

***THE PUBLIC INTEREST DISCLOSURE  
(Whistleblower Protection)  
ACT***

**PROCEDURES TO MANAGE DISCLOSURES  
FOR DESIGNATED OFFICERS**

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These procedures are designed to manage the receipt and handling of inquiries, requests for advice and disclosures made under the Public Interest Disclosure (Whistleblower Protection) Act and its regulations (“PIDA”) within Government of Alberta departments and are intended for the use by designated officers within departments. Handling of disclosures includes the review of disclosures received as well as the subsequent investigation of a disclosure, if required. Use of these procedures requires a familiarity with and an understanding of the Act, and should not be used without referring to the Act as appropriate.

## 1. OVERVIEW

Purpose of the Act	The purposes of PIDA is to facilitate the disclosure and investigation of significant and serious matters in or relating to departments, public entities or offices of the Legislature, that an employee believes may be unlawful, dangerous to the public or injurious to the public interest; to protect employees who make those disclosures; to manage and investigate disclosures of wrongdoing and reprisals; to promote public confidence in the administration of departments, public entities and offices of the Legislature; and any other purpose prescribed in the Regulations. - (section 2(2))
PIDA deals only with “wrongdoings” as defined under the Act	<p>The values of the Public Service of Alberta provide a strong foundation to articulate the way employees work on a daily basis and ensure all management and non-management employees are able to do their best work. The foundation is the people of the Public Service. Existing policies and practices are consistent with a people focused approach.</p> <p>While PIDA has an important role to play as a tool to assist and protect employees, and promote public confidence in the administration of the Government of Alberta, day to day workplace issues that fall short of “wrongdoings” should be dealt with using existing internal departmental policies and practices.</p>
This Act applies to	This Act applies to departments, public entities and offices of the Legislature prescribed in the Regulations. - (section 2(1))
Wrongdoing	<p>Section 3 of PIDA defines “wrongdoing” as follows:</p> <ul style="list-style-type: none"> <li>• a contravention of a federal or provincial Act or regulation; or</li> <li>• an act or omission that creates: <ul style="list-style-type: none"> <li>○ a substantial and specific danger to the life, health or safety of individuals, not including a danger inherent to the employee’s duties or functions, or</li> <li>○ a substantial and specific danger to the environment</li> <li>○ gross mismanagement of public funds or a public asset, or</li> <li>○ knowingly directing or counseling a person to commit any of the above</li> </ul> </li> </ul> <p>- (section 3)</p>
Reprisal	<p>A reprisal means any of the following measures taken against an employee because the employee has, in good faith, sought advice about making a disclosure, made a disclosure, co-operated in an investigation pursuant to this Act or declined to participate in suspected wrongdoing:</p> <ul style="list-style-type: none"> <li>• a dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of a job location, reduction in wages, change in hours of work or reprimand;</li> <li>• any measures, other than the ones mentioned above that adversely affect the</li> </ul>

