OMBUDSPERSON
BRITISH COLUMBIA

DESIGNATED OFFICER TOOLKIT

FOR *PUBLIC INTEREST DISCLOSURE ACT* INVESTIGATIONS

November 2025

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DESIGNATED OFFICER PIDA INVESTIGATIONS TOOLKIT

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 confidentially 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 reprised (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 the 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 I.2: WHAT IS THE *PUBLIC INTEREST DISCLOSURE ACT*?

BC's PIDA came into force in December 2019. Over a five-year period which ended in December 2024, PIDA's jurisdiction expanded to cover more than 197 organizations, with 320,000 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 I.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. The Office of the Ombudsperson has created sample 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.

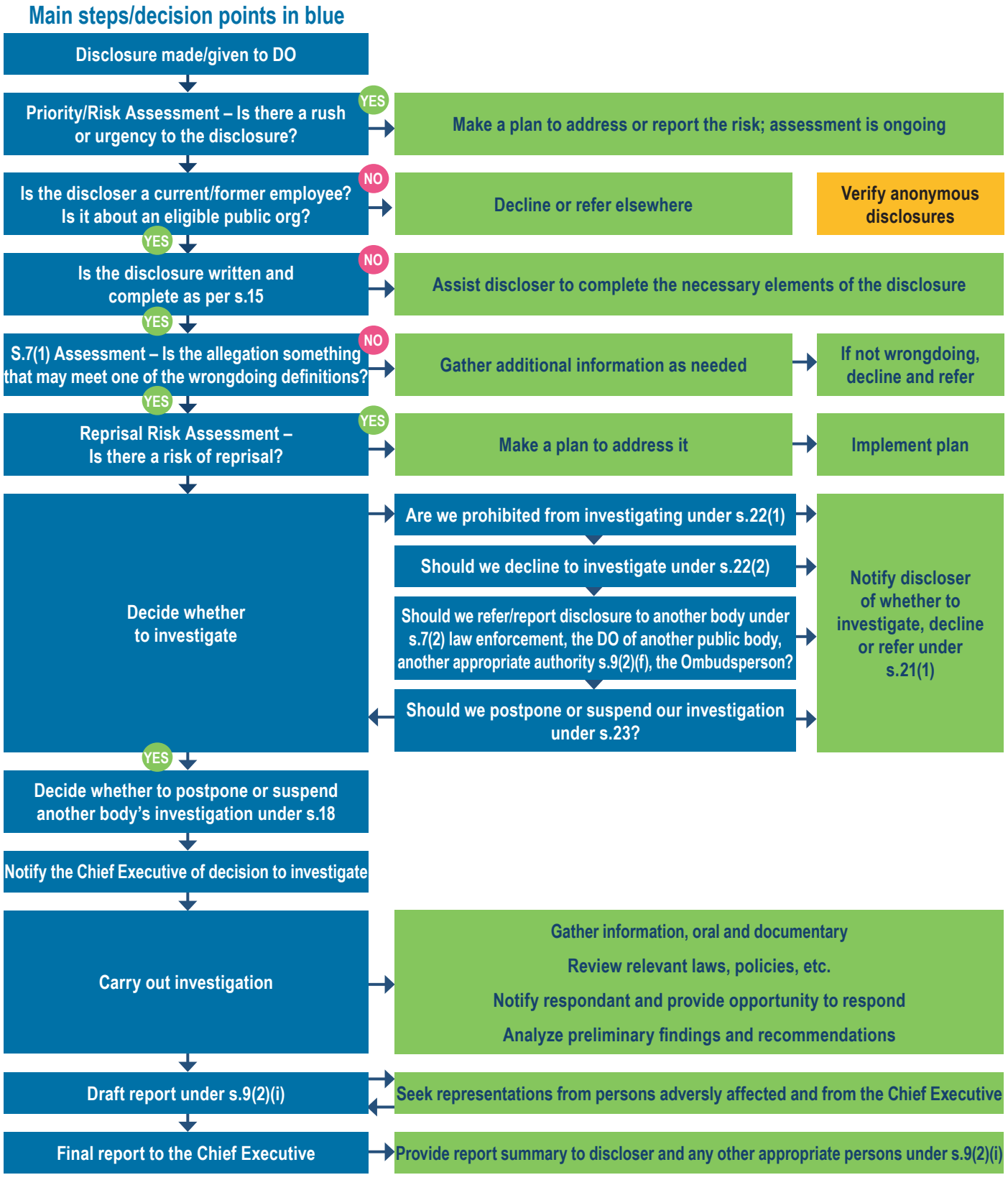
Please note that some tools are referenced in more than one topic. That is because the tools may be useful at different stages of a PIDA investigation.

