



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

“**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

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

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.¹
5. Supervisors and Designated Officers will document all requests for advice received under PIDA, and maintain a written record of the advice provided.

¹ 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

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**.² Disclosures must include the following information, if known:
 - a. A description of the wrongdoing;
 - b. The name(s) of the person alleged

² 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.³

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

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

³ 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

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

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.”⁴ 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

⁴ 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

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. 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).
30. 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 (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

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

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**⁵)
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

⁵ 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**⁶ for more information about when and how to assess the risk of reprisal and how to manage that risk.

Gathering Information

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**⁷ 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

47. The Designated Officer will assess the disclosure to confirm the following:
 - a. the discloser is an employee or former employee⁸ 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:**

⁶ See Appendix B

⁷ See Appendix C

⁸ 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 Wrongdoing⁹, 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

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

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.¹⁰
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.

⁹ See Appendix C

¹⁰ 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 considerations¹¹:
 - a. The disclosure does not provide sufficient details or particulars about the wrongdoing;
 - b. The disclosure is frivolous or vexatious;
 - c. The disclosure was not made in good faith;
 - d. 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;
 - e. The disclosure relates solely to a public policy decision.
 - f. The disclosure has been referred to another appropriate authority for investigation; or
 - g. 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.

¹¹ 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

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

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.¹² 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.¹³

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.

¹² PIDA, s. 9(2)(g)(i)

¹³ PIDA, s. 18

Maintaining Confidentiality

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

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

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 Wrongoings

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

¹⁴ PIDA s. 9(2)(h)

Discontinuing an Investigation

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

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

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

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.

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.

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

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

Final Reports

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.¹⁵
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

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.¹⁶
105. The annual report must not include any information that would
- identify the discloser;
 - identify a respondent; or
 - unreasonably invade a person's privacy.¹⁷
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].¹⁸

¹⁵ PIDA, s. 38(2)(c)(iii)

¹⁶ PIDA, s. 38(2)

¹⁷ PIDA, s. 38(4)

¹⁸ 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 *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:

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, LGBTQS2 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.

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