wrongdoing qualify under PIDA.

To be considered wrongdoing under PIDA, the conduct must have both of these elements:

- Occur “in or relating to” a ministry, government body or office of the legislature; and,
- Meet the criteria for at least one type of wrongdoing as outlined in section 7(1) of PIDA (described on following pages)

### What does “in or relating to” mean?

Under PIDA, wrongdoing can take place directly within an eligible public body or be relating to its function.

To be considered “relating to” an eligible public body, there must be a real and substantial connection between the wrongdoing and that organization.

An assessment of whether there is a real and substantial connection will depend on the specific context and facts. See page 32 of this toolkit for more information.

## Types of wrongdoing

See pages 33-35 for more detailed information.

### A) Offences

PIDA definition: section 7(1)(a) a serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada;

What it means: A serious action or failure to act that is also a crime or an offence.

### B) Danger to people or the environment

PIDA definition: section 7(1)(b) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of an employee’s duties or functions;

- What it means: An action or failure to act that is dangerous to a person’s health or safety or to the environment. The danger will be considered substantial if it is serious and likely to result in real harm. The danger will be considered specific if the actual threat can be identified as well as when it is likely to occur.
- Exception: Danger that is a typical part of someone’s job.

### C) Misuse of public funds

PIDA definition: section 7(1)(c) a serious misuse of public funds or public assets;

- What it means: Government money or resources are not being used for their intended purpose, are being wasted, or are used in a way which is not normally expected or required. The misuse must be serious. Serious misuse may include misuse that is recurrent, systemic, deliberate, undertaken by a person at a senior level, or involving a high dollar value.

### D) Mismanagement

PIDA definition: section 7(1)(d) gross or systemic mismanagement;

- What it means: Gross mismanagement means management of a government resource (example: staff, contract, project) that is highly inappropriate, irresponsible, reckless, deliberate, involving a significant resource, etc. Systemic mismanagement means mismanagement that is broad, longstanding, recurrent or inherent to the organization’s culture.

### E) Directing wrongdoing

PIDA definition: section 7(1)(e) knowingly directing or counselling a person to commit a wrongdoing described in paragraphs (a) to (d).

- What it means: Telling someone else to do one of the acts or omissions listed above in A,B,C or D. It does not matter whether the individual acts on the instructions.

### Not sure if something is wrongdoing?

Speak up! An employee can report wrongdoing even if they are not sure that it meets the definition of wrongdoing under PIDA. There is no penalty if their report doesn't qualify as wrongdoing. An employee is protected from reprisal even if their allegations are not investigated or proven during an investigation. An employee may also wish to seek advice before they report wrongdoing. If an employee would like more information before they report, they should seek advice from their supervisor, DO, union/employee association, lawyer or the Ombudsperson.

### 2.3b: PIDA and other complaint mechanisms

What can an employee do if they are concerned about a problem in their workplace?

PIDA is one of many complaint processes available to public service employees, and does not replace other mechanisms. **It is an additional, optional pathway for reporting serious wrongdoing that is in the public interest.** It is not meant as a complaint mechanism for personal employment disputes or public policy grievances.

### Employees have several pathways to report concerns in their workplace. Some common pathways include:

- Health and safety concerns → WorkSafe BC
- Disputes about workplace conditions → human resources, union or employee association representatives

- Program operation concerns → Program Managers, Directors
- Offences → law enforcement

### What makes PIDA unique from other complaint processes?

- Under PIDA, employees always have a choice as to where they disclose wrongdoing. They can make a disclosure internally to their supervisor or DO, or externally to the Ombudsperson.
- Unlike some other complaint mechanisms, PIDA legally protects employees from reprisal and includes strong confidentiality provisions.
- PIDA allows for anonymous disclosures.
- PIDA is only available to employees or former employees of eligible public bodies. It is not available to contractors, volunteers or members of the public.
- PIDA investigations result in findings and recommendations. Recommendations may address individual circumstances or issues with policy, practice or systems.

### How does PIDA relate to other complaint processes?

- Making a disclosure under PIDA does not replace mandatory reporting obligations under other legislation or policy, unless the legislation or policy explicitly says so. Examples of a reporting obligation include a person's duty to report child abuse under section 14 of the *Child, Family and Community Service Act*, or a public service employee's duty to report misspending under section 33.2 of the *Financial Administration Act*.
- PIDA is a stand-alone process. Employees do not need to exhaust any other another complaint mechanism before making a disclosure of wrongdoing under PIDA.
- PIDA is not an appeal mechanism. But, if an employee has raised their concerns elsewhere, they can still make a disclosure under PIDA.

- The DO may decline to investigate if, after assessing a disclosure, they conclude that the alleged wrongdoing has already been (or is being) appropriately investigated or otherwise dealt with.
- PIDA investigations are not intended to compromise other investigations. The Ombudsperson or a DO may postpone or suspend their own PIDA investigation if they believe it may compromise another investigation process or if the alleged wrongdoing is also being investigated for the prosecution of an offence.
- The Ombudsperson or DO may also require that another investigation by a public body (other than a PIDA investigation) be suspended or postponed if there is *prima facie* evidence that the investigation was undertaken with the intention of compromising an investigation under PIDA.

If the Ombudsperson or DO believes that a disclosure could be more appropriately investigated through another mechanism, they may refer it to another organization. The potential

for this referral should be discussed with the discloser first. If the discloser has concerns about the referral, the basis for the concern should be considered when making the decision. The final referral decision rests with the Ombudsperson or the DO. If the disclosure, in whole or in part, has been referred, the discloser must be informed.

### What is the role of a DO in helping employees decide whether to make a disclosure?

- To help employees understand the pathways available to them for dealing with their concerns, including information about what PIDA is and how to access it.
- To avoid encouraging or discouraging employees from making a disclosure. To protect employees from reprisal for making a disclosure even if:
  - the employee is mistaken about the allegation,
  - the allegation is assessed not to be wrongdoing, and/or
  - the DO determines investigation is not warranted.

## TOPIC 2.4: RECEIVING DISCLOSURES

Employees who wish to make a disclosure must do so in writing, whether by email, mail or through submission of their employer's disclosure form. Employers are encouraged to develop a Disclosure Form to ensure the necessary information is included.

Under PIDA, disclosures must include the following information, *if known*:

- a description of the wrongdoing;
- the name(s) of the person alleged
  - to have committed the wrongdoing, or
  - to be about to commit the wrongdoing;
- the date(s) of the wrongdoing;

- whether the information or conduct that is being disclosed relates to an obligation under another enactment and, if so, a reference to the enactment;
- whether the wrongdoing has already been disclosed under PIDA or another enactment;
- if paragraph (e) applies, the name of the person to whom the disclosure was made and the response, if any, that has been received.

Since employees can make disclosures to their supervisor or a DO by email or mail, employees should be strongly encouraged to note that they are making a public interest disclosure and to ensure that their disclosure includes the required information.

If an initial disclosure is not made in writing, the supervisor or DO may assist the employee to document their disclosure using a disclosure form.

It is best practice to confirm receipt of a disclosure within two business days.

The DO should conduct an initial interview with a discloser as soon as possible after receipt of a disclosure. Interviews should be conducted in a manner and place that maintains the confidentiality of the identity of the discloser.

The purpose of the interview is to gather more information about the nature of the disclosure so that the DO can assess whether it is likely to meet the threshold for wrongdoing. The interview is also intended to inform the DO's assessment of the urgency of the matter, as well as an initial consideration of the risk of reprisal to the discloser.

### ***Maintaining confidentiality***

DOs and supervisors may collect, use and disclose personal information for the purpose of PIDA where the personal information is included in a disclosure or is for the purpose of an investigation or report.

Information about the identity of the discloser is confidential. No person may share personal information about a discloser that could enable the identification of the discloser as the person who made the disclosure, unless:

- The provision or use of the information is for the purposes of the Act, including as necessary to effectively manage the disclosure in accordance with PIDA and the principles of natural justice and procedural fairness;
- The provision or use of the information is in connection with another lawful purpose;
- The discloser has given express consent, in writing, to the release or use of the personal information; or
- The personal information has previously been lawfully published.

Wherever possible, the DO will not share or confirm that the employee made the disclosure. Where necessary to effectively carry out an investigation, a DO may share that the employee who made the disclosure was a witness and a source of evidence.

The DO will explain the confidentiality provisions in the Act to the discloser.

Information and documents obtained in the disclosure process will be stored in a safe and secure manner and must be protected from unauthorized access, use and disclosure.

### ***Managing information***

Start by making a secure investigation file which will eventually include:

- ☐ A copy of the written disclosure and any evidence included by discloser
- ☐ Urgency and reprisal risk assessments and any risk management plans
- ☐ Written investigation plan
- ☐ Document register
- ☐ Case activity/communication log
- ☐ Evidence/exhibit log or index
- ☐ Your own notes, memos to file
- ☐ Recordings or notes of all witness interviews
- ☐ Copies of all correspondence, notification letters, written witness submissions
- ☐ A succinct summary of the analysis leading to conclusions, findings of fact and whether wrongdoing occurred, and recommendations
- ☐ Draft investigation report, any responses from adversely affected persons and the analysis of those responses
- ☐ Final investigation report and summary reports

# ASSESSING A DISCLOSURE

3



## TOPIC 3.1: ARE DOs LEGALLY ABLE TO INVESTIGATE UNDER PIDA?

When DOs receive a disclosure, they will need to assess it for various factors before proceeding. The following should be assessed in this order:

1. Has the disclosure been made by an employee or a former employee of an organization covered by the *Public Interest Disclosure Act* (PIDA)?
2. Is the matter of wrongdoing “in or relating to” an organization covered by PIDA?
3. Did the employee learn of the wrongdoing during the course of their employment?
4. Are you barred from investigating under section 22(1) of PIDA?

### 01. *Current or former employee*

DOs can only investigate disclosures made by employees or former employees of public bodies covered by PIDA. Employees may disclose about past events and there is no time limit for making a disclosure. In most cases, DOs will be able to check the discloser’s employment status against their organization’s records to ensure they are an employee/past employee.

Anonymous disclosers can be verified as employees if the information provided could likely only have been acquired by an employee/former employee of their organization. If unclear, you can ask for information such as a redacted paystub, or ask questions about topics only someone within the organization would be privy to.

If it is not clear in the disclosure that the jurisdictional test has been met, clarifying questions can be posed during the initial communication with the discloser.

### 02. *“In or relating to”*

A disclosure must be about a wrongdoing which is within an eligible public sector organization or is related to the function of an eligible organization.

Disclosers will typically disclose wrongdoing that has occurred within their own organization. However, it is possible that an employee could make a disclosure about a different organization. This is acceptable so long as the function is closely tied to their organization. For example, employees can make disclosures about organizations that are agents, delegates or service providers of their organization, or if the wrongdoing was carried out in the course of exercising their organization’s duty or authority.

To be considered “relating to”, there must be a real and substantial connection between the wrongdoing and that organization. An assessment of whether there is a real and substantial connection will depend on the specific context and facts. (see *Topic 3.5: Assessing the Threshold of Wrongdoing* for more detail)

### 03. *How did they learn of wrongdoing?*

A discloser must learn of the wrongdoing during the course of their employment. The matter of concern cannot be something they heard of on the radio or through a friend.

### 04. *Statute barred under section 22(1)*

DOs must also ensure that the subject matter of the disclosure can be investigated under PIDA. Section 22 of PIDA outlines the topics DOs are not allowed to investigate under PIDA and those subject to their discretion.

Matters that cannot be investigated under PIDA include:

- A dispute between an employee and their employer about an individualized matter of employment



- Matters relating to police conduct
- Matters relating to the prosecution of an offence.
- Matters related to an adjudicative function of a court, tribunal or other statutory decision maker

If the disclosure received either does not contain the components listed above (numbers 01 to 03), or is about a matter barred under section 22(1), then it is not something to be addressed under PIDA. There may be another more appropriate complaint mechanism or human resources process to deal with the matter of concern.

## TOPIC 3.2: ASSESSING URGENCY AND REPRISAL RISK

### **Risk assessments**

The Designated Officer (DO) is responsible for conducting two types of risk assessments: an urgency assessment and a reprisal risk assessment. Both assessments must be conducted as soon as practical. The assessments are then reconsidered throughout the life of a file, but in particular:

- before beginning an investigation, as part of the investigation planning process;
- as needed during the investigation; and
- before sharing the results of an investigation, even in draft form.

### **Urgency assessment**

Although employees may often share distressing information during a request for advice or through a PIDA disclosure, some matters are time-sensitive and may result in severe negative outcomes if they are not immediately addressed. PIDA does not prevent DOs from acting to address problems and there may be times where it is not possible to wait for an investigation to be completed before addressing the concern.

When assessing a disclosure, consider the urgency of the allegations and act accordingly.

Some aspects to consider to determine the urgency of a disclosure are:

- Could there be serious harm to people or the environment?
- Could there be severe financial harm?
- Is there an opportunity to intervene before the wrongdoing occurs?
- Is there a high risk that necessary evidence will be lost or destroyed?
- Is there a high risk to the discloser or another person?
- Do the allegations have the potential to adversely affect a child, youth or vulnerable adult?
- Has the discloser already raised the concerns as an urgent public disclosure?
- Is there exceptionally high reprisal risk to the discloser, such as a threat to their safety or that of their family?

If a disclosure is considered urgent, deal with it immediately and take steps to prevent harm.

An urgent response may also be necessary following an urgent public disclosure unless information indicates that any serious risk has already been addressed.

**Important Note:** A file may become urgent at any time as new information comes to light. Reassess the allegations regularly throughout the investigation and act accordingly.

### Reporting imminent risk to protection officials

If reporting the matter to a protection official is believed to be the best course of action, DOs can do so if the “matter constitutes an imminent risk of a substantial and specific danger to the life, health or safety of persons, or to the environment.” In these cases, DOs are able to share information learned through PIDA with protection officials and they can share information between each other, if necessary.

Protection Officials are:

- In respect of a health-related matter, the [Provincial Health Officer](#)
- the provincial administrator as defined in section 1 (1) of the *Emergency and Disaster Management Act*
- In any other case, the [appropriate police force](#)

### FOIPPA obligations

If a matter poses a risk of significant harm to the environment or the health or safety of persons, consider whether the public interest reporting provision in section 25 of the [Freedom of Information and Protection of Privacy Act](#) may be applicable. If you believe that section 25 may apply, consult your Chief Executive.

### Reprisal risk assessment

Reprisal is prohibited under PIDA. Reprisal is defined in section 31(1) of PIDA as follows:

**31(1)** A person must not take any of the following measures of reprisal against an employee, or counsel or direct that any of the following measures of reprisal be taken against an employee, by reason that the employee has, in good faith, sought advice about making a disclosure, made a disclosure or cooperated with an investigation under this Act:

- (a) a disciplinary measure;
- (b) a demotion;
- (c) a termination of employment;
- (d) any measure that adversely affects the employee’s employment or working conditions;
- (e) a threat to take any of the measures referred to in paragraphs (a) to (d).

#### “Protected Acts”

Employees are protected from reprisal when they do any of the following acts:

- (a) Seek advice about making a disclosure
- (b) Make a disclosure
- (c) Cooperate with a PIDA investigation

One of PIDA’s goals is to create a safe pathway for employees to speak up about wrongdoing within their organizations. To create this sense of safety, Designated Officers must do everything they can to reduce the risk or reprisal to disclosers.

Reprisal, often referred to as retaliation, includes *any* action taken by management, peers or any other person which negatively impacts an employee’s employment or working conditions where that action was taken because an

employee sought advice, made a disclosure or cooperated with an investigation.

### ***Reprisal is an offence under PIDA***

Many people think of reprisal as being a single, high profile event such as termination or a demotion. Although this can be true, reprisal is often a series of more subtle actions. Reprisal can be perpetrated by peers, not only superiors. It is the DO's responsibility to create an environment where reprisal will not be tolerated.

Topic 3.2a Reprisal Risk Assessment includes questions to consider and strategies to use to minimize reprisal risk in an investigation. The level of reprisal risk depends the context and many factors such as the history of the discloser with the alleged wrongdoers and the power dynamics between individuals. Confidentiality is one of the best tools to mitigate reprisal risk.