	<p>employee's employment or working conditions;</p> <ul style="list-style-type: none"> <li>• a threat to take any of the measures mentioned above</li> </ul> <p>- (section 1(l) and section 24)</p>
Employees seeking advice	An employee who is considering making a disclosure may seek advice from their designated officer, chief officer or the Commissioner. – (section 8)
Offences and penalties under PIDA	<p>It is an offence under PIDA:</p> <ul style="list-style-type: none"> <li>• For any person to take or direct, or counsel or direct a person to take or direct, any of the following measures against an employee because the employee has, in good faith, sought advice about making a disclosure, made a disclosure, co-operated in an investigation under this Act, declined to participate in a wrongdoing or done anything in accordance with this Act: <ul style="list-style-type: none"> <li>i. A dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of job location, reduction in wages, change in hours of work or reprimand;</li> <li>ii. Any measure other than one mentioned in (i) that adversely affects the employee's employment or working conditions;</li> <li>iii. A threat to take any of the measures in clause (i) or (ii) - (section 24)</li> </ul> </li> <li>• For any person seeking advice about making a disclosure, in making a disclosure, or during an investigation, to knowingly withhold material information or make a false or misleading statement, orally or in writing, to a designated officer, a chief officer the Commissioner or a person acting on behalf of or under the direction of a designated officer, a chief officer or the Commissioner. – (section 46(1))</li> <li>• For any person to counsel or direct another person to willfully, in seeking advice about making a disclosure, in making a disclosure, or during an investigation, knowingly withhold material information or make a false or misleading statement, orally or in writing to a designated officer, a chief officer, the Commissioner or a person acting on behalf of or under the direction of a designated officer, a chief officer or the Commissioner. – (section 46(2))</li> <li>• For any person to willfully obstruct, or counsel or direct a person to willfully obstruct, a designated officer, a chief officer or the Commissioner, or any individual acting on behalf of or under the direction of a designated officer, a chief officer or the Commissioner, in the performance of a duty or function under the Act. – (section 47)</li> <li>• For any person to: <ul style="list-style-type: none"> <li>i. destroy, mutilate, or alter the document or thing;</li> <li>ii. falsify the document or make a false document or thing;</li> <li>iii. conceal the document or thing; or</li> <li>iv. direct, counsel or in any manner cause a person to do anything mentioned in clauses (i) – (iii). - (section 48)</li> </ul> </li> </ul> <p>Any person who contravenes any of the above provisions is guilty of an offence and is liable:</p>

	<ul style="list-style-type: none"> <li>i. for a first offence to a fine of not more than \$25,000;</li> <li>ii. for a 2<sup>nd</sup> or subsequent offence, to a fine of not more than \$100,000. – (section 49)</li> </ul>
Limitation on Prosecution	A prosecution under this Act may be not be commenced later than two years after the day the alleged offence was committed – (section 50)
Protection of Commissioner and others	<p>No action lies or may be commenced or maintained against a designated officer, a chief officer, the Commissioner, or any person employed or engaged for services and acting on behalf of or under the direction of a designated officer, a chief officer or the Commissioner, in respect of anything done or omitted to be done in the exercise or intended exercise of any power under this Act or in the performance or intended performance of any duty or function under this Act.</p> <p>No person is liable to prosecution for an offence against any Act, and no action lies or may be commenced or maintained against a person, by reason of the person's compliance with any requirement of this Act.</p> <p>The protections above do not apply to a person in relation to anything done or omitted to be done by that person in bad faith. – (section 51)</p>

## 2. RECEIVING REVIEWING and PROCESSING DISCLOSURES

<p>Upon receipt of an alleged wrongdoing</p>	<p>Disclosures must be in writing and in a form provided by the designated officer. Upon receipt, each disclosure must be stamped with the date of receipt of the disclosure. Under Section 13 of PIDA, disclosures must include the following information, if known:</p> <ul style="list-style-type: none"> <li>• A description of the wrongdoing;</li> <li>• The name of the individual(s) alleged to have committed the wrongdoing or to be about to commit the wrongdoing;</li> <li>• The date(s) of the alleged wrongdoing;</li> <li>• Whether a disclosure in respect of a wrongdoing has been made pursuant to the procedures established under section 5 by the department, public entity or office of the Legislature and whether a response has been received, and if so, a copy of the response;</li> <li>• Any additional information that the designated officer or Commissioner may reasonably require in order to investigate the matters set out in the disclosure;</li> <li>• Any other information prescribed in the regulations;</li> </ul> <p>– (section 5(2)(a), section 13)</p>
<p>Time limits and extensions</p>	<p>A disclosure must be acknowledged within 5 business days from the date the disclosure is received by notifying the disclosing employee in writing.</p> <p>Within a maximum of 10 business days from the date on which the disclosure was received, the designated officer shall decide whether an investigation is required and shall notify the disclosing employee in writing of that decision.</p> <p>A chief officer may extend the above time limits provided that the overall time period for investigation and the provision of a report (110 days – see “Investigating Disclosures” below) is not extended for more than 30 business days.</p> <p>A chief officer may, with the Commissioner’s permission extend the above time limits for a longer period that the Commissioner considers to be appropriate in the interest of a fair and efficient outcome, consistent with the purposes of the Act..</p> <p>The Commissioner may extend the above time limits as the Commissioner considers necessary in the interest of a fair and efficient outcome, consistent with the purposes of the Act.</p> <p>If a time limit is extended, the individual who submitted a disclosure must be promptly advised when he or she may expect the next procedural step to occur or be completed.</p> <p>(Regulation section 3)</p>
<p>Referring a disclosure to the Commissioner</p>	<p>If the designated officer reasonably believes that the matter to which the disclosure relates constitutes an imminent risk of a substantial or specific danger to the life, health or safety of individuals, or to the environment, the designated officer shall as soon as reasonably practicable refer the disclosure to the Commissioner to be dealt with by the Commissioner under section 10(2) of the Act. – (section 5(2)(c))</p>

