

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 retaliation or 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 report 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.