Remember, under PIDA only the Ombudsperson may investigate complaints of reprisal from employees under PIDA's jurisdiction. If an employee believes that a reprisal has been taken against them, they may contact the Ombudsperson's office to make a complaint. If an employee makes a reprisal complaint to you, it must be promptly referred to the Ombudsperson.

#### **Helpful tools for DOs**

- [Reprisal risk assessment](#) (pg 20)
- [Reprisal risk assessment tool](#) (pgs 24-27)

### **Topic 3.2a: Reprisal risk assessment**

This section aims to help DOs understand the nature of reprisal, identify reprisal risks, develop suitable mitigation strategies and implement a plan to reduce the risk of reprisal to the discloser.

#### ***Understanding reprisal***

Reprisal is defined under section 31(1) of PIDA. Reprisal occurs when a person adversely impacts, or threatens to adversely impact, another person's employment or working conditions because they made a disclosure, sought advice under PIDA or cooperated with a PIDA investigation.

Reprisal can come in many forms and is not always a single high-profile event such as termination or demotion. It can be covert and informal and may come from colleagues as well as superiors. The most common types of reprisal include threats, intimidation, discrimination, harassment, undermining of authority, heavier scrutiny of work, ostracism or exclusion, questioning of motives, unsafe or humiliating work, and being made to work with alleged wrongdoers.

#### ***When to conduct a reprisal risk assessment***

Conduct a reprisal risk assessment at the following times:

- as soon as is practical after receiving a disclosure;
- before beginning an investigation, as part of the investigation planning process;
- as needed during the investigation; and
- before sharing the results of an investigation, even in draft form.

Reprisal may take place at any time. Therefore, ongoing reprisal risk assessments are necessary.

### **Step 1. Risk analysis and evaluation**

Some factors make disclosers particularly vulnerable to reprisal:

#### **Disclosers whose allegations are particularly egregious**

Examples:

- alleged wrongdoing has taken place over a significant period of time
- alleged wrongdoer is in a high position of influence
- allegations are against multiple people
- allegations include significant harm or financial loss
- allegations include discrimination, harassment or violence

#### **Disclosers whose identity could become known**

Examples:

- discloser has stated their identity is known
- discloser has raised these concerns previously
- confidential investigation of the disclosure is not possible
- discloser can be easily identified due to the nature of the allegations
- discloser told someone they were making a disclosure

*Consider these factors to the extent possible even if the discloser is anonymous.*

#### **Disclosers who are in vulnerable positions**

Examples:

- discloser has expressed fear of reprisal
- respondent(s) has/have seniority over discloser or can easily affect discloser's working conditions
- discloser has been/is being performance managed
- discloser is an employee on a contract, auxiliary, part-time or works in an isolated location

- social or cultural inequities or power imbalances such as gender, race or sexual orientation are present that may disadvantage the discloser and/or advantage the respondent(s)
- lack of effective supervisory arrangements for respondents or others who are likely to commit reprisal
- allegations include discrimination, harassment and/or violence
- discloser and respondent work together in a physically isolated location and/or with little supervision

#### **The respondent(s) or others are motivated to commit reprisal**

Examples:

- respondent(s) will likely experience adverse consequences as a result of the investigation
- identity of respondent(s) cannot remain confidential during the investigation
- respondent(s) will be removed from the organization during the investigation
- respondent(s) and discloser have had a strained relationship in the past

#### **There are other dynamics that suggest potential for reprisal**

Examples:

- discloser does not have support network in the organization
- discloser and respondent(s) socialize outside of work
- a history of conflict in the workplace involving the discloser, respondent(s), management and/or colleagues
- a workplace culture that facilitates conflict, discrimination or harassment

## Step 2. Reprisal risk mitigation strategies

### General strategies:

- ☐ Keep the identity of the discloser confidential.
- ☐ Develop a support strategy for the discloser and respondent(s).
- ☐ Communicate with the discloser and respondent(s) at regular intervals.
  - Be proactive by reinforcing the Act's prohibitions against reprisal with the respondent(s) and any person cooperating with an investigation.
- ☐ Where appropriate, take steps to delay or limit workplace awareness of the investigation. For example, collect evidence after work hours.
- ☐ Consult with the discloser regarding alternate work arrangements such as changing lines of reporting or changing the discloser's/ respondent's work hours or work location.
- ☐ Delay notification to the Chief Executive and/ or respondent(s) in accordance with PIDA and where natural justice permits.
- ☐ Carefully consider when and how to notify the alleged wrongdoer/respondent(s) of the allegations against them.
- ☐ Ensure the disclosure is dealt with in an appropriate timeframe.

### Interview tips:

- ☐ Give the discloser an alias (e.g. – Witness C) for use on all documents which may be used during interviews, to avoid unwittingly sharing the discloser's identity.
- ☐ Interview the discloser as part of the investigation, if it would be expected that everyone in the workplace would be interviewed.
- ☐ Do not discuss details of the allegations which may only be known to the discloser, except to the extent necessary to conduct a procedurally fair and effective interview.

### Counsel the **discloser** on the following:

- Disclosers should limit communication regarding any wrongdoing to discussions with the DO, a union representative (as applicable), legal counsel or other “support person” – this may be a spouse/partner, counsellor or other person who can provide emotional support but is not involved in the process or connected with the workplace.
- Disclosers should ensure that their chosen means of communication is private and is not subject to third party monitoring.
- Disclosers should take care to ensure they do not alert anyone who may be the subject of a disclosure that a disclosure has been made.
- Disclosers should only assist the DO when requested. Disclosers should not, on their own initiative, seek out additional information or evidence.
- Disclosers should notify the DO immediately of any reprisal measure, or suspicion that reprisals are occurring or have been threatened.

### Counsel **witnesses** on the following:

- Remind witnesses that the investigative process is confidential and explain the prohibitions on disclosing personal information which could enable the identification of the employee who made the disclosure.
- Tell witnesses not to discuss their interview or their evidence with colleagues.
- Discuss the reprisal protection provisions and confidentiality obligations of PIDA with every witness.

### Counsel **respondents** on the following:

- Only discuss the matter with the DO, union representative (as applicable) or legal counsel.
- Do not take any adverse measures against another employee whom they know or suspect has made the disclosure.

### Step 3. Risk management plan

In light of the above strategies, develop a plan to eliminate or minimize reprisal risks. The risk management plan should be customized according to the particular situation of the discloser and the subject matter of the disclosure.

Consider *what* actions are appropriate, *who* will take these actions and *when* they will be executed. Multiple actions may need to be taken to mitigate multiple risks.

Repeat the reprisal risk assessment and re-evaluate the risk management plan on an ongoing basis as the risks and mitigation strategies may evolve over the course of an investigation.

### 3.2b: Reprisal Risk Assessment Tool

#### Reprisal Risk Assessment Tool for DO Use

Discloser	
Designated Officer:	
Date:	

The DO will assess the risk of reprisal to the discloser and/or those cooperating with the investigation as soon as is practical after receiving a disclosure. The DO will exercise their discretion to revisit the assessment and note any changes before beginning an investigation, before notifying witnesses or respondent and conducting interviews and before sharing the results of an investigation, even in draft form.

#### Step 1. Identify the risk

##### Is the nature of the disclosure particularly egregious?

- ☐ Yes *Has the alleged wrongdoing taken place over a significant period of time? Is there more than one alleged wrongdoer?*
- ☐ No
- ☐ N/A

##### Is the discloser's identity known in the workplace?

- ☐ Yes *If yes, how did the identity of the discloser come to be known? Is this a cause for concern?*
- ☐ No
- ☐ Unknown

##### If "No" or "Unknown", could the discloser's identity become known?

- ☐ Yes *Has the discloser told anyone else that they were making a disclosure? Have they raised their concerns to others? Is the nature of the disclosure such that they may easily be identified? Is it possible to confidentially investigate the disclosure?*
- ☐ No

##### Is the discloser in a vulnerable position?

- ☐ Yes *Has the discloser expressed fear of reprisal? Does the respondent have seniority over the discloser or can they easily affect the discloser's working conditions? Is the discloser being performance managed? Are there effective supervisory arrangements to monitor the conduct of the respondent(s)? Is the discloser on contract or part-time?*
- ☐ No



**Will the respondent(s) have motivation to commit reprisal?**

- ☐ Yes      *Has the discloser told anyone else that the respondent suffer any adverse consequences as a result of an investigation? Will their identity remain confidential during the investigation? Will the respondent be removed from the workplace during the investigation?*
- ☐ No
- ☐ Unknown

**Are there any other dynamics suggesting the potential for reprisal?**

- ☐ Yes      *Does the discloser have a support network in the organization? How closely connected is the discloser with the respondent(s)? Do the discloser and respondent(s) socialize outside of work? Is there a history of conflict in the workplace involving the discloser or respondent(s) and management or colleagues?*
- ☐ No
- ☐ N/A

If yes, describe

**Step 2. Risk analysis and evaluation**

Using the information from the previous page, analyze the risk to assess the nature and likelihood of reprisal taking place.

**Reprisal measures****Given any risks identified, what form could reprisal potentially take?**

*Some examples: discrimination, disadvantage or adverse treatment to the employee's career, a workplace transfer, damage to reputation, threats, bullying, harassment or torment, ostracism, significant undermining of the employee's authority, heavier scrutiny of work, unsafe or humiliating work, injury, or any other action which has a negative impact on employment or working conditions*



## Likelihood

### What is the likelihood of reprisal occurring?

- Which factors make reprisal more or less possible?
- The most significant indicators of high risk are:
  - past experiences of conflict, threats or reprisal in the workplace;
  - the likelihood that the confidentiality or anonymity of the discloser will not be maintained;
  - the significance of the wrongdoing, the number of people involved, and/or the status of the alleged wrongdoers; and
  - the vulnerability of the discloser in the workplace given their seniority, proximity to the alleged wrongdoer(s), or how physically isolated they may be.

## Controls

### What measures or protective factors are already in place to protect the discloser and mitigate or prevent the risk?

- How effective are the measures likely to be?
- Are those measures sufficient to protect the discloser? If not, why and what else needs to be addressed?

## Risk evaluation

DOs should select a risk rating based on a consideration of all the available information assessed above. Risk factors may be given more or less weight in the assessment depending on the circumstances. Some examples which may support the corresponding risk are below:

### ☐ Low risk

Confidentiality of the discloser can be maintained – The discloser has not raised concerns about reprisal – No concerns about historical conduct of parties involved – The discloser is not in a vulnerable position in the workplace – The discloser is not currently employed by the organization

### ☐ Medium risk

The discloser's anonymity may not be maintained – There is a potential for low level reprisal against the discloser such as workplace conflict, isolation – There are minor concerns about the historical conduct of the parties – There is a power imbalance between the parties – The discloser does not have significant social support in the workplace

### ☐ High risk

The discloser's identity is known or is likely to be known – Previous retaliatory threats may have occurred – There have been previous incidents of concern relating to the conduct of the parties – The discloser is vulnerable in the workplace – The matter of wrongdoing involves more than one party and/ or is egregious – There is a strong motivation for reprisal given the ramifications to the respondent(s) in a finding of wrongdoing

### **Step 3. Risk management plan**

Develop strategies to eliminate or minimize any risks posed. What actions will be taken? Who is responsible for the actions? What is the timing of such actions?

Possible strategies:

- Keep the identity of the discloser confidential.
- Counsel the discloser on ways they can maintain confidentiality.
- Develop a support strategy for the discloser and respondent(s).
- Communicate with the discloser and respondent(s) at regular intervals.
- If conducting interviews in the workplace, interview all employees in a work unit so that neither the discloser nor other witnesses stand out or become easily identifiable as the source of information.
- Be proactive by reinforcing the Act's prohibitions against reprisal with the respondent(s) and any person cooperating with an investigation.
- If risk is high, consider consultation with legal counsel or the Office of the Ombudsperson regarding any additional means of protection at the employer's disposal.
- Delay notification to the respondent(s) where natural justice permits.
- Ensure the disclosure is dealt with in an appropriate timeframe.

**Plan:**

### TOPIC 3.3: MAKING REFERRALS TO OTHER ORGANIZATIONS

Upon receipt of a disclosure consider whether the organization is best placed to conduct an investigation of the matter.

#### Report to law enforcement

The DO may report an alleged offence relating to a request for advice, a disclosure or a reprisal complaint under the Act to a law enforcement agency if they have reason to believe an offence may have been committed. The offence may be reported regardless of whether the disclosure is determined to meet the threshold for wrongdoing or whether the DO decides to investigate the allegations. In assessing whether to make a report, the DO will consider the seriousness of the allegations and whether the alleged offence may be a criminal offence.

The victim of any alleged offence should be consulted prior to a report being made, unless consultation poses health and/or safety concerns or would interfere with a law enforcement agency investigation. Consider concerns about reporting to law enforcement in cases where persons involved belong to communities or groups that have historically experienced systemic tensions with police.

The DO should not report an offence without first consulting the Chief Executive, unless the Chief Executive is implicated in the alleged offence.

Provide no more information to law enforcement than is necessary to make the report.

#### Referrals

Some disclosures may be more appropriately investigated by the Ombudsperson or another organization, whether under PIDA or through another complaint mechanism.

If it's decided that the allegations meet the threshold for wrongdoing, consider whether the disclosure, in whole or in part, would be more

appropriately investigated by the Ombudsperson or the DO for another public body under PIDA. In assessing whether to refer a disclosure to another party, consider the following:

- the relationship between that public body and the matter of the disclosure
- the resources required to conduct the investigation
- the expertise required and available
- the level and position of the alleged wrongdoer(s)
- potential conflicts of interest or perceptions of bias
- whether the discloser previously raised their concerns through another mechanism
- the ability of the public body to manage any reprisal risk
- implications to the public interest
- the extent and nature of another authority's jurisdiction over the subject of the disclosure
- any other relevant factors that arise on the facts of the case

**Note:** *Once a matter is referred to another DO for investigation under PIDA, that DO will be following PIDA's reporting process within their own organization, ie., reporting to their Chief Executive on the matter. The DO for the original disclosure may receive no further information on the conduct of the investigation or its outcome unless it adversely impacts their organization.*

#### Referrals to the Ombudsperson

DOs can refer the investigation, in whole or in part, to the Ombudsperson. They can do so at their discretion for any disclosure. In addition to the factors listed above, when considering a referral to the Ombudsperson the DO may want

to consider the likelihood of voluntary compliance of witnesses. The Ombudsperson has the power to compel information and conduct interviews under oath.

The DO must consult with the Chief Executive prior to referring a disclosure to the Ombudsperson, and make the referral at the direction of the Chief Executive, unless the disclosure is about the Chief Executive.

The DO must inform the discloser in writing of a referral to the Ombudsperson.

**Important:** If the disclosure includes allegations that involve the Chief Executive, the DO must refer the disclosure to the Ombudsperson. It cannot be investigated internally.

### Referrals to other organizations

If there is another organization that would be better positioned to investigate the allegations, the DO may refer the matter to them. For example, there may be times where the DO of a different organization would be better able to investigate the matter under PIDA or where the allegations would fall under the jurisdiction of another oversight body.

If the DO decides to refer the allegations to another party, they should follow the procedures outlined in any agreement that exists between the two organizations.

If protocols have not been established between the two organizations, follow these steps:

1. Write to a senior official to request a consultation.
2. During the consultation, speak about the disclosure in general terms. Only share the information necessary about the subject matter of the disclosure to allow the organization to assess whether, or on what conditions, it would be appropriate to make the referral. Where possible, anonymize the information.

3. If the organization confirms that a referral would be appropriate, you may share sufficient information for them to be able to investigate. Do not share personal information about a discloser which could enable their identification as the discloser, except as permitted under section 6(4) of PIDA.
4. Write the discloser to inform them that their disclosure has been referred and include reasons for this decision. Any concerns they may have should be addressed.

### Investigating a PIDA allegation within the DO's organization

#### *Is the DO the best person to investigate?*

As a senior official within their organization, the DO likely has access to information that could shed light on any possible wrongdoing. Their knowledge of the organization and access to witnesses could also allow them to conduct investigations in a discreet manner that minimizes the risk of reprisal. However, they should consider whether their position and existing relationships within the organization would present any perception of bias and whether they have the skills, experience and capacity to conduct a thorough investigation.

#### *Procedural fairness and preventing a perception of bias*

One of the key components of procedural fairness is having an unbiased decision-maker. Given that the DO is an internal employee and may be investigating colleagues, reports and superiors, there may be times when they are not able to investigate in a fair manner.