Conflict of interest?	<p>The designated officer must review the disclosure to ensure it does not represent a conflict of interest for the designated officer. (For example, if the disclosure refers to a matter that involves the designated officer or a family member or friend of a family member).- (section 5(2)(a) and 5(2)(d); Regulation section 3(3))</p> <p>The designated officer must remove him/herself from disclosures if a conflict of interest exists. In such cases, the designated officer shall refer the matter to an alternate that the respective Chief Officer considers to be appropriate. - (Regulation section 3(3))</p>
Confidentiality	<p>The identity of the persons involved in the disclosure process, including employees who make a disclosure or seek advice, witnesses and persons who are alleged to be responsible for a wrongdoing, must be protected subject to any other Act or Regulation and to the principles of procedural fairness and natural justice. – (section 5(2)(h))</p> <p>The designated officer may assign unique identifiers or codes to files or employ other administrative tools to help maintain confidentiality. (section 5(2)(h))</p> <p>Information that comes to a person’s attention or knowledge through the performance of their duties under PIDA must be protected and must not be disclosed except as required by the principles of procedural fairness and natural justice or as required under this or another Act. – (section 5(2)(g))</p>
Wrongdoing under PIDA?	<p>PIDA only covers wrongdoings that occur after the coming into force of the Act. The designated officer must determine if the disclosure falls within the categories of wrongdoing covered by PIDA, as follows:</p> <ul style="list-style-type: none"> <li>• a contravention of a provincial or federal Act or Regulation;</li> <li>• an act or omission that creates substantial and specific danger to life, health or safety of individuals or the environment, but does not include dangers inherent to the employee’s duties or functions;</li> <li>• gross mismanagement of public funds or a public asset;</li> <li>• knowingly directing or counseling a person to commit any of the above;</li> </ul> <p>– (section 3(1),(2))</p>
Disclosure made in good faith?	<p>If the designated officer determines that a disclosure is not made in good faith, the designated officer may consider that the matter does not constitute a wrongdoing under PIDA. - (sections 1(f) and 19(1)(d))</p>
Disclosure / advice tracking system	<p>The designated officer shall create an electronic or paper record (e.g. a log) to track disclosures and/or requests for advice under PIDA, and take reasonable care to handle the record with due regard to confidentiality requirements and protection of identity under PIDA. The record must be treated as strictly confidential, maintained in a secure manner and location, and protected from unauthorized access. – (section 5(2)(g))</p>

