

# PUBLIC INTEREST DISCLOSURE ACT INVESTIGATIONS: INFORMATION FOR WITNESSES

## 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 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, or by teleconference, depending on what is appropriate for the circumstances. Please let us know if you have a preference for the style (remote or in-person) or location of the interview.

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.

During the physical distancing measures in place due to COVID-19, we are conducting most interviews by teleconference.

### 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 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 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](#)