### Evaluating whether you can be an unbiased decision maker:

- What is your relationship with the discloser, witnesses and the alleged wrongdoer(s)?
- Do you have preconceived opinions (negative or positive) about any of the parties involved? Are you starting the investigation with assumptions about various parties?
- Have you had any conflicts or close relationships with the parties involved?
- Have you been involved in the project or subject area of the allegations?
- Would a finding of wrongdoing (or no wrongdoing) impact your career? Are you motivated, or could you be seen to be motivated, as seeking a certain result?

Remember that *perception* of bias, even if it is not warranted, can undermine an investigation. The DO should delegate the investigation in whole or in part if they believe they would not be viewed as an unbiased decision-maker.

### Investigatory capacity

DOs come from many different professional backgrounds and may or may not have the skills, experience or time to conduct a PIDA investigation thoroughly and fairly. Consider if you are well positioned to conduct the investigation.

For example:

- Do you have any training or experience in workplace investigations?
- Are you able to conduct interviews effectively on sensitive topics?
- Are you familiar with PIDA's confidentiality provisions and comfortable investigating without sharing the identity of the discloser?
- Do they have the capacity to take on a thorough and possibly lengthy investigation?

### Delegating tasks to others

DOs may delegate the investigation, or components of the investigation, to a colleague or an impartial external investigator.

If the DO delegates tasks, it should be in accordance with PIDA's information-sharing and confidentiality provisions. Note that while other individuals can take on tasks such as reviewing documents, interviewing and coming to preliminary findings, DOs are ultimately responsible for making a finding (or not) of wrongdoing and ensuring that the investigation has been conducted in accordance with PIDA's legal requirements. It is a good idea for DOs to work with the assigned individual(s) to strategize around confidentiality, record retention, information-sharing restrictions and reprisal prevention.

It is best practice to detail delegated tasks in writing. The DO remains ultimately responsible for any delegated duties and should ensure sufficient oversight of any delegates.

### TOPIC 3.4: WHAT IS WRONGDOING?

Wrongdoing is serious or systemic misconduct relating to a public body covered by PIDA that is in the *public interest* to address. Policy disagreements or human resources disputes between an employee and their employer are unlikely to be considered wrongdoing under PIDA.

Section 7 of PIDA lays out the legal definition of wrongdoing and the different types of behaviours, actions or inactions that are considered wrongdoing under the Act. Not all unethical or misguided behaviour is considered wrongdoing under PIDA. Something can be “wrong” but not be wrongdoing.

To meet PIDA’s test of wrongdoing, an allegation must be:

- a) a serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada;
- b) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of an employee’s duties or functions;
- c) a serious misuse of public funds or public assets;
- d) gross or systemic mismanagement; or
- e) knowingly directing or counselling a person to commit a wrongdoing described in paragraphs (a) to (d).

Descriptions of each type of wrongdoing can be found on [our website](#) and on pages 33-35 of this toolkit. Note that allegations may fall under more than one category.

In assessing whether a disclosure, if substantiated, could be a wrongdoing under PIDA, consider the following non-exhaustive list of examples:

#### *Likely wrongdoing*

- Taking bribes from someone
- Unresolved workplace violence or threats of violence
- Hiring only family members
- An ongoing culture of sexism
- Widespread bullying and harassment
- Ongoing inaction regarding the abuse of vulnerable people
- Recurring theft
- Ongoing use of faulty equipment in hospitals
- Ongoing mistreatment of patients
- Authorization of resource extraction when contrary to statute
- Knowingly contaminating drinking water or other natural resource
- Practices allowing ongoing health and safety violations
- Organized fraud conducted by one or more people
- Awarding contracts for political or personal financial gain
- Using public funds for personal vacations over a sustained period of time
- Using government resources for personal businesses over a sustained period of time
- Covering up of illegal evictions
- Culture of overspending on corporate meals and travel
- Systematically blocking patients, people in custody or clients from accessing complaint mechanisms
- Limiting access to healthcare for people in custody
- Negligence causing serious harm
- Practices that lead to ongoing harm to animals
- Approval of dangerous medicines or procedures in exchange for funding
- Significant destruction of government property



- Use of a work vehicle to operate a private business
- Withholding permits, services or payments as a coercive act

### ***Not likely wrongdoing***

- Mistakes with paystubs
- A single act of bullying behaviour
- A single discriminatory comment
- A single sexist comment made at work
- A badly matched foster care placement
- Errors in submitting travel expenses
- A medical error
- Hiring a teacher without an education degree to fill a short-term vacancy
- Environmental damage that is addressed in a timely manner
- Understaffing at medical facilities where there is no direct link to harm
- A workplace injury
- An isolated incident of an employee stealing an asset that is worth an insignificant amount from the organization
- Using government computers to send personal emails
- Expensing a costly dinner while on a work trip
- Disciplining a person in custody in accordance with prison policies
- Granting a permit to a logging company with a bad record for a time-limited project
- Mistakes in issuing hunting permits where there is no significant harm to the environment
- A difference of opinion about a policy or practice
- An isolated incident of misuse of government property of small value
- Using a work vehicle to do errands on an occasional basis

## **TOPIC 3.5: ASSESSING THE THRESHOLD OF WRONGDOING**

### ***Assessing wrongdoing***

Section 7(1) of PIDA defines wrongdoing as:

7 (1) This Act applies to the following wrongdoings in or relating to a ministry, government body or office, including wrongdoings that occurred before the coming into force of this Act:

- (a) a serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada;
- (b) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of an employee's duties or functions;
- (c) a serious misuse of public funds or public assets;
- (d) gross or systemic mismanagement;
- (e) knowingly directing or counselling a person to commit a wrongdoing described in paragraphs (a) to (d).

### **Elements of wrongdoing**

Section 7 sets out two main elements of wrongdoing:

- (1) The act or omission occurred in or relating to a ministry, office or government body ("public bodies")
- (2) The act or omission meets the test for at least one type of wrongdoing



## Location of the wrongdoing

PIDA applies to wrongdoings “in or relating to” a public body. The term “relating to” extends the term “in”. It speaks to a real and substantial connection between the wrongdoing and the public body.

Usually, an alleged wrongdoing will be clearly “in” a public body. However, where it is unclear and/or a relationship to a public body is alleged, an assessment will be necessary to determine whether the wrongdoing relates to that public body. The test is whether there is a real and substantial connection between the wrongdoing and the public body.

An assessment of whether there is a real and substantial connection will be based on the specific context and facts, and in particular, on the nature of any relationship between the public body and other organization or actor and the nature of the alleged wrongdoing.

Factors that may assist in determining whether a wrongdoing occurred in relation to a public body include:

- Whether the organization or actor is an agent, delegate or service provider of the public body or otherwise contracted to perform a function of the public body
- Whether the public body provided all or part of the organization’s operating budget
- Whether the organization is required to adhere to the public body’s administrative or ethical rules
- Whether the public body has control of or audit responsibilities over the organization
- Whether the nature of the wrongdoing relates to the public body’s assets, programs, services or employees
- Whether the wrongdoing was carried out in the course of exercising the public body’s duty or authority

## Type of wrongdoing

An act or omission must also meet the test for at least one type of wrongdoing set out in section 7 to be considered a wrongdoing under PIDA. There are five types of wrongdoing and an act or omission may constitute more than one type.

Each of the following sections set out the type of wrongdoing, the essential components of that type (or the test to be met), and any considerations that may assist the assessment.

### 1. Offences

Section 7(1)(a) – a serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada.

Both **a** and **b**, below, must be met for the conduct to fall into this category.

- a. The act or omission constitutes an offence under BC or federal law.
- b. The act or omission is serious. Consider:
  - *Intention*: was it deliberate; an abuse of power; discriminatory, done in bad faith, for a malicious purpose or for personal gain?
  - *Gravity*: was it a marked departure from normally recognized and accepted standards of conduct or ethical obligations? Did it disproportionately impact persons, communities or groups that have been historically marginalized (such as indigenous peoples, racialized people, women, 2SLGBTQ2+ people, immigrants, etc.)?
  - *Position of alleged wrongdoer*: is the person in a position with a high level of seniority, authority, responsibility or trust? Is there any imbalance in a power relationship?
  - *Consequences*: did the conduct adversely impact the public body’s employees, those who use its services, or other persons?

Did the conduct impact the public body's ability to carry out its mission or public trust in the organization?

## 2. *Substantial and specific dangers*

Section 7(1)(b) – an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of an employee's duties or functions.

Parts **a** and **b**, below, must be met for the conduct to fall into this category. If **c** is met, then the conduct is excluded from this category even if it meets **a** and **b**.

- a.** The conduct creates a substantial danger. A substantial danger is a risk or situation that a similarly situated person/an ordinary person in the same context a reasonable person would consider to be serious in nature. It would likely result in a real harm to the life, health or safety of a person or persons. Consider:
  - Would it have clearly resulted or is it reasonably likely to result in real harm to life, health or safety of a person or persons or to the environment?
  - What is the nature, level or severity of the danger?
- b.** The conduct creates a specific danger. A specific danger is clearly identifiable, is an actual threat and has a reasonable expectation of occurrence within a foreseeable time. Consider:
  - What is the actual threat?
  - Who or what in particular is at risk?
  - Is it reasonably expected to occur? When?
  - How, in particular, was the danger created or did the harm occur?

- c.** The danger is inherent in the performance of an employee's duties or functions. Consider:
  - What kind or level of danger is normally expected of, essential to or characteristic of the job?
  - Is the danger a marked departure from what is normally expected or to what normally occurs?

## 3. *Serious misuse of public funds/assets*

Section 7(1)(c) – a serious misuse of public funds or public assets.

Parts **a**, **b** and **c**, below, must be met for the conduct to fall into this category.

- a.** The funds or assets are public.
- b.** The funds or assets were misused. Consider:
  - How were they used and how was the use unauthorized or irregular?
  - What was normally expected or required in the circumstances?
- c.** The misuse was serious. Consider:
  - Was it deliberate, an abuse of power, discriminatory, done in bad faith, for a malicious purpose or for personal gain?
  - Is the person in a position with a high level of seniority, authority, responsibility or trust?
  - Was the conduct recurrent, frequent or systemic?
  - Did the conduct adversely impact the public body's ability to carry out its mission, its employees, those who use its services, or other persons or public trust in the organization?
  - Was the dollar value high or otherwise significant? Did the conduct disproportionately impact persons, communities or groups that have been historically marginalized?

#### 4. Gross/systemic mismanagement

Section 7(1)(d) – gross or systemic mismanagement.

Parts **a** and **b** or **a** and **c**, below, must be met for the conduct to fall into this category

- a.** A public resource was mismanaged. A public resource may include a contract, project, time, human resource, etc.
- b.** The mismanagement was gross. “Gross” indicates a high or serious degree and something more than ordinary mismanagement. Consider:
  - Is the person in a position with a high level of seniority, authority, responsibility or trust?
  - Was it deliberate, aggressive, reckless, an abuse of authority, unlawful, discriminatory, dishonest or in bad faith?
  - Was it for an improper purpose such as for personal gain or to promote private interests?
  - Did it disproportionately impact persons, communities or groups that have been historically marginalized?
  - Was it regarding matters of significant importance or involving significant government resources?
  - If there were errors, were the errors so serious that they are not debatable among reasonable people?
  - If there was negligence, was the conduct so reckless or indifferent to be considered gross?
  - Did it involve a serious or significant breach of a code of conduct or standard of ethics?
  - Did it create a substantial risk of significant adverse impact upon the ability of an organization, office, unit or staff member to carry out its mandate?

- c.** The mismanagement was systemic. “Systemic” indicates a broad, longstanding, social, cultural or organizational issue. Consider:
  - the history, frequency or recurrence of the conduct
  - the number of people responsible for the conduct or affected by it
  - the knowledge or acceptance of the conduct within the public body
  - whether the conduct is inherent to the organization’s structure, policies or practices

#### 5. Directing or counselling a wrongdoing

Section 7(1)(e) - knowingly directing or counselling a person to commit a wrongdoing described in paragraphs (a) to (d).

Parts **a**, **b** and **c**, below, must be met for the conduct to fall into this category.

- a.** A person directed or counseled another person to do something, whether an act or omission
- b.** The act or omission constitutes a wrongdoing under 7(1)(a) to (d)
- c.** The direction or counsel was clear and purposeful

**Note:** *Counselling or directing someone else to do the act or omission is the wrongdoing. The person receiving the direction or counsel need not act, or intend to act, upon the instructions for this test to be met. The person directing or counseling the wrongdoing need not be in a supervisory role to the person receiving the direction or counsel.*

# INVESTIGATIVE PRINCIPLES

4

## TOPIC 4.1: INTRODUCTION

This section provides an overview of some generally accepted investigation principles.

Although these principles are not referenced in PIDA we offer them as a guide to best practices in investigating.

If DOs follow these principles, investigations are more likely to be fair, defensible and ultimately will support a speak-up culture which can assist organizations to improve.

## TOPIC 4.2: PRINCIPLES OF NATURAL JUSTICE

Designated Officers (DOs) will be making decisions that impact people.

Section 17 of PIDA provides “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.”

Therefore, DOs have a duty to:

- Manage requests for advice and disclosures in a timely way.

Responding promptly reinforces a speak-up culture and can help to prevent or address possible ongoing wrongdoing. Have a look at topic 5.7 Investigative Principles – Timeliness, for some tips to help act expeditiously.

- Respond to disclosures proportionately. “Proportional” means planning the scope and breadth of an investigation depending on the nature of allegations made and the potential impact if the allegations were proven. Consider these factors which can influence proportionality:
  - the potential harm to public interest
  - the potential impact on a single employee, group of employees or all the organization’s employees
  - the potential for loss of public confidence in the organization

- the potential for organizational impact e.g., if a systemic investigation was required

For example, it may not be proportional – and may be unnecessarily disruptive – to interview all employees when a smaller number of employees could provide the necessary information. Conversely, it may not be proportional to limit information and evidence gathering to a few employees if a disclosure implicates more employees.

- Demonstrate administrative fairness in the decision-making process – more about this below.

### ***How to be administratively fair***

The principles of natural justice are the foundation of administrative fairness. They are intended to prevent decisions from being arbitrary or unfair, and require that people who are the subject of a decision have:

- *The right to an impartial, unbiased decision-maker, and,*
- *The right to be heard, also known as participatory rights.*

### ***What does this mean?***

An unbiased DO maintains an open mind and has not prejudged the case prior to gathering and weighing all the relevant evidence and information. An impartial DO is impartial to

both the issues to be decided under PIDA and the parties involved in the allegations. The DO must be free from bias and be seen to be free from bias, meaning they cannot have any real or perceived interest in the outcome of their decisions.

Participatory rights include:

- Adequate notice
- Information about the decision to be made
- Opportunity to be heard, and
- A decision with reasons

Participatory rights are shaped by the context in which the decision-making process is occurring. For example, the respondent's participatory rights will likely exceed those of the discloser or other

witnesses. That's because the respondent may be subject to censure if wrongdoing is found. In that light, the respondent can expect timely notice with enough information about the allegation and subsequent detail to be able to respond. A witness, on the other hand, may only need to know the general nature of the investigation because the outcome of the investigation may not affect them significantly, or at all.

#### Helpful tools for DOs

- [Quick Tip: Understanding Fairness](#)
- [Quick Tip: Essentials of Procedural Fairness](#)

### TOPIC 4.3: CONFIDENTIALITY

The requirement for confidentiality under PIDA (section 6) sets a high bar.

Maintaining confidentiality is the best way to prevent reprisal or retaliation.

This means DOs must consider confidentiality while providing advice and at every step of the investigation from planning to final report, and possibly post-report. The framework of PIDA is unlike that of other management processes. DOs must not provide progress reports or briefings to senior managers or executives unless reporting to the Chief Executive on a completed investigation.

DOs should take every opportunity to inform parties about their confidentiality responsibilities under the law, for example:

- when beginning a witness interview
- at the conclusion of an interview
- in all emails, notice letters, requests for information and other correspondence. As well, DOs must consider confidentiality when conducting reprisal risk assessments which

are completed at designated points and as necessary throughout the investigation to mitigate the risk of retaliation or reprisal.