If criteria have not been met	If the designated officer determines that the matter of the disclosure does not constitute wrongdoing under PIDA, or the disclosing employee advises in writing that they wish to withdraw their disclosure, then the designated officer may close the file, and advise the disclosing employee. No further action is required under PIDA.
Good faith	A designated officer has an obligation to act in good faith. Good faith means to act objectively and in a manner that is not biased, arbitrary or discriminatory in handling disclosures in accordance with the Act and procedures. – (section 5(2)(d))
Notification to the employee making the disclosure	The disclosing employee shall be informed of the outcome of the assessment and the action to be taken, for example, whether the matter will be investigated or not within 10 business days of the disclosure being received. (Regulation section 3)
Notification to alleged wrongdoer	The alleged wrongdoer shall be informed of the nature of the disclosure, and provided with relevant information as required. The designated officer should exercise due diligence and discretion when providing such information. - (section 5(2)(d))
Action or investigation	<p>If immediate action, but no investigation, is required:</p> <ul style="list-style-type: none"> <li>• The designated officer shall identify options what corrective action needs to be taken and make recommendation to the Chief officer and shall follow up in a timely manner with the chief officer to determine what action the chief officer has or will be taken.</li> <li>• The Designated officer shall advise the disclosing employee and alleged wrongdoer of any action taken by the chief officer disclosing only that information which is required by law to be disclosed and in accordance with the principles of procedural fairness and natural justice.</li> <li>• The designated officer shall update and close the file and advise the disclosing employee accordingly. - (section 5(2)(a))</li> </ul> <p><b>OR</b></p> <p>If an investigation is required:</p> <ul style="list-style-type: none"> <li>• See part 3, Investigating Disclosures</li> </ul>

### 3. INVESTIGATING DISCLOSURES

<p>Time limits and extensions</p>	<p>An investigation must be concluded within 110 business days from the date on which the disclosure is received.</p> <p>A chief officer may extend this time limit provided that the overall time period for investigation and the provision of a report is not extended for more than 30 business days.</p> <p>A chief officer may, with the Commissioner's permission extend this time limit for a longer period that the Commissioner considers to be appropriate.</p> <p>The Commissioner may extend this time limit as the Commissioner considers necessary in the interest of a fair and efficient outcome, consistent with the purposes of the Act.</p> <p>If a time limit is extended, the individual who submitted a disclosure must be promptly advised when he or she may expect the next procedural step to occur or be completed.</p> <p><b>(Regulation section 3)</b></p>
<p>Multiple disclosures</p>	<p>If more than one disclosure is received by a designated officer in respect of the same matter, a single investigation may be conducted rather than a separate investigation with respect to each disclosure.</p>
<p>Responsibility</p>	<p>Investigations must be managed by the designated officer, with appropriate assistance (expertise), depending on the nature of the disclosure. This responsibility cannot be delegated. – <b>(section 5(2)(d))</b></p>
<p>Resources for designated officers</p>	<p>The designated officer may:</p> <ul style="list-style-type: none"> <li>• Consult with the chief officer regarding the management and investigation of a disclosure;</li> <li>• Request advice from the Commissioner with respect to the management and investigation of a disclosure.</li> </ul> <p>The Commissioner may require a request for advice to be in writing. – <b>(section 14)</b></p>
<p>Procedural fairness and natural justice</p>	<p>Investigations must be conducted in accordance with the principles of procedural fairness and natural justice. For example, the alleged wrongdoer has the right to know the nature of the disclosure, receive relevant information as required, and to be given an opportunity to reply to the disclosure. Information that is to be disclosed shall be limited to that which is required to be disclosed in accordance with the principles of procedural fairness and natural justice. – <b>(section 5(2)(d))</b></p>
<p>Safeguarding disclosure information and disclosure files</p>	<p>Each disclosure must be maintained in a separate, secured file, must be treated as strictly confidential, and must be protected from unauthorized access. – <b>(section 5(2)(g))</b></p> <p>All written information obtained as a result of the receipt of the disclosure, review of the disclosure, or the investigation of the alleged wrongdoing must be included in the disclosure file. All pertinent information obtained verbally must be documented in writing, dated, and placed in the disclosure file.</p> <p>– <b>(section 5(2)(g))</b></p>