TOPIC I.5: DESIGNATED OFFICER TOOLKIT NAVIGATION MAP

ACTION STEP	TOPICS	TOOLS
PREPARE	**Review investigative principles**	• Fairness Facts: Understanding Fairness • Fairness Facts: The Essentials of Procedural Fairness • Fairness Facts: Using Discretion Fairly • Fairness Facts: Reducing Bias in Decision Making
PLAN	**Decide issues/scope** **Identify sources of information** **Conduct urgency and reprisal risk assessments** **Plan communication with the parties** **Write the investigation plan**	• Reprisal risk assessment (pg 21) • Interview planning checklist (pg 60) • Sample notice and interview invitation letters (pgs 46, 47, 58) • Sample information for investigation participants (pgs 61-64) • Investigation plan checklist (pg 52-53)
INVESTIGATE	**Interviewing** **Analyzing** **Documenting** **Avoiding pitfalls**	• Assessing wrongdoing (pg 32) • Fairness Facts: Making Fair Decisions
AFTER THE INVESTIGATION	**Writing the final reports** **Notifying parties of the results**	• Draft investigation report outline (pg 75) • Formulating findings and recommendations (pg 76) • A word about reasons (pg 76) • Fairness Facts: Effective Apologies; Fair Appeal Processes • Sample letters to affected parties (pgs 81, 82)

RECEIVING DISCLOSURES AND REQUESTS FOR ADVICE

TOPIC 2.I: INTERNAL DISCLOSURE FLOWCHART



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 service
- 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 below)

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) a description of the wrongdoing;

(b) the name(s) of the person alleged

  (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.

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

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 service

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 on 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**
☐ **No**
☐ **N/A**

Has the alleged wrongdoing taken place over a significant period of time? Is there more than one alleged wrongdoer?

Is the discloser's identity known in the workplace?

☐ **Yes**
☐ **No**
☐ Unknown

If yes, how did the identity of the discloser come to be known? Is this a cause for concern?

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

☐ **Yes**
☐ **No**

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?

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:

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 DOs 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 finds 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

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

- Fairness Facts: Understanding Fairness
- Fairness Facts: 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

- Fairness Facts: Reducing Bias in Decision Making
- Fairness Facts: Using 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/what-we-do/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 Fairness Facts: 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 proceduress 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

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 investigate 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 is it 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
PLANNING		
	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
OBTAIN RECORDS		
	Prepare requests for/obtain documents and other evidence	
	Review documents and other evidence received, conduct own research	
INTERVIEWS		
	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	
ADDITIONAL EVIDENCE & ANALYSIS		
	Consult outside experts/resources if applicable	
	Conduct on-site inspection (prior agreed upon date) if appropriate	Reconsider reprisal risk assessment
	Conduct analysis	
CONCLUDE INVESTIGATION & REPORT		
	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.I: 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 you 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		*To inform witness selection/sequencing and interview question formulation*
Interview discloser		*To inform witness selection/sequencing and interview question formulation*
Review list of potential witnesses and decide whom to interview		
Reconsider reprisal risk; re-assessment		
Reprisal mitigation plan		
Determine sequence and timing of interviews		*Consider reprisal risk assessment and any mitigation plan*
Confirm neutral, comfortable interview venue		*Consider cultural humility and trauma-informed principles and practices*
Prepare notification letter/interview invitations		*See samples*
Does witness need accommodation? Arrange.		
Does witness want third party to attend?		*Discourage work unit support persons. Consider confidentiality agreement for third party*
Schedule interviews		
Prepare opening script		
Prepare interview questions guide		*Tag questions to relevant evidence for ease of reference*
Provide area of inquiry and records to be referenced to the witness/respondent in advance as appropriate given confidentiality and the integrity of investigation		*Supports right to be heard and transparency*
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 Ac*t 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.

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

- Fairness Facts: 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)
- Fairness Facts: Effective Apologies
- Fairness Facts: Fair Appeal Processes

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)
- Fairness Facts: Fair Appeal Processes

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

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)

Fairness Facts

- The Essentials of Procedural Fairness
- Using Discretion Fairly
- Fair Appeal Processes
- Effective Apologies
- Reducing Bias in Decision Making
- Making Fair Decisions
- 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

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
- Complaint Handling Guide

PIDA-specific resources

- Checklist for Chief Executive
- Public Interest Disclosure webpages
- Sample PIDA section 9 procedures

NOTES

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TRAINING/RESOURCES

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