PIDA section 6 sets out the only times a DO may share personal information about a discloser that could lead to identifying the discloser:

- The provision or use of the information is for the purposes of the Act, including as necessary to effectively manage the disclosure in accordance with PIDA and the principles of natural justice and procedural fairness;
- The provision or use of the information is in connection with another lawful purpose;
- The discloser has given express consent, in writing, to the release or use of the personal information; or
- The personal information has previously been lawfully published.

DOs are authorized to share personal information only for the purposes listed above and with due consideration to reprisal risk and mitigation. At



times when managing a disclosure, it may be necessary to disclose limited information, for example to advance their investigation or to cooperate with the police.

**Note:** *If a matter being assessed under PIDA could lead to the prosecution of a regulatory or criminal offence, consider whether the matter should immediately be referred directly to law enforcement. To review information about referring PIDA disclosures, have a look at the topic Assessing Urgency, Reprisal Risk, and Whether to Refer a Disclosure.*

For example,

- You may need to disclose a document or other evidence to the alleged wrongdoer, who may be able to identify the author of the document as the discloser or witness
- There are a small number of employees who had the specialized knowledge to make a disclosure, which may become obvious to the alleged wrongdoer when you share relevant information, and to others in the organization who are interviewed as witnesses
- You need to conduct a site visit
- Law enforcement officials request the information as part of an inquiry into allegations related to the disclosure

#### **If personal information must be shared, do:**

- Re-assess reprisal risk
- Inform the person in advance that their personal information may be shared or their identity may become known, and explain why it is necessary to do so — refer to the PIDA section 6 reasons listed above
- Consider how to get the necessary information:
  - Ask for records, documents or other physical evidence from a source as “far away” in the organization from the discloser as possible

- Plan the timing and sequence of notice, record requests, witness interviews and site visits to minimize the chance of identifying witnesses, the discloser and the alleged wrongdoer. See the topic [Interview Sequencing, Timing and Logistics](#) pg 49.

DOs will need to *exercise discretion here*: they may wish to consult with legal counsel.

To preserve confidentiality, always store information and documents obtained in the disclosure and/or investigation process in a safe and secure manner to protect it from unauthorized access, use and disclosure.

#### **Here are some tips to avoid revealing confidential information gathered during the investigation:**

- ☐ Promptly retrieve documents from copiers and fax machines
- ☐ Store information securely either under key or digitally with appropriate security and access safeguards
- ☐ Interview people privately, in a way their colleagues cannot see or hear them
- ☐ Do not give confidential information to others to copy, type, address or send
- ☐ Black out names, addresses or phone numbers on documents that may need to be referenced when interviewing
- ☐ Consider how to avoid causing suspicion, for example, by not interviewing the discloser if it is expected that everyone in the workplace be interviewed
- ☐ Be cautious about leaving messages on voice mail that could be heard by third parties



## TOPIC 4.4: CONDUCT A THOROUGH INVESTIGATION

The reporting of alleged wrongdoing is vital to the integrity of public sector organizations.

That's why PIDA emphasizes fostering employee confidence and belief in the organization's desire and ability to appropriately address wrongdoing. It is crucial to ensure that employees have confidence that alleged wrongdoing will be taken seriously and addressed. Being thorough is also critical to a fair decision-making process and helps ensure conclusions are sound and reasonable.

It's important to remember that an investigation is an act of neutral fact-finding; it is not an exercise to prove or disprove allegations. Only after all relevant information and evidence has been considered can a DO move through analysis to form conclusions about whether wrongdoing occurred.

### ***Key considerations for a thorough investigation***

#### **Ensure you are the best person to investigate**

- Do you have experience or are you trained in conducting investigations?
- Do you have enough familiarity with the relevant rules that apply to the details of the disclosure?
- Could bias or the appearance of bias affect your ability to conduct a fair investigation?

#### **Resource the investigation sufficiently**

- Ensure there is adequate time and other resources to conduct a thorough and therefore defensible investigation
- Be organized and write an investigation plan

#### **Pursue all relevant issues**

- All issues identified in the disclosure and assessed as warranting investigation are pursued

- Take time to plan the investigation to ensure it stays focused on answering the primary questions raised by the disclosure
- Understand all the relevant rules and how they apply to the circumstances raised in the disclosure
- All relevant information and evidence are gathered, preserved and considered for each issue under investigation

#### **Honour the right to be heard:**

- Witnesses are identified, notified and given opportunity to be heard and present evidence – to tell their story and share information or evidence that can advance the investigation
- Alleged wrongdoers are notified and have opportunity to respond to the allegations, evidence gathered and challenge or correct information

#### **Conduct a thorough analysis**

- Analysis is based on material collected, statements taken and observations made during the investigation
- Evidence and information are assessed for credibility and relevance to the issues being investigated
- Conclusions are provided in writing
- Reasons for conclusions are provided and link the evidence and analysis to the relevant rules in clear, understandable language
- Investigation records are complete and securely maintained

#### **Helpful tools for DOs**

- [Quick Tip: Reducing Bias in Decision Making](#)
- [Quick Tip: Exercising Discretion Fairly](#)

## TOPIC 4.5: TRAUMA-INFORMED PRACTICE IN PIDA INVESTIGATIONS

Trauma is a term used to describe the challenging emotional consequences that living through a distressing event can have for an individual. Traumatic events can be difficult to define because the same event may be more traumatic for some people than for others.

Research shows trauma can affect brain structure and chemistry, physical and mental health, belief systems and perceptions of the world and a person's coping mechanisms. When people have experienced trauma, they may exhibit low tolerance for frustration, difficulty problem solving or difficulty being flexible.

Consider that participants in a PIDA investigation may be experiencing heightened emotions or feelings of fear or anxiety. For example:

- A discloser may be concerned about the potential for reprisal.
- A discloser may be disclosing events that may have been traumatizing.
- A respondent will likely be concerned about the outcome.
- Other participants in the investigation may feel nervous.

As DO, be aware that trauma may be present in the events being disclosed and investigated, and the investigation may trigger past traumas.

Adopting a trauma-informed approach is best practice for supporting people through the investigative process. It can help to conduct a fair investigation while respecting the participants involved.

To be clear, trauma-informed practice is not about treating trauma. It's about adopting a trauma-informed approach in order to avoid inadvertently re-traumatizing people in the course of conducting a PIDA investigation.

Nor does taking a trauma-informed approach mean avoiding asking questions that are pivotal

to advancing the investigation but which may be uncomfortable for witnesses or may trigger emotional responses. The DO must gather information and evidence to make a conclusion about whether wrongdoing occurred. They can, however, take steps to minimize potential trauma.

Of course, the DO may not know if the person they're interacting with may have experienced trauma. Therefore, adopt the approach of *universal precaution* – this means that anyone you interact with may have experienced trauma that impacts them and how they experience the world. Adopting universal precautions means:

- Assume others have experienced trauma, and
- Treat people with unconditional respect and understanding

Here are some key principles that can help to adopt a trauma-informed perspective in PIDA work:

**Trauma awareness:** DOs should always be conscious of the possibility of trauma and the importance of demonstrating trauma awareness in their role, while continuing to develop an understanding of trauma-informed practice and how to apply that lens to PIDA work.

**Safety and empowerment:** Those who have experienced trauma may feel unsafe because trauma unpredictably violates a person's physical, social, and emotional safety resulting in a sense of threat and need to manage risks. Trauma also often involves a loss of power and control that can make a person feel helpless and powerless.

- To the extent possible, it is important to try and create a sense of safety and empowerment so that a person is not retraumatized and may be better able to participate in the investigation.
- Empowerment may be supported when a person understands their role in inquiries and that they will be heard in the DO's decision-making process.

**Clarity about process:** Giving individuals clear explanations of what is going to happen may alleviate fears.

- Understanding what is going to happen and why may support a perception of physical and emotional safety in those affected by trauma.

**Communication:** Trauma can influence the way individuals perceive what those in authority say and how they say it.

- Using language which is respectful, non-judgmental and neutral may have a positive effect on those affected by trauma.
- Being as clear and transparent as possible in communication is also important. Participants in investigations may have concerns or uncertainty when they are not clear about what is happening.

#### Tips for demonstrating a trauma-informed approach when communicating with a witness

- ☐ Always communicate in a respectful tone and manner
- ☐ Use clear, understandable language
- ☐ Take time at the start of an interview to ensure the participant is comfortable, to explain the interview process, and to invite them to ask questions
- ☐ Ask if they need any accommodations
- ☐ Let participants know they may take breaks if they wish

## TOPIC 4.6: CULTURAL HUMILITY IN PIDA INVESTIGATIONS

### What is cultural humility and why should a DO practice it?

British Columbia's First Nations Health Authority provides a definition:

*“Cultural Humility is a process of self-reflection to understand personal and systemic conditioned biases, and to develop and maintain respectful processes and relationships based on mutual trust. Cultural humility involves humbly acknowledging oneself as a life-long learner when it comes to understanding another's experience.”*

<https://www.fnha.ca/wellness/wellness-and-the-first-nations-health-authority/cultural-safety-and-humility>

**In the context of PIDA investigations, the goal in developing an approach of cultural humility is to create an environment of respect and cultural safety for everyone who might be involved in a PIDA investigation.**

Cultural humility is about engaging in self-reflection on our own cultural assumptions and practices.

A first step in practising cultural humility is about being open to learning and being comfortable with starting with what we don't know.

It is about seeking to learn about and understand each person we work with and know that we all have our own unique backgrounds, experiences and culture that we bring to our interactions with each other.

Of course, this doesn't mean DOs have to learn everything about employees involved in investigations. Even though contact with a participant may be short during an investigation, it is best practice to check assumptions and apply a lens of cultural humility to the DO's interactions. Doing so indicates respect.

## So, what can DOs do to adopt cultural humility in their PIDA practice?

- Commit to being lifelong learners: engage in critical self-reflection on their cultural biases, assumptions and practices. Absence of bias is a key fairness requirement – have a look at our [Quick Tip: Reducing Bias in Decision-making](#). Remember, DOs and everyone they engage with during a PIDA investigation bring their own history and culture to the process.
- Be empathetic and show caring as a means to find common understanding across differences.

- Also, acknowledge the power imbalances that are often inherent in the investigative process. Where possible, mitigate such imbalances with transparency and other measures, to the degree possible.

Bottom line: practicing cultural humility can help participants in a PIDA investigation feel safe which may contribute to more complete and informative responses that advance their investigation. And participants are more likely to feel heard, a key fairness requirement.

## TOPIC 4.7: TIMELINESS

An investigation under PIDA is a serious matter to all involved and the experience can be stressful.

Concluding an investigation into an allegation under PIDA should be managed in a timely way, without undue delay.

Sometimes delay is unavoidable. This could be due to the DO or witnesses' volume of work, challenges obtaining access to evidence or witnesses, illness or other absences, or even the complexity of the investigation.

Even in the face of unexpected events, a DO can take steps to ensure the investigation proceeds at a timely pace.

- Plan the investigation
- Make decisions within a reasonable time
- Let people know if the process will take longer than originally stated or reasonably expected
- Explain any delays
- The organization should accept responsibility for any unnecessary delays and for dealing with the consequences

### Here are some tips to ensure timeliness:

- ☐ Demonstrate responsiveness by being ready for requests for advice and disclosures. Ensure procedures are in place to confidentially receive PIDA disclosures, to acknowledge them promptly and to assess them as quickly as possible
- ☐ Ensure investigations are properly planned and resourced including blocking time for investigation activities
- ☐ Use the investigation plan to monitor and review progress, and adjust as necessary

# PLANNING THE INVESTIGATION

5

## TOPIC 5.1: PROVIDING NOTICE OF INVESTIGATION TO RELEVANT PARTIES

If the DO decides to investigate, they must notify the discloser, the Chief Executive and any respondents.

Below are some considerations for notifications:

### **Disclosers:**

- Let the discloser know what the scope of the investigation will be.
- If only investigating some of the allegations, give the discloser reasons why the other components will not be investigated.
- If the DO declines to investigate, provide the discloser with reasons why they will not be investigated their allegations under the *Public Interest Disclosure Act* (PIDA). If there is reason to believe the discloser may have other options or obligations to report the matter, they should be advised of these alternatives.

### **Chief Executive:**

- Notify the Chief Executive of the decision to investigate without providing unnecessary details.
- Delay notifying the Chief Executive if it is the best way to prevent reprisal risk and/or preserve the integrity of the investigation.

### **Respondent(s):**

- Notify the respondent(s) that they are the subject of an investigation in order to adhere to the principles of procedural fairness.
- DOs must tell any respondent(s) about the investigation before they are interviewed; otherwise, DOs can use their discretion about the timing of the notification.
- Be sure to consider reprisal risk when deciding when to notify the respondent(s).

### **Helpful tools for DOs**

- [Sample notice of investigation to Chief Executive Officer](#) (pg 46)
- [Sample notice of investigation to discloser](#) (pg 47)

### 5.1a. Sample notice of investigation letter to Chief Executive Officer

Date

Via email: insert email address

Name of recipient

Title, Organization

Address

Dear First Name Last Name,

I am writing pursuant to section 21(2) of the *Public Interest Disclosure Act* (PIDA) to notify you that I am investigating a disclosure of wrongdoing concerning our organization. Under PIDA, the Designated Officer is tasked with investigating disclosures of wrongdoing from eligible public sector employees.

The discloser alleges (insert short summary of allegations). My investigation will determine whether (insert type of wrongdoing) occurred in or relating to our organization.

Under PIDA, the identity of the discloser is protected to the extent possible and information is only shared as permitted by statute. If you suspect the identity of the discloser, please keep that information confidential and only share information about our investigation with colleagues as permitted by PIDA. Should you be contacted by anyone in relation to our investigation, please take the opportunity to remind them of PIDA's important confidentiality protections.

The first step in my process is to collect relevant information. I will contact the individuals I deem appropriate for that purpose, as well as individuals who will be interviewed as part of the investigation. These individuals are protected from reprisal and should be allowed to collect evidence and/or participate in interview(s) during work hours as needed.

As you are aware, PIDA has strict confidentiality requirements and prohibits reprisals against employees who seek advice, make a disclosure or cooperate in an investigation under PIDA. Should you be contacted by anyone in relation to my investigation, please take the opportunity to remind them of these important protections under PIDA.

Please find enclosed an information sheet "Information for Investigation Participants" for more information about what to expect during the course of our investigation.

I will contact you again if I require any information or support for my investigation. Otherwise, I will be in touch once my investigation is complete. At that time, I will provide you with a report of my findings and any recommendations, if applicable.

If you have further questions regarding this investigation please contact me.

Yours sincerely,

Name

Designated Officer



## 5.1b. Sample notice of investigation letter to discloser

Date

Via email: insert email address

Name of recipient

Title, Organization

Address

Dear First Name Last Name,

Thank you for coming forward with your concerns under the *Public Interest Disclosure Act* (PIDA).

I am writing to let you know that I have completed the assessment of your allegations concerning (insert short summary of allegations) and have decided to investigate your concerns. This letter will outline what you can expect during the investigation and once it has been concluded.

*(Optional, I have attached a Fact Sheet for you: Information for Investigation Participants.)*

### Investigation Process

As the Designated Officer for PIDA, I am required to conduct investigations fairly and impartially. I will gather evidence to determine whether, on a balance of probabilities, wrongdoing occurred. This could include gathering documents and other records and interviewing witnesses.

Under PIDA, your identity will be protected to the extent possible. For example, if I need to share information that would identify you, I will only do so where it is essential to carry out a function under PIDA or it is otherwise required by law. Please let me know if you have any specific concerns about your identity becoming known.

Investigations vary in length depending on the complexity, the cooperation of witnesses and the availability of information. I will be in touch if there are key developments in the investigation that you should be aware of or when I need to consult with you about any elevated risk of reprisal. Otherwise, you may not receive correspondence from me until the investigation is concluded. If you would like an update on the investigation, you are welcome to contact me.

In some circumstances, I may refer, suspend or stop an investigation. In these situations, I will let you know the action taken and the reasons for that action. PIDA outlines several circumstances where it is not appropriate to continue the investigation.

### Investigation Conclusions

Once the investigation is complete, I will decide if wrongdoing, as defined under section 7 of PIDA, has taken place. Wrongdoing has a very specific definition under PIDA and the allegations must meet a high threshold. A plain language definition of wrongdoing is available on the Office of the Ombudsperson website.

At the conclusion of the investigation I will send a report to our Chief Executive Officer outlining any findings and recommendations. I will also send you a summary of the report.

### Reprisal and Confidentiality Provisions

It is an offence for anyone to reprise (retaliate) against you because you made a report of wrongdoing under PIDA. Reprisal includes any action taken by anyone that adversely affects your employment or working conditions. Reprisal can include ostracism, harassment, demotion, disciplinary measures or termination. If you believe you are experiencing reprisal, please alert me immediately. Alternatively, you can make a complaint about reprisal to the Office of the Ombudsperson.

PIDA also has strict confidentiality requirements and information is only shared in specific circumstances. To protect yourself from potential reprisal and to protect the integrity of the investigation, I ask that you not discuss your disclosure of wrongdoing or this investigation with anyone other than a support person (such as your lawyer, union representative or counsellor) if needed. Please do not discuss the investigation with anyone in your workplace.

Thank you for coming forward with your concerns. If you have any questions about this letter, PIDA, or my investigation, please contact me at (phone number) or by email at (email address).

Yours sincerely,

Name

Designated Officer

## TOPIC 5.2: DEFINING INVESTIGATION SCOPE AND ISSUES

Defining the scope of an investigation and the issues to be addressed is a critical first step in planning an investigation.

This step determines the specific issues in the disclosure that will be investigated, the facts that need to be determined and the standard to be applied to make a finding. It sets the parameters of the investigation from which to refine planning.

### Step 1:

Decide which allegations to investigate. DOs can review PIDA's definition of wrongdoing and how to interpret wrongdoing in Topic 3.4 [What is Wrongdoing?](#) and Topic 3.5 [Assessing the Threshold for Wrongdoing](#).

- Decide which allegation(s) in the disclosure you will investigate.
- If applicable, decide which allegation(s) in the disclosure *will not* be investigated and record the reasons for the decision not to investigate those allegation(s), in the case file.

### Step 2:

Then, ask:

- What questions need to be answered to prove or disprove the allegations in the disclosure being investigated?

- What information is required to answer those questions?

### Step 3:

- Write a thoughtful, concise statement of each allegation to be investigated and exactly what will be investigated about each allegation.

For example, imagine an employee made a disclosure alleging misuse of public funds. After reviewing the details in the disclosure and the relevant rules that apply, the DO may craft a statement such as:

*"The focus of the investigation is whether the Financial Administration Act and organizational policies and procedures were followed by Wrongdoers A, B, C respecting the submission of personal expenses for reimbursement."*

Stating the focus of the investigation at the outset allows the DO, after investigating, to make a clear finding about what the discloser alleges.

Now there is a clear focus, you can begin identifying the types of information and evidence needed to determine if wrongdoing occurred.

## TOPIC 5.3: IDENTIFYING SOURCES OF INFORMATION

By now the DO should be familiar with the details of the disclosure. Hopefully they have had a chance to interview the discloser and do research. It's time to drill down.

**Ask:** What evidence is needed to answer the key questions that will prove or disprove the allegations made in the disclosure?

DOs should identify all potential sources of information, including witnesses they believe have information that can advance the investigation by answering key questions or providing key evidence.

Here is a list of some of the typical types of evidence, in addition to the written disclosure, DOs may need to collect:

- Relevant rules – legislation, regulation, policy and procedures, other internal guidance documents
- Emails and texts
- Written correspondence
- Published documents, reports
- Photos and screen captures
- Digital recordings
- Witness, discloser and alleged wrongdoer interviews
- Site inspections
- Physical evidence

Identify any other resources that may be needed to complete the investigation, such as external experts, technical reports/assessments, special equipment, staff time or a budget allocation.

### **Develop a strategy to obtain the identified evidence.**

As the DO is investigating events in their own organization it is likely they have ready access to records and witnesses. If not, consider and record in the Investigation Plan how to request and gain access to necessary records and other evidence.

## TOPIC 5.4: INTERVIEW SEQUENCING, TIMING AND LOGISTICS

### ***Deciding the sequence and timing of interviews***

Now that the DO has identified, collected and reviewed relevant documents and other physical evidence, they're ready to plan the sequencing of witness interviews, and schedule them.

The DO will use their discretion to decide which witnesses to interview and the timing and sequence of interviews.

Ideally, the DO will want to interview witnesses once only, if possible.

Ask these questions:

- Who should be interviewed?
- What is the most logical sequence or timing of interviews to obtain oral evidence that advances the investigation by helping to prove or disprove the wrongdoing alleged?

### ***How to decide which potential witnesses to interview?***

- Some investigators start with the least involved witnesses and work inwards to the most involved or most knowledgeable.
- Others begin with the most knowledgeable, or the discloser, and work outwards.

- Either way, the DO must meet the duty of procedural fairness by giving the alleged wrongdoer(s) adequate opportunity to respond to the allegations and any key evidence obtained.

A word about interviewing the discloser: Employees who are, or may become, whistleblowers may merit special consideration. If the DO decides to interview the discloser, consider that promptly interviewing a discloser may help define the scope of the investigation. Also, an early interview may earn the whistleblower's trust and serve to preserve confidentiality.

### ***Re-assess reprisal risk***

Confidentiality and protecting the discloser's and witnesses' identity is paramount in managing public interest disclosure investigations. It is not uncommon for the discloser and witnesses to feel nervous about any potential risk of reprisal once witnesses are notified and interviews scheduled.

Now is the time to conduct a risk reprisal re-assessment and if indicated, change the risk management plan.

## TOPIC 5.5: COMMUNICATION WITH PARTIES

The question of how much to communicate with parties to a PIDA investigation is an important one.

Outside of the notification and reporting requirements under PIDA, it is the DO's discretion to decide how much to communicate, carefully considering procedural fairness requirements due to all parties, and particularly to the alleged wrongdoer(s). As well, the DO must consider the principle of protecting peoples' identities to the degree possible, being trauma-informed and practicing cultural humility.

PIDA specifies when formal communication must occur:

- formal notice and requests for information (section 21 PIDA);
- final investigation report to the Chief Executive; and
- summary reports to discloser, and any other appropriate persons (section 9 (i) and (j) PIDA). This may include witnesses or the alleged or confirmed wrongdoer.

Typically, a disclosure investigation does not include ongoing communication or investigation status/progress reports to the discloser, alleged wrongdoer(s) and other witnesses. This is because:

- the discloser and other witnesses may not have any personal connection to the matters under investigation; in such a scenario the discloser

and witnesses are not personally aggrieved and have no right to ongoing reports

- it could give the appearance of bias by the DO
- ongoing communication with parties could adversely affect the progress of the investigation or integrity of the evidence

It is important to explain the above reasons to any party asking for investigation updates or investigation reports.

It is at the DO's discretion to determine the sequence and timing of witness interviews, and how much and when to communicate with parties (other than prescribed communication under PIDA).

For instance, the DO may decide to communicate more frequently with a discloser when the risk of reprisal is present. Disclosers may feel vulnerable, for example when investigation reports are issued. At these times, and at the DO's discretion, more frequent contact may be indicated, both to re-assess reprisal risk and to demonstrate a trauma-informed approach.

Bottom line: during all communication, the DO must adhere to the confidentiality principles and specific provisions in PIDA governing the protection of persons' privacy.

Always document communications – see the topic *Documenting the Investigation*.

## TOPIC 5.6: WRITE THE INVESTIGATION PLAN

***It is best practice to write an investigation plan.***

The purpose of a written investigation plan is to help stay focused on the disclosure allegations, and collect and preserve all relevant evidence related to the disclosure, in order to:

- facilitate decision-making about whether the alleged wrongdoing occurred
- create a record of the investigative actions to defend findings and any recommendations made

- create a corporate record in the event of any future review of DO's investigation

An investigation plan needs to be flexible because the DO may learn about potential evidence or witnesses during the investigation.

### ***Benefits of a written investigation plan***

You may think “Why bother writing an investigation plan? I can keep the steps in my head.”

Even if the investigation plan is straight-forward it is best practice to make a written or digital record of it. Why?

- It helps ensure fairness requirements are met, which leads to sound decision-making.
- It acts as a corporate recording in case an investigation plan cannot be completed.
- It gives a roadmap to help stay on course and on schedule.
- It helps to plan the sequence and timing of information-gathering to best protect confidentiality, avoid reprisal and conduct an efficient investigation.
- It provides a record of progress – This is especially helpful if investigations are complex and concurrent actions have to be taken. It allows the ability to track where an investigation is at and what next steps should be.

### ***Before writing a plan, consider:***

- What is the overall approach to gathering the evidence? Is it gathering and reviewing documents, interviewing witnesses, conducting research, making a site visit, consulting experts, or a combination or another means?
- The timing and method of obtaining evidence in order to maximize confidentiality and minimize the risk of reprisal.

- Will additional resources be required – experts or other personnel or equipment, for example?
- When will the investigation be completed and what are the milestones and timelines? This will help conduct a timely investigation and decision-making process.
- What problems might arise during the investigation?
- How will communications be managed?

Typically, the investigation plan will:

- Be in writing and stored in the secure case file and/or secure digital file that has already been made
- Identify the PIDA wrongdoing alleged and issue(s) you have decided to investigate along with the key questions to be answered
- Identify key parties to be interviewed - a list of witnesses and alleged and potential wrongdoers
- Include urgency and reprisal risk assessments and any mitigation plans
- Identify key documents/evidence to be obtained and method and timing
- Set out the sequence and timing of interviews
- Include interview opening/closing scripts, key questions to pose to witnesses
- Address any special considerations, e.g., bias or appearance of bias, accommodations requested
- Identify any resources required
- Set out how communications will be managed
- Outline the investigation steps and sequence
- Estimate timelines

### **Helpful tools for DOs**

- [Investigation plan checklist](#) (pg 52-53)

### 5.6a: Investigation plan checklist

☒	Steps	Notes
<b>PLANNING</b>		
	Discloser and Designated Officer names, date, file #, other key information	
	The disclosure(s) made under PIDA with relevant section(s) cited and other relevant rules cited	
	A summary of allegations and key issues in disclosure I will investigate	
	Focus of investigation – what will I investigate? What will I decline to investigate, and why?	
	My overall approach to obtaining evidence – document review? Witness interviews? Site visits? Expert opinion? Other?	
	Interview the discloser about the specifics of the allegation and suggested witnesses	Manage expectations
	Reprisal risk assessment, urgency assessment if indicated	
	Identify/address any anticipated problems in gathering evidence	e.g., reluctance to participate in investigation, document destruction, risk of witness collusion, delays, employees/ witnesses leaving the public service
	Estimate timeline for completion	
	Investigation communication protocols	When and to whom to communicate with?
	List of evidence needed: • where is it and who is the custodian • strategy to obtain it	
	List of evidence needed: • where is it and who is the custodian • strategy to obtain it	
	List of witnesses: • management officials (listed by name or position) and the issues to address • non-management and unionized individuals (listed by name or position) and the issues to address • witnesses suggested by discloser (unless it's deemed their evidence would not advance the investigation – make notes about why) • use discretion to decide if and when to interview the alleged wrongdoer(s)	



☒	Steps	Notes
<b>OBTAIN RECORDS</b>		
	Prepare requests for/obtain documents and other evidence	
	Review documents and other evidence received, conduct own research	
<b>INTERVIEWS</b>		
	Decide sequence and timing of interviews	
	Arrange neutral interview venue, recording method and any necessary equipment, personnel	
	Prepare notice to witnesses inviting to interview; conduct reprisal risk re-assessment and notify discloser/witnesses/respondent(s) as indicated	Reconsider reprisal risk assessment
	Identify and address reasonable accommodations requested by witnesses	
	If third party attending, prepare confidentiality agreement, if using	
	Prepare interview opening script and interview question guide	
	Conduct interviews	
<b>ADDITIONAL EVIDENCE &amp; ANALYSIS</b>		
	Consult outside experts/resources if applicable	
	Conduct on-site inspection (prior agreed upon date) if appropriate	Reconsider reprisal risk assessment
	Conduct analysis	
<b>CONCLUDE INVESTIGATION &amp; REPORT</b>		
	Make decision – does the body of evidence support a finding of wrongdoing?	
	Formulate finding(s) and recommendation(s) for wrongdoing and/or other deficiencies	
	Draft the investigation report and notify potentially affected parties	Review sample notice letters; consider risk reprisal assessment
	Review any responses from potentially affected parties; record reasons for rejecting any submissions	
	Finalize report and submit to Chief Executive or alternate	
	Write Summary Report and provide to appropriate persons	Reconsider risk reprisal assessment
	Ensure completeness of investigation file and close it	



# CONDUCTING THE INVESTIGATION

6

## TOPIC 6.1: INTERVIEWING

### ***Taking care of logistics***

Once the DO has considered and addressed reprisal risk and decided the sequence and timing of witness interviews, it is time to activate this part of the investigation plan.

- Decide how to interview people. Although in-person interviewing is considered ideal it may not always be possible. DOs may need to consider video or telephone.
- Think about cultural humility here and strive to be trauma-informed in investigative practices and communications.
- Include reminders about confidentiality requirements and reprisal protection in written and verbal communications.

It is helpful to provide witnesses and alleged wrongdoers (respondents) with information about the process. When notifying people to invite them to an interview, ask them to identify any accommodations they may need to participate, such as a support person, disability accommodations, or translation services.

Remember, disclosing and even cooperating with a public interest disclosure investigation may be stressful for participants – adopt a trauma-informed approach.

### ***What is the role of a support person?***

Sometimes, an interviewee may want to bring a support person, such as legal counsel, union representative, family member, friend or another person to an interview.

- Ask interviewees to identify support persons for approval prior to the actual interview.
- Make sure the interviewee is aware that the role of counsel or other support person will be limited to supporting them.

- The support person is not a witness themselves and should be made aware that their role is as an observer/supporter, not an active participant in the interview.
- DOs may wish to use a written confidentiality agreement.
- Union representatives may be supporting several people in the investigation and should be reminded not to share any information about the investigation or individuals' identities.
- Unless there are exceptional circumstances that warrant it, colleagues from an interviewee's work unit should not be approved to attend as a support person. In the course of the investigation they may be called as a witness or they may be implicated in the wrongdoing.
- If legal counsel is named, ensure they represent the interviewee and not the organization/employer.

Best practice is to *not provide approval* for a person to act as support person in the following circumstances:

- They are also a witness or a respondent in the investigation;
- They were not requested by the interviewee to attend;
- They represent the interests of the employer;
- Their presence would present a conflict of interest or jeopardize the integrity of the evidence. For example, if they have attended or will attend on behalf of other witnesses;
- They will not provide assurance that they understand their role is to provide support and not be actively involved in the interview.

### ***Scheduling interviews***

Be flexible when scheduling interviews but maintain a timely pace to the investigation. Give people reasonable advance notice of interviews, unless there is a good investigative reason for short notice.

Choose neutral interview locations, preferably away from the discloser's worksite with private, comfortable amenities. Plan for breaks if an interview becomes long, or schedule additional interviews on subsequent dates. Provide water and take any other steps to increase interviewees' ease.

### What to do about resistant, unresponsive or uncooperative witnesses?

- Reinforce the benefits of a speak-up culture.
- Remind them about the DO's authority and obligation under PIDA to investigate.
- Offer the option of a support person such as union official or mentor, for example.
- Be transparent – outline next steps available to you if they continue refusing to respond or cooperate.

Remember, DOs can refer a PIDA matter to the Office of the Ombudsperson, for example, if they have real or perceived bias, key witnesses decline to be interviewed or are uncooperative, or they are experiencing challenges in obtaining information. The Ombudsperson has legal authority to compel witnesses and document production.

### How to prepare for an interview

It's time to prepare for the actual interview. Here is a checklist to help you prepare for each interview.

#### 1. Prepare a short opening script

- Introduce yourself and explain your role and authority under PIDA to impartially investigate disclosures;
- Explain the purpose of the interview – a brief statement about the general nature of the wrongdoing alleged and why the person was invited to interview;
- Ask for the interviewee's truthful and accurate information;

- Emphasize confidentiality requirements including for third parties or support persons attending, and protections against reprisal.

#### 2. Prepare guiding questions

- The objective is to get relevant information/facts that will help form a conclusion about the alleged wrongdoing. Reviewing information, documents and evidence already collected will help to inform the questions which will be a guide to the interview. Be flexible in your questions, in case unknown information comes forward that needs questioning. Try to organize questions chronologically.

- After the opening script, investigators generally start interviews with easier, open-ended questions and prompts designed to give the witness an opportunity to tell their story in their words. Move to more specific or clarifying questions later. Open-ended questions tend to get fuller responses, for example,

*"Can you tell me about the events you observed on (date)?"*

Closed-ended questions could be used to clarify what the interviewee has told you, and often elicit shorter answers. For example,

*"Did you actually see the events yourself?"*

A best practice is to end interviews with an open question inviting the interviewee to add any additional information they think is relevant, for example,

*"Is there anything else you can tell me about these events?"*

Remember, these are interviews not interrogations; it is not meant to be antagonistic. The best interviews are those where the witness or respondent is able to do most of the talking and the interviewer just keeps them on track with the subject matter of the questions.

### 3. Prior to the scheduled interview

Once you have determined areas of inquiry and the questions to ask, it is best practice to provide the interviewee with advanced notice of the general subject areas the interview will cover. If you intend to reference any documents or records, provide the witness/respondent with those records in advance of the scheduled interview, depending on confidentiality considerations and the integrity of the investigation. Providing documents or records in advance can be especially helpful if the matters being discussed or referenced took place long ago.

The better prepared a witness or respondent is to speak to the matters of the investigation, the more useful the information obtained will be.

### 4. Determine the method of interview record-keeping – handwritten notes or digital recording.

Please note that digital recording is considered best practice for accuracy and because it frees the DO to focus on managing the interview to obtain information that advances the investigation. DOs should make sure they have appropriate working equipment to digitally record the interview, or personnel assigned to take notes.

### Time to start interviewing!

#### Helpful tools for DOs

- [Sample letter to invite witness](#) (pg 58)
- [Sample letter to invite respondent](#) (pg 59)
- [Sample information for investigation participants](#) (pg 61-64)
- [Interview planning checklist](#) (pg 52-53)

## 6.1a: Sample letter inviting participant to interview

Sample letter for DO use to invite participant to interview

Date

Via email: insert email address

Name of recipient

Title, Organization

Address

Dear First Name Last Name,

As the Designated Officer for (name of organization), I am investigating a report of wrongdoing under the *Public Interest Disclosure Act* (PIDA). PIDA is whistleblower legislation for current and former employees. It provides a process for reporting serious wrongdoing learned of in the workplace and mechanisms to investigate and address wrongdoing when found.

In the course of my inquiries, you have been identified as someone who may be able to provide useful information regarding (insert brief statement about the general subject of your questions, ie. the spending on the new computer system or the use of company's vehicles).

I write to request your attendance at an interview. **Please contact me on my direct line (insert number) to discuss your availability and confirm a date and time for us to speak.** During this call I can also answer any questions you may have about PIDA or the investigative process.

All PIDA investigations are conducted privately. PIDA has its own confidentiality provisions. In light of these provisions, please **do not discuss this email or my investigation with colleagues or those in your reporting hierarchy, or invite others to be present during our initial conversation.**

I appreciate your time responding to this email.

Respectfully,

Name

Designated Officer

## 6.1b: Sample letter inviting respondent to interview

Sample letter for DO Use to invite respondent to interview

Date

Via email: insert email address

Name of recipient

Title, Organization

Address

Dear First Name Last Name,

As the Designated Officer for *(insert organization)*, I am investigating a report of wrongdoing under the *Public Interest Disclosure Act (PIDA)*. It is alleged that *(insert brief statement about allegation under PIDA. For example, It is alleged that you have seriously misused a government vehicle, or, it is alleged that you have mismanaged the review of loan applications)*.

At this point, I have not formed any conclusions about the matter and I am interested in hearing from you. Therefore, I request your attendance at an interview because the allegations raise questions about your conduct in the organization. The interview will be an opportunity for you to respond to the allegations and provide me with additional information.

**Please contact me by (date) to discuss your availability and confirm a date and time for an interview.**

Once we have scheduled the interview, I will provide you with further information in writing regarding the report of wrongdoing received by our office so that you are prepared to speak to your role within the organization as well as the specific matters alleged to have occurred that, if proven, could constitute wrongdoing under PIDA.

For your reference, I have included information about my role and investigation process (below). I've also attached an information package that includes some commonly asked questions about our work under PIDA. If you require clarification, assistance or have any questions, we can discuss those during our call or you can contact me at (insert email and/or phone number).

All PIDA investigations are conducted privately. PIDA has strong confidentiality provisions. In light of these provisions, please **do not discuss this email or my investigation with colleagues or upline reports or invite others to be present during our initial conversation. If you would like a support person to attend the interview with you, we can discuss your request when you contact me.**

I appreciate your time responding to this email.

Respectfully,

Name

Designated Officer

## Topic 6.1c: Interview planning checklist

Interview planning checklist		
Steps	Done?	Notes
Review documents, correspondence, submissions, DO research, other evidence already available		<i>To inform witness selection/sequencing and interview question formulation</i>
Interview discloser		<i>To inform witness selection/sequencing and interview question formulation</i>
Review list of potential witnesses and decide whom to interview		
Reconsider reprisal risk; re-assessment		
Reprisal mitigation plan		
Determine sequence and timing of interviews		<i>Consider reprisal risk assessment and any mitigation plan</i>
Confirm neutral, comfortable interview venue		<i>Consider cultural humility and trauma-informed principles and practices</i>
Prepare notification letter/interview invitations		<i>See samples</i>
Does witness need accommodation? Arrange.		
Does witness want third party to attend?		<i>Discourage work unit support persons. Consider confidentiality agreement for third party</i>
Schedule interviews		
Prepare opening script		
Prepare interview questions guide		<i>Tag questions to relevant evidence for ease of reference</i>
Provide area of inquiry and records to be referenced to the witness/respondent in advance as appropriate given confidentiality and the integrity of investigation		<i>Supports right to be heard and transparency</i>
Ensure recording method resourced and functional		



## 6.1d: Sample information for investigation participants

### **Public Interest Disclosure Act investigations: information for investigation participants**

#### **Public Interest Disclosure Act**

The *Public Interest Disclosure Act* (PIDA) is whistleblower protection legislation for current and former employees of eligible public bodies in British Columbia. It provides public sector employees with a clear process for reporting serious wrongdoing relating to a government organization, and mechanisms to investigate and address wrongdoing when found. PIDA also prohibits reprisal against employees who report concerns of wrongdoing, who seek advice under PIDA or who cooperate with a PIDA investigation. Employees have the choice of reporting wrongdoing within their organization to their supervisor, the DO, or to the Office of the Ombudsperson.

#### **Designated Officer**

The Designated Officer (DO) or agent if an external investigator is engaged, is authorized to conduct investigations privately and confidentially under the authority of the PIDA.

Under the PIDA the DO is required to:

- conduct fair and impartial investigations into reports of wrongdoing and reprisal and make recommendations for corrective measures
- provide advice to employees who are considering making a report

#### **What does the DO investigate under PIDA?**

Under PIDA, the DO investigates reports of serious wrongdoing from current and former employees of their organization.

**Note:** Under PIDA only the Office of the Ombudsperson may investigate reports of reprisal from employees who believe they have been retaliated against for seeking advice, making a report of wrongdoing, or cooperating with an investigation. The DO must refer reports of reprisal to the Office of the Ombudsperson for assessment.

#### **The Ombudsperson**

The Ombudsperson is an officer of the legislature, independent from the government. The Office of the Ombudsperson conducts investigations privately and confidentially under the authority of the *Ombudsperson Act* and PIDA. The Ombudsperson issues a public report each year summarizing the office's work under PIDA.

Under PIDA the Ombudsperson is required to:

- conduct fair and impartial investigations into reports of wrongdoing and reprisal and make recommendations for corrective measures
- provide advice to employees who are considering making a report
- provide assistance to public bodies with their investigations if consultation requested

#### **Why have I been asked to attend an interview?**

Interviews are an important source of information for investigations. You have been asked to attend an interview because the DO believes you could provide relevant information for the investigation.

#### **Can I bring someone with me to the interview?**

Usually, interviews are limited to the witness and investigators. PIDA section 9 requires

that investigations and interviews are conducted privately. This means the DO must ensure the confidentiality of information gathered and must protect participants' personal knowledge. To the extent possible, the DO will not share any of the information you provide with others.

In some cases, witnesses would like to attend an interview with another person, such as legal counsel, union representative, friend, family member, or other support person. The DO will consider such requests on a case-by-case basis. If you are participating in an interview by teleconference, you must be alone unless you have requested in advance that someone attend with you.

If you want someone to attend the interview with you, please discuss this with the DO as early as possible, and at least five days in advance of your interview.

### **Do I have to attend the interview?**

Although your attendance at the interview is voluntary, your participation is appreciated and assists our organization to be accountable and learn going forward. The DO will make every reasonable effort to confirm a date and time for the interview that is convenient for you, and as least disruptive to your regular routine as possible. If you require any special accommodations for your interview, please let the DO know in advance so that they can be arranged.

### **Where will the interview be held?**

Interviews will be held in a mutually agreed upon location, or by teleconference, depending on what is appropriate for the circumstances. Please let the DO know if you prefer to meet remotely or in-person and if you prefer a specific location for the interview.

### **What can I expect at the interview?**

You will be provided with some introductory information. The DO will discuss with you the need for confidentiality and PIDA's reprisal protections. You will have an opportunity to ask questions about the process. You will be provided with enough context and information so that you can answer the questions. You should answer questions as clearly and in as much detail as possible. Please ask if you need time to think over your response, whether on-the-spot or through a short break. If asked about events that happened a long time ago, you are welcome to refer to your own documents or other records during your interview to refresh your memory.

If you don't know the answer to a question, please do not speculate. It is okay if you don't know the answer or need to rely on other information or documents. If you need to take a break during the interview, or would like to consult legal counsel, please let the DO know.

### **Why do I have to provide records?**

Records are important because they can contain details that may be overlooked in an interview. Records also help verify information provided in an interview. If the DO believes you may have relevant records, the DO can ask you to provide them in advance so that they can be reviewed before your interview. You may also be asked to produce additional documents during or after your interview.

### **Do I have to answer all of the questions?**

Please answer questions truthfully and as completely as possible. This helps to ensure the DO has all the necessary information to conduct a thorough, fair investigation. And it may prevent the DO from having to interview you a second time.

### How do I prepare for an interview by teleconference?

If you are scheduled to participate in an interview by teleconference, try to find a private, quiet setting where you can talk. You should be alone for the interview unless you have requested in advance that someone be with you and the DO has approved your request. Please ensure that nobody can overhear your conversation. If you have difficulty finding an appropriate space, let the DO know.

### How will the interview be recorded?

[Choose one:]

The DO will record the interview to ensure there is an accurate record of what is said. The recording of your interview will be stored confidentially in accordance with the *Freedom of Information and Protection of Privacy Act* and PIDA. To maintain confidentiality and preserve the integrity of the investigation, you will not be provided with a copy of the recording at the conclusion of the interview. However, you may take notes during the interview if this will assist you in providing a full and complete response to the questions.

The DO will make detailed notes throughout the interview. The notes of your interview will be stored confidentially in accordance with the *Freedom of Information and Protection of Privacy Act* and PIDA. To maintain confidentiality and preserve the integrity of the investigation, you will not be provided with a copy of the notes at the conclusion of the interview. However, you may take notes during the interview if this will assist you in providing a full and complete response to the questions.

### Can I make a recording of the interview?

No. The DO must retain control of digital recordings in order to preserve the integrity of the investigation, protect confidentiality and enhance reprisal protection.

### Will the information I provide be shared with anyone else?

All PIDA investigations are conducted in private. PIDA has strong confidentiality provisions. The information you provide may only be shared where required by law or as necessary for the conduct of the investigation. In any event, all practical measures will be taken to protect your personal information and involvement in the investigation.

### I am concerned that I may face retaliation for providing information to the DO. How am I protected?

PIDA prohibits acts of retaliation - also called reprisal - taken against people who seek advice, make disclosures or participate in PIDA investigations. Reprisal includes disciplinary measures, termination or demotion, change in work location or hours, suspension, or any measure that adversely affects the employee's employment or working conditions, including actions of colleagues (PIDA section 31). PIDA also protects against threats of reprisal and directing/counselling others to commit reprisal.

PIDA also prohibits reprisal against a contractor's current or potential contract with a public body (PIDA section 32).

A person who contravenes section 31 or 32 is guilty of an offence under PIDA and is liable, on conviction, of a fine up to a maximum of \$100,000.

Please ensure you do not take any adverse measures against anyone you think may be the discloser or anyone who participates in our investigation.

If you believe that you have faced reprisal as a result of your cooperation in the investigation, please let the DO know immediately. Only the Ombudsperson has the authority to investigate reprisal complaints under PIDA. Your employer cannot investigate an allegation of reprisal under PIDA.

### **Will I have access to government records or records from other witnesses to prepare for my interview?**

Records may be shared with you if they are necessary to understand and answer questions. This will be determined by the DO on a case-by-case basis, in accordance with the confidentiality requirements of PIDA.

Efforts will be made to provide you with access to such records in advance of the interview to allow you to prepare. Any documents provided will be subject to terms and conditions designed to maintain the confidentiality of those documents, preserve the integrity of the investigation and ensure that the documents are only used for the purpose of your participation in this investigation.

### **I am a former public sector employee. Can you provide me with access to all my government email or records?**

As indicated above, the DO will determine on a case-by-case basis what records to share with witnesses to further the investigation. If there are records that you believe will assist you to answer questions, please let the DO know.

### **Is funding available for legal support?**

No. PIDA does not provide for funding for legal support. If you believe you will incur expenses in order to attend an interview or to comply with a request for documents, please let the DO know.

### **Procedural fairness**

PIDA investigations are intended to be conducted in a procedurally fair way and according to the principles of natural justice.

If the disclosure suggests you may have committed wrongdoing, you will:

- know the allegations against you, but not who made them;
- have the opportunity to respond to the allegations by telling your side of the story and providing evidence; and
- know the outcome of the investigation and reasons for any matters that impact you.

### **What happens after the interview?**

You will be reminded to not discuss the interview with anyone else, including other witnesses or potential witnesses. This is to protect the integrity of the investigation.

If any additional information is required of you after the interview has concluded, you may be asked by the DO to attend another interview to answer further questions or to provide additional records.

Under PIDA, the DO is required to report the results of the investigation to the Chief Executive. Before finalizing the investigation report, the DO will notify anyone who may be adversely affected by the report or any recommendations made in the report, and give them an opportunity to make representations to the DO.

The *interview planning checklist* is complete and now the DO has advanced to the interviewing stage of the investigation plan. The objective of interviewing in a *Public Interest Disclosure Act* (PIDA) investigation is threefold:

1. To provide respondents with opportunity to respond to the allegations against them.
2. To provide witnesses with an opportunity to be heard by an unbiased decision-maker.
3. To get information that will help to decide if wrongdoing occurred.

### **Tips**

- Start by taking steps to make the interviewee comfortable.
- Let the interviewee know they may request a break during the interview, for example, to compose themselves or to consult with counsel.
- Work to establish rapport and to relax the interviewee.
- Always treat those interviewed with dignity, respect, and courtesy.
- Listen more than talk and don't be afraid of silence.
- Avoid use of any investigative jargon.
- Avoid making statements that are, or could be, perceived to be threatening or intimidating.
- Take notes throughout or record the interview.

### **Best practice:**

If possible, consider having a second interviewer present in interviews. The benefits are:

- The Designated Officer (DO) can focus on the interviewee's responses and is not distracted by note-taking or other logistics.
- Having a second interviewer can be particularly useful in complex or emotionally charged interviews.
- A second interviewer may assist interviewees to feel more comfortable especially during the investigation of matters pertaining to persons, communities or groups that have been historically marginalized (such as Indigenous peoples, racialized people, women, 2SLGBTQ+ people, immigrants, etc).

### **Using the opening script**

- Identify yourself and any others participating in the interview.
- Explain your authority to conduct the investigation.
- State the reason for the interview.
- Explain why they, in particular, were selected to be interviewed.
- Clarify that the interview is *voluntary* and can be ended at any time.
- Note that their comments will be kept confidential to the degree possible.
- Request them to keep the interview confidential and if necessary, consider written confidentiality agreements.
- Review reprisal protections.
- Explain how you will make a record of the interview – notes or digital recording.
- Before posing investigative questions, ask if there are any questions.



- If a support person is attending, remind them of their role and obtain their commitment to maintain confidentiality, in writing if necessary.
- Ask for their permission to proceed with the interview.

### **Use the interview question guide**

- Maintain a conversational tone.
- Explain that it is important the interviewee be open and candid.
  - It's ok to say "I don't know" rather than speculating.
  - If there is reluctance, remind the interviewee of the importance of a speak-up culture and request their cooperation.
- Begin with an open-ended question such as "Will you please tell me about the events in your own words? Take your time."
- Clarify information if needed, but try to avoid interrupting or asking closed-ended questions until after the interviewee has finished telling their account.
- After the interviewee has given their information, pose any specific questions that arise or which the interviewee has not addressed.
- Be sure to share relevant information that may be adverse to the interviewee so they can exercise their right to respond, challenge or correct.
- Keep control of the interview by asking, not answering questions.
- Offer no opinions relating to the investigation.
- Don't ask for the interviewee's opinion or conclusion on the alleged wrongdoing.
- Keep the questions simple, direct, and avoid compound sentences and questions.
- Restate your understanding of the interviewee's responses, to ensure your understanding is complete and accurate.

### **At the end of the interview:**

- Recap what was said to ensure accuracy and give the interviewee opportunity to add or clarify information they provided
- Thank them
- Let them know they may be re-interviewed to clarify points
- Request that they contact you if they think of anything not covered
- Ask if they know of others who may be able to add useful information
- Remind them about confidentiality requirements and reprisal protections
- Thank them again
- File notes/digital recording

### **Best practice tips**

Consider asking an open-ended question to conclude interviews in order to facilitate complete and thorough information-gathering. For example:

- ☐ Is there any other information you would like me to know?
- ☐ Is there anything you were hoping to share or would like to tell me?
- ☐ Is there anything I have not asked about that you think I should be aware of?

Consider asking the interviewee if they have discussed their potential responses with other parties before coming to the interview and whether anyone has influenced or instructed them on their responses.

### **Helpful tools for DOs**

- [Quick Tip: On Effective Communication](#)

## TOPIC 6.2: ANALYSIS

Once the DO understands the relevant rules and has gathered all the relevant information and evidence, it's time to analyze the information and decide whether wrongdoing occurred or not.

The analysis explains why and how the DO reached their conclusions. But it's more than simply a conclusion or a statement that wrongdoing occurred or not. The analysis must disclose a chain of reasoning. It will lead to the reasons which must impart to the reader a logical understanding as to why the DO reached their conclusion. Reasons should flow naturally from the facts presented and the analysis of them so that conclusions appear obvious.

Best practice is to dedicate a separate section in the investigation report to address the question: did wrongdoing occur?

### Four Steps to follow when analyzing facts obtained from a PIDA investigation

If investigating more than one allegation, analyze each allegation separately.

**Step 1:** Summarize the nature of the allegations being investigated and state the questions to be answered.

Return to the investigation plan and the questions identified at the outset as requiring an answer:

- Does evidence provide answers to those questions or reach factual findings/conclusions about those matters?
- Do the answers (factual findings) to those questions give a clear understanding of the allegations?
- Can those answers be used to form conclusions about whether wrongdoing occurred?

Ask:

- Are there any gaps?
- Are more facts, evidence and information needed? If so, take steps to get the additional information.

**Step 2:** Identify the specific rules or tests that apply to the matters investigated.

Set out the applicable laws, policies, and/or standards relating to each of the issues identified above.

Wherever possible, cite specific sections of the rules that apply to the allegations under investigation.

**Step 3:** Describe the evidence and explain it in relation to the rules that apply.

The DO's role is to determine what occurred (findings of fact) and compare it to what should have occurred (according to the relevant rules).

Review the relevant evidence gathered (oral, physical, documentary). Collate the information and create visual timelines, chronologies, diagrams or any other tools to assist with the analysis.

Apply the facts to the rules:

- Describe the relevant evidence obtained
- Demonstrate the chain of analysis
- Resolve conflicting evidence and explain why you prefer one piece of evidence or version of events over another
- Explain what you have determined the relevant facts are, and how and why they made their findings



**Step 4:** State the conclusions.

Determine whether the findings of fact (evidence) in Step 3 support a conclusion of wrongdoing under PIDA. Again, review the investigation plan and the questions identified at the outset as requiring an answer.

In other words, based on the analysis of the facts – form a conclusion, answer this question:

**Did wrongdoing occur, or not?**

You may wish to review these topics covered earlier in this Toolkit.

- [What is Wrongdoing](#) (pg 31)
- [Assessing the Threshold of Wrongdoing](#) (pg 32)

Clearly state the conclusion respecting whether the evidence, on the *balance of probabilities*, supports one or more findings of wrongdoing under PIDA.

**What if I note areas for improvement but the threshold of wrongdoing was not met?**

During the investigation, note deficiencies or flaws that do not rise to the level of wrongdoing but need to be remedied. Note these in the analysis and make recommendations to address them, even if the conclusion is that the threshold of wrongdoing was not crossed.

**What is the standard for administrative decision-making?**

Balance of probabilities; not beyond a reasonable doubt, as our criminal courts require.

What does this mean? A balance of probabilities means that when weighing all of the information, it is *more probable than not* that the issue should be decided in a specific way.

**How do I assess the credibility and reliability of evidence I gather?**

Look for:

- Consistency of interviewee evidence that agrees with, or clearly shown by other evidence, to have occurred.

- Compare/contrast interviewee evidence is clearly shown.
- Internal consistency of interviewee evidence.
- Consistency with what the interviewee has said on other occasions or in the documentary or digital evidence.

**CAUTION!** Be careful about jumping to conclusions if an interviewee shows emotion or if their demeanor raises questions. There are **NO** confirmed unique behaviours associated with truthfulness or deceit!

**Is the analysis sound?**

Ask these questions:

- Is there enough information to support a conclusion about whether wrongdoing happened?
- Are there any questions not fully answered? If the DO is not fully comfortable with the analysis or explanation, review the evidence for completeness to support a decision at this point and if necessary, take steps to get more evidence.
- Are there any gaps in evidence that emerge from timelines, chronologies or other analytic tools used?
- Can the logical flow of evidence to conclusions be demonstrated?

Ultimately, the DO wants a positive response to this question:

**On objective evidence and given the rules that apply, would a reasonably well-informed person form the same conclusion on the matter?**

This means giving adequate weight to relevant facts – but not excessive weight to matters of little importance to the decision at hand.

**Helpful tools for DOs**

- [Quick Tip: 10 Tips to Making Fair Decisions](#)

## TOPIC 6.3: DOCUMENTING THE INVESTIGATION

The objective of documenting an investigation is to collect and preserve all evidence related to the disclosure in order to:

- Facilitate decision-making about whether wrongdoing occurred and any deficiencies noted while investigating;
- Create a record of the investigation to defend the findings and any recommendations made; and
- Create a corporate record for any review of the investigation.

The first step is to get organized – preferably at the start of the investigation!

The benefits of being organized include:

- It helps to ensure the investigation is thorough and fair.
- It demonstrates integrity with complete, organized, accessible and transparent records.
- It facilitates effective and respectful interviewing.
- It facilitates sound analysis.

### Best Practices in record keeping

- Make security and protection of privacy a priority.
  - Always store physical records and evidence under lock.
  - Where possible, digitize physical records and store securely.
- Only allow access to files by necessary parties, such as a co-investigator or expert witnesses.
- Ensure all files use some form of authentication to access, such as needing to sign in as an authorized user with a unique password.
- Depending on the complexity of the investigation or volume of information, consider indexing or categorizing information for easy access. It will be helpful at the interviewing and analysis stages.
- Make notes contemporaneously or as soon as possible after interviews and keep the investigation file up to date.
- Be prepared to address questions about freedom of information requests about the investigation.

**Managing information**

Start by making a secure investigation file which will eventually include:

- ☐ A copy of the written disclosure and any evidence included by discloser
- ☐ Urgency and risk reprisal assessments and any risk management plans
- ☐ Written investigation plan
- ☐ Document register
- ☐ Case activity/communication log
- ☐ Evidence/exhibit log or index
- ☐ Notes, memos to file
- ☐ Recordings or notes of all witness interviews
- ☐ Copies of all correspondence, notification letters, written witness submissions
- ☐ A succinct summary of the analysis leading to conclusions, findings of fact and whether wrongdoing occurred, and recommendations
- ☐ Draft report, any responses from adversely affected persons and the analysis of those responses
- ☐ Final investigation report and summary reports

**What about audio or video recording interviews?**

Digitally recording interviews is a best practice for accuracy and frees the DO to focus on managing the interview to obtain information that advances the investigation.

If digitally recording, do:

- Inform the interviewee that the interview will be recorded – preferably in advance.
- Explain why: for accuracy and because it frees the DO to actively listen and respond to the interviewee's information.
- Reassure the interviewee about secure storage of the recorded interview.
- Be prepared to respond to any concerns about recording.
  - Consider interviewees' requests to listen to their own recorded interviews but do not provide copies of recorded interviews - this may breach privacy requirements and hinder the investigation.

**How long should an investigation file be maintained?**

The investigation file must be complete and securely stored, in keeping with the organization's records management legislation or policies. For example, if the organization is subject to the *Freedom of Information and Protection of Privacy Act*, ensure that PIDA investigation records are maintained for the period of time prescribed in that Act.

**Bottom line:** Make sure the DO understands the record retention requirements that applies to their organization and store PIDA investigation records accordingly.

## TOPIC 6.4: AVOIDING PITFALLS

If the investigation is procedurally fair, the DO is more likely to come to reasonable conclusions. That's because procedurally fair steps help ensure a thorough investigation, with results based on objective analysis of the facts and evidence through the lens of the relevant rules that apply.

There are pitfalls that can arise during investigations, such as:

- Failing to adhere to procedural fairness requirements
- Investigating to prove or disprove allegations rather than fact-finding
- Overlooking important evidence, e.g., insufficient interviewing or selective interviewing/reporting
- Making conclusions before all relevant evidence is obtained and considered
- Reluctant witnesses
- Not managing emotions
- Conducting a fair investigation with reasonable outcomes but neglecting to explain reasons
- Undue or excessive delay

### Here are some tips to help avoid pitfalls in the investigation:

- ☐ Plan
- ☐ Follow the steps to procedural fairness to ensure a thorough investigation
- ☐ Make it the practice to manage participants' expectations early in the investigative process
- ☐ Be self aware, practice cultural humility and be trauma-informed
- ☐ Stay within the scope and issues defined as the focus of the investigation
- ☐ Actively manage the investigation to maintain a timely pace
- ☐ Keep an open mind
- ☐ Continuously review collected info and data
- ☐ Continuously test biases
- ☐ Base opinions and conclusions on objective evidence and explain how you arrived at conclusions
- ☐ Maintain control of all evidence
- ☐ Keep reprisal risk and confidentiality top of mind throughout.

# AFTER THE INVESTIGATION

7

## TOPIC 7.1: WRITING THE INVESTIGATION REPORT

An investigation report is an important record of the investigation, the procedurally fair process involved, and the basis for decisions and recommendations. Most importantly, the investigation report is an opportunity to demonstrate the organization's commitment to a speak-up culture, where reports of wrongdoing are treated seriously and are investigated using fair process. Also, it's possible the report may be reviewed by an external investigating authority. Take the time to write an excellent report.

The investigation report will inform the organization and affected parties of the results, specifically whether wrongdoing occurred or not. If the DO made a finding that wrongdoing happened, the report will include recommendations to address the finding(s).

The DO will write:

1. A full investigation report for the Chief Executive (CE)
2. A summary report for the discloser, confirmed wrongdoer and other appropriate parties, as the DO determines.

Remember, the DO has wide discretion about how much information to disclose to parties, and the timing. There may be sensitivities about providing summary information in certain circumstances.

Of course, best practice is to write reports using plain, understandable language.

### ***What should the investigation report include?***

The *investigation report* should include at minimum:

- A summary of the disclosures made under PIDA with relevant sections, the alleged wrongdoing and the key issues and questions investigated
- Reasons for not investigating any allegations included in the disclosure
- The relevant rules – legislation, bylaws, policies, standards etc. – considered when determining if wrongdoing occurred
- A list of the sources of key evidence considered – documents, records, interviews conducted
- The analysis for each of the questions investigated with a summary of the evidence considered
- The findings:
  - factual findings
  - did wrongdoing occur or not – for each allegation in the disclosure
  - other findings related to the matters investigated but which do not rise to the threshold of wrongdoing
- Clear and meaningful reasons that explain how and why the DO made their findings
- Conclusions and any proposed recommendations to address the wrongdoing and/or deficiencies

The DO will give a draft of the investigation report or excerpts of the report to the CE and any other adversely affected people.

If the DO chooses to provide only excerpts of the report, they will exercise discretion to determine how much information to share. Make sure to provide adequate information – enough context and details – so the party can form a response if they choose.

After the CE and adversely affected parties have had a chance to comment on the draft report or excerpts shared with them, consider any submissions and write the final report.

Take the opportunity here to reinforce for recipients of any report the confidentiality requirements and reprisal protections under PIDA.

The *Summary Report* to the discloser and other appropriate persons typically includes at a minimum:

- A summary of each allegation investigated;
- Whether wrongdoing is substantiated, for each allegation; and
- Any recommendations, regardless of whether wrongdoing was found.

Exercise discretion to decide how much information to include, if any, about evidence considered and how you arrived at the conclusions, keeping protection of privacy considerations top of mind.

### Helpful tools for DOs

- [Investigation report outline](#) (pg 75)
- [A word about reasons](#) (pg 76)
- [How to formulate findings and recommendations](#) (pg 76)
- [Quick Tip: On Apologies](#)
- [Quick Tip: Leading Practices in Appeals](#)

### Investigation report checklist:

- ☐ List the allegations investigated and cite the relevant PIDA sections for each allegation
- ☐ Describe the relevant rules that apply to the details of the disclosure – legislation, regulation, bylaw, policy, procedure, other internal practice guidance
- ☐ State the finding for each allegation – substantiated or not
- ☐ Describe or summarize the evidence
- ☐ Describe or summarize the analysis of evidence in relation to the alleged wrongdoing
- ☐ Include a dedicated section to address the question: Did wrongdoing occur?
- ☐ Clearly link the analysis to conclusions
- ☐ Draft concise findings statements
- ☐ Draft recommendations that:
  - flow logically from the investigation
  - respond to the root causes that led to the disclosure
  - are solution-focused and measurable
  - are achievable, time-bound and prioritized, if there are multiple recommendations
- ☐ Provide understandable, logical reasons for conclusions, findings and any recommendations



## 7.1a: Investigation report outline

### Sample investigation report outline

Designated Officer:

Date:

#### **Summary of the disclosure:**

*Write a brief description of the disclosure.*

#### **Allegations investigated**

*Describe the scope of the investigation and the specific allegations which were considered.*

#### **Law/Policies/Standards**

*Set out the applicable laws, policies, and/or standards relating to each of the issues identified above and which were investigated.*

#### **Sources of Evidence**

*Summarize the sources of evidence considered during the investigation, including but not limited to records, responses to questions, witness interviews, physical evidence, observations during a site visit, etc.*

#### **Evidence and Factual Findings**

*Summarize the evidence obtained and findings of fact relating to each allegation investigated.*

#### **Analysis and Findings**

*Apply the facts to the applicable laws/policies/standards, including a determination of whether wrongdoing occurred.*

#### **Recommendations**

*Outline any recommendations to address any finding of wrongdoing or other matter, such as deficiencies identified through the investigation.*

#### **Conclusion**

*Summarize the findings and recommendations.*

### 7.1b: A word about reasons

If the DO fails to provide clear, understandable reasons for the findings and recommendations, they may find that people ask for further explanation, or complain. They may also doubt the fairness of the investigation.

Provide reasons that are clear, and aim to be thorough enough – as brief as you can while providing enough information for the reader to understand the rationale for the conclusion.

#### Reasons should:

- ☐ Describe what evidence was considered and how and why it led to the decision
- ☐ Demonstrate that the decision-maker heard and considered the information provided by the parties to the case
- ☐ Summarize any credibility assessment of witnesses that were made and how this impacted the consideration and weight given to the witnesses' evidence, particularly where conflicting evidence was presented
- ☐ Be responsive and understandable to the parties receiving them. Reasons are the primary way the DO demonstrates that as the decision-maker they have listened to the arguments and evidence and considered them when making the decision

#### Ask these questions

When I explain the results of my investigation to them or they receive my written report:

- Will they understand why I made the decision?
- Have I demonstrated that I heard and considered the evidence they provided in my decision-making process?

### 7.1c: How to formulate findings and recommendations

PIDA section 9(2)(i) authorizes the DO to report the outcomes of investigations. This includes any findings made, with reasons to support the findings and any recommendations to address the findings.

In order to make a finding, the following must be considered:

- the relevant rules that apply – legislation, regulation, bylaw, policy, procedure, or other internal guidance
- the application of those rules to the facts and evidence collected

A finding of wrongdoing is only one of several findings that may be made during an investigation.

If it is concluded that wrongdoing did not occur, the DO may still make recommendations to address deficiencies noted while investigating. More on this below.

#### Formulating findings

Findings are factual statements based on careful consideration and analysis of the facts and evidence relevant to the wrongdoing assessment.

Findings can be positive or negative statements. For example:

*“I find that staff were well-informed about our organization’s policies, protocols and practices respecting use of vehicles for personal use.”*

Or...

*“I find that staff held differing interpretations of our organization’s policies, protocols and practices respecting use of vehicles for personal use which led to differing practices respecting personal use.”*

#### Best practice tip: Include “What is Wrongdoing?” section in the reports

For added clarity, best practice is to dedicate a separate section in the investigation report to address the question: did wrongdoing occur?

Based on evidence gathered and the analysis, clearly state the conclusion(s) about the alleged wrongdoing – did it meet the threshold of wrongdoing or not?

This can be a very succinct finding statement such as,

*“Based on the evidence, I conclude that on a balance of probabilities, wrongdoing did/did not occur.”*

In more complex investigations and decisions the DO may opt to include a brief summary of their analysis.

For example,

*“Based on the evidence, and in particular the following key evidence:*

- (Name, key evidence)
- (Name, key evidence)
- (Name, key evidence)

I conclude that on a balance of probabilities, wrongdoing occurred.”

### **Additional findings**

Remember, the DO may make recommendations based on concerns noted during the wrongdoing assessment but which do not rise to the level of wrongdoing. For example, imagine the DO observed that employees have different interpretations of the policy about the use of company vehicles for personal use, which was a factor in the disclosure. The DO may wish to provide analysis of such an observed deficiency, even when making a finding that the threshold of wrongdoing was not met. This supports the organization’s efforts towards continuous improvement.

### **Formulating recommendations**

Recommendations are intended to remedy wrongdoings found, and other findings related to the wrongdoing assessment, and/or prevent future wrongdoing. Without recommendations, the report has less chance of achieving positive change.

- Recommendations should be specific, solution-focused and targeted:
  - Specify the actions and state which part of the organization should be accountable for implementing them.
  - Focus on one issue per recommendation.
  - For clarity, list all required actions for each recommendation in bullet or list format.
  - Include a level of detail in the recommendation that helps the intended audience interpret and implement the actions correctly.
- Recommendations should be measurable and root-cause responsive:
  - Ensure recommendations are sufficiently focused so that implementation can be measured.
  - Recommendations should be based on a careful analysis of the source of the problem identified in the report.
  - Avoid recommendations that address only the symptoms of a problem, rather than the underlying structural factors.
  - Identify any gaps in the rules that allowed the problem to occur, and draft a recommendation that is aimed at addressing those gaps.
- Recommendations should be achievable:
  - Ensure recommendations are realistic and therefore operationally achievable.
  - It may be necessary to make recommendations that require additional resources.
- Recommendations should clearly flow from the analysis and logic in the report.
- Recommendations should be time-bound, and if making multiple recommendations, prioritized.
- Consider whether interim recommendations may be necessary, to address the wrongdoing while full implementation of recommendations is underway.

### ***What kinds of recommendations can a DO make?***

Under PIDA, the DO has discretion to recommend:

- Changes to existing rules or programs and services
- New rules or programs and services
- Apology
- Change in practice
- Monetary remedy – refund, other
- Training
- Mediation
- Any other reasonable action to address the wrongdoing, for example “Initiate an investigation into employee X’s conduct in this matter”.

### ***Recommendation drafting checklist***

General considerations:

- Decide what type of recommendation the DO is making. Have all relevant considerations been addressed?
- Use plain, easy to understand language

Here is a handy checklist to help formulate recommendations that are more likely to achieve the desired change:

- ☐ Does the recommendation clearly state which part of the organization is responsible to act?
- ☐ Does each recommendation address only one issue?
  - Are separate actions related to that issue set out in bullet points?
- ☐ Does the recommendation contain enough detail to understand and implement it?
- ☐ Can implementation of the recommendation be measured?
  - Does the recommendation use any vague or subjective language?
- ☐ Does the recommendation address the root cause of the problem?
- ☐ Is the recommendation responsive to the applicable rules and procedural framework?
- ☐ Are interim recommendations necessary?
- ☐ Are the recommendations clearly connected to key facts and conclusions in the report?
- ☐ Do the recommendations clearly emerge from the analysis in the report?
- ☐ Is it necessary to establish a time frame for implementation in the recommendation?
  - If establishing a time-frame:
    - Has the sequence of implementation of related recommendations been considered?
    - What is the relative importance of the recommendations? Should some recommendations be implemented immediately?
    - Are any recommendations interdependent and if so, do time frames reflect this?
- ☐ Have the potential consequences of implementing recommendations been considered, addressed or acknowledged? For example, there may be a time or budget impact to recommendations.

## TOPIC 7.2: NOTIFYING PARTIES OF THE RESULTS

Now that the DO has completed the investigation, how do they share the results and to whom?

**Being fair requires the DO to notify those who may be adversely affected by the report so they can comment if they choose.**

This step provides potentially adversely affected parties with an opportunity to be heard, a key element of procedural fairness, prior to finalizing the reports.

**The confidentiality of the discloser's identity remains a primary consideration during this phase.**

It's important to conduct a reprisal risk re-assessment, and the DO may need to develop/ amend the risk management plan prior to issuing notifications.

### Draft investigation report

#### Objective

The objective of a draft investigation report is to provide those who may be adversely affected by the report, or excerpts of the report, with an opportunity to respond and be heard. Getting their feedback ensures the DO gets the facts right, helps fill in any gaps in the written analysis and can identify where reasons may need to be better explained.

#### Exercising discretion

Always considering reprisal risk and the principle of protecting parties' identities, especially the discloser's, the DO has discretion to:

- determine whether to share the full report, or excerpts of it
- decide how much information to provide to each potentially adversely affected party

Best practice is to provide adversely affected parties with excerpts that affect them only. Again, depending on reprisal risk and confidentiality considerations.

The Chief Executive will typically receive the full report.

**Note:** *The CE does not receive the full report if they are accused of or found to be a wrongdoer. In that case, if the DO believes the CE could be considered to be potentially adversely affected, the DO will provide the full investigation report to the designated alternate set out in the section 9 procedures. In this scenario, the CE will receive excerpts that affect them only.*

Once there is a game plan, the DO should prepare written notification to potentially adversely affected parties in order to provide them with an opportunity to comment prior to finalizing the report. When providing excerpts of the report, explain that it's necessary to protect privacy. See sample letters on pages 82-83.

DOs can opt to receive responses orally or in writing. If they are willing to receive responses orally, they should be sure to document immediately afterward.

**Note:** *This notification step does not typically include the discloser, who may not be directly affected by the findings or recommendations. The discloser receives only a Summary Report. However, the DO may decide to notify the discloser about the draft investigation report, and possibly provide excerpts if reprisal risk exists or if the DO determines the discloser may be potentially adversely affected.*

### ***Finalizing the investigation report***

Provide adequate time for affected parties to respond to the draft report or excerpts. Consider any responses received, and make any changes to finalize the report, as appropriate. Prepare to inform adversely affected parties if their submissions were rejected, with reasons.

Submit the final written report to the Chief Executive.

### ***Summary report***

It may be reasonable to provide a summary of the report to other parties to the investigation who are not adversely affected but may have a significant stake in the outcome of the investigation – often the discloser, sometimes an alleged wrongdoer, or other key witnesses.

The DO can notify them and other appropriate persons about the results of the investigation with a summary report comprised of:

- a brief statement about the allegations investigated;
- whether the investigation confirmed wrongdoing, or not; and
- any recommendations and/or actions planned or taken by the organization to address issues identified through the investigation.

Although some witnesses may be keen to read the full report, if they are not adversely affected they do not need to receive any portion of the investigation report, either in draft or final forms. It is helpful to have explained this to them earlier in the investigative process as part of managing their expectations.

Also, it may be appropriate at this point to discuss with the Chief Executive whether any information should be shared with employees, for example the outcome of large or systemic or otherwise intrusive investigations. This may allay misinformed conclusions that could affect the organization's reputation or employee morale.

### **Tools DOs may find helpful**

- [Reprisal risk assessment](#) (pg 21)
- [Sample section 9 procedures](#)
- [Sample letter notifying Chief Executive of draft investigation report](#) (pg 81)
- [Sample letter notifying affected parties of final report/excerpts](#) (pg 82)
- [Quick Tip: Leading Practices in Conducting Appeals](#)

## 7.2a Sample letter for use by Designated Officer when providing Chief Executive with draft investigation report

Date

Via email: insert email address

Name of recipient

Title, Organization

Address

Dear First Name Last Name,

I write regarding my investigation into a disclosure of wrongdoing concerning x under the Public Interest Disclosure Act (PIDA).

This letter and the enclosed draft investigation report are intended to inform you of the grounds on which I intend to make findings and recommendations.

Before I issue a final report in accordance with our (insert organization's section 9 PIDA policy title), I invite you to respond to the draft investigation report, enclosed. I will carefully consider any information you provide by (DATE 2 weeks from letter date) before finalizing the report.

The final investigation report will be provided to you, as the Chief Executive of (name of organization). A summary of the report will be provided to the discloser (name other roles in the organization who may receive the final investigation report or excerpts, if applicable).

If you wish to provide a response to the draft investigation report, please do so by (DATE 2 weeks from letter date). If you wish to meet prior to responding to this letter, I can be reached at (email and/or phone number).

All PIDA investigations are conducted privately. PIDA has strong confidentiality provisions. In light of these provisions, please do not discuss this email or my investigation with other parties in the organization.

I look forward to your response.

Yours sincerely,

Name

Designated Officer

Encl.: Draft Investigation Report



## 7.2b Sample letter for Designated Officer use to provide report/excerpts to affected parties (not Chief Executive)

Date

Via email: insert email address

Name of recipient

Title, Organization

Address

Dear First Name Last Name,

As the Designated Officer, I write regarding my investigation into a disclosure of wrongdoing concerning (insert brief statement or description) under the Public Interest Disclosure Act (PIDA).

This letter and the enclosed (Select one: investigation report/report excerpts) are intended to inform you of the grounds on which I expect to make findings and recommendations.

Before I issue a final report in accordance with our (insert organization's section 9 PIDA policy title), I invite you to provide a response or representations on (Select one: the draft investigation report/report excerpts that affect you), enclosed. I will carefully consider any information you provide by (DATE 2 weeks from letter date) before finalizing the report.

The final investigation report will be provided to (insert appropriate senior official according to section 9 PIDA policy).

If you wish to respond or make representations on (Select one: the draft investigation report/excerpts of the report), please do so by (DATE 2 weeks from letter date). If you wish to meet prior to responding to this letter, I can be reached via email (insert email address) or by telephone at (insert number).

All PIDA investigations are conducted privately. PIDA has strong confidentiality provisions. In light of these provisions, please do not discuss this email or my investigation with colleagues or upline reports.

I look forward to your response.

Yours sincerely,

Name

Designated Officer

Encl.: Draft Investigation Report/Excerpts

# ADDITIONAL RESOURCES

The background of the page is composed of several large, overlapping triangles in different colors. A dark blue triangle occupies the top right corner. A light blue triangle is on the left side, extending from the top left towards the center. A green triangle is located in the bottom left and center. An orange triangle is in the bottom right corner. The text 'ADDITIONAL RESOURCES' is written in white, bold, uppercase letters in the top right area, over the dark blue background.

## LINKS DIRECTORY AND ADDITIONAL RESOURCES

We've covered a lot of ground in this Designated Officer PIDA Investigations Guide.

### **Tools for Designated Officers**

- [PIDA and other complaint mechanisms](#) (pg 14)
- [Reprisal risk assessment](#) (pg 21)
- [Reprisal risk assessment tool](#) (pg 24)
- [Assessing wrongdoing](#) (pg 32)
- [Sample notice of investigation letter to Chief Executive Officer](#) (pg 46)
- [Sample notice of investigation letter to discloser](#) (pg 47)
- [Sample letter inviting participant to interview](#) (pg 58)
- [Sample letter inviting respondent to interview](#) (pg 59)
- [Interview planning checklist](#) (pg 60)
- [Sample information for investigation participants](#) (pg 61-64)
- [Investigation plan checklist](#) (pg 52-53)
- [Investigation report outline](#) (pg 75)
- [A word about reasons](#) (pg 76)
- [How to formulate findings and recommendations](#) (pg 76)
- [Sample letter notifying Chief Executive of final report](#) (pg 81)
- [Sample letter notifying affected parties of final report/excerpts](#) (pg 82)

### **Quick tips**

- [Quick Tip: Essentials of Procedural Fairness](#)
- [Quick Tip: Exercising Discretion Fairly](#)
- [Quick Tip: Leading Practices in Conducting Appeals](#)
- [Quick Tip: On Apologies](#)
- [Quick Tip: On Effective Communication](#)
- [Quick Tip: Reducing Bias in Decision Making](#)
- [Quick Tip: 10 Tips to Making Fair Decisions](#)
- [Quick Tip: Understanding Fairness](#)

Here are some additional resources Designated Officers and their organizations may find useful. All eLearning courses, webinars and fairness guides are available on the Office of the Ombudsperson website.

### **Consult with the Office of the Ombudsperson Public Interest Disclosure Team**

- [report@bcombudsperson.ca](mailto:report@bcombudsperson.ca)

### **eLearning**

- [Speaking Up Safely: Your Rights and Responsibilities Under PIDA](#)
- [Fairness 101: An Introduction to Administrative Fairness](#)

### **Webinar series**

- PIDA Supervisor Responsibilities
- 2021 PIDA Conference: Dr. Cindy Blackstock
- Essentials of Fair Complaint Handling
- Fairness Matters: Making Fair Decisions
- Fairness in Practice: Aspects of Procedural Fairness

### **Fairness guides**

- [Fairness In Practice: A Guide to Administrative Fairness in the Public Sector](#)
- [Fairness By Design: An Administrative Fairness Self-Assessment Guide](#)
- [Developing an Internal Complaint Mechanism](#)
- [Complaint Handling Guide](#)

### **PIDA-specific resources**

- [Checklist for Chief Executive](#)
- [Public Interest Disclosure webpages](#)
- [Sample PIDA section 9 procedures](#)

## MAIL

PO Box 9039 Stn Prov Govt  
Victoria BC V8W 9A5

## TELEPHONE

Toll-free: 1.800.567.FAIR (3247)

## TRAINING/RESOURCES

[consult@bcombudsperson.ca](mailto:consult@bcombudsperson.ca)

## INDIVIDUAL ADVICE/SUPPORT

[report@bcombudsperson.ca](mailto:report@bcombudsperson.ca)

## IN PERSON

2<sup>nd</sup> Floor • 947 Fort Street • Victoria BC

## ONLINE

[bcombudsperson.ca](http://bcombudsperson.ca)



**OMBUDSPERSON**  
BRITISH COLUMBIA

**Office of the Ombudsperson**

PO Box 9039 Stn Prov Govt  
Victoria BC V8W 9A5

**General Inquiries:**

1 800 567-3247

Fax: 250 387-0198

[www.bcombudsperson.ca](http://www.bcombudsperson.ca)



**OMBUDSPERSON**  
BRITISH COLUMBIA