Investigating other wrongdoings	<p>If during an investigation the designated officer has reason to believe that another wrongdoing has been committed or may have been committed the designated officer may investigate that wrongdoing in accordance with this Act. – (section 5(2)(e))</p> <p>If during an investigation the designated officer has reason to believe that an offence has been committed under a provincial or federal Act or Regulation the designated officer must, as soon as reasonably practicable, report the alleged offence to a law enforcement agency and to the Minister Justice and Solicitor General. - (section 5(2)(f))</p>
Confidentiality	<p>Subject to the principles of procedural fairness and natural justice, the designated officer must ensure the confidentiality of the information collected and must protect the identity of the persons involved in the disclosure process, including the disclosing employee, any witnesses and the alleged wrongdoer, to the fullest extent possible. – (section 5(2)(g) and 5(2)(h))</p> <p>Identifying information of anyone involved shall not be disclosed unless it is necessary to conduct the investigation or required by principles of procedural fairness and natural justice. – (section 5(2)(h))</p> <p>If specialized expertise is retained by the designated officer to assist in the investigation (e.g., lawyers, specialized investigators, forensic auditors), care must be taken to handle all correspondence to or from any expert, including billings for these services, with due regard to confidentiality requirements and protection of identity under PIDA.- (section 5(2)(g) and 5(2)(h))</p>
Investigation report	<p>On completing an investigation the designated officer must prepare a report that sets out:</p> <ul style="list-style-type: none"> <li>• The designated officer’s findings or reasons for those findings;</li> <li>• Any recommendations the designated officer considers appropriate respecting the disclosure and the wrongdoing</li> </ul> <p>- (section 5(2)(i))</p>
Documentation	<p>All documentation related to the investigation, including interview notes, must be included in the disclosure file. – (section 5)</p>
Follow-up of recommendations	<p>If the designated officer makes a recommendation, the designated officer may request the chief officer to notify the designated officer of the steps the department has taken or proposes to take to give effect to the recommendations.</p> <p>- (section 5(2)(j))</p>

## 4. REPRISALS

What is a "reprisal"?	No person shall take or direct, or counsel or direct a person to take or direct, any of the following measures against an employee because the employee has, in good faith, sought advice about making a disclosure, made a disclosure, co-operated in an investigation under this Act, declined to participate in a wrongdoing or done anything in accordance with PIDA: <ul style="list-style-type: none"><li>• A dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of job location, reduction in wages, change in hours of work or reprimand;</li><li>• Any measure, other than one mentioned in clause (a), that adversely affects the employee's employment or working conditions;</li><li>• A threat to take any of the measures referred to above</li></ul> (section 24) (Regulation s.3(2))
Complaints of reprisals are handled by the Commissioner	Complaints of reprisals shall be made in writing to the Commissioner in the prescribed form as set out in the Regulation. – (section 25)

## 5. ANNUAL REPORTING OF DISCLOSURES

Designated Officer's Annual Report	<p>The designated officer must ensure there is a mechanism in place to accurately track disclosures of alleged wrongdoing that have been made, for annual reporting purposes, including the outcomes of investigations.</p> <p>– (section 5(2)(i))</p>
Chief Officer's Annual Report	<p>The chief officer must prepare a report annually on all disclosures that have been made to the designated officer of the department, public entity or office of the Legislature for which the chief officer is responsible. – (section 32(1))</p> <ul style="list-style-type: none"> <li>• The report must include the following information: <ul style="list-style-type: none"> <li>i. the number of disclosures received by the designated officer, the number of disclosures acted on and the number of disclosures not acted on by the designated officer and reasons why disclosures were not acted upon;</li> <li>ii. the number of investigations commenced by the designated officer as a result of the disclosures;</li> <li>iii. in the case of an investigation that results in a finding of wrongdoing, a description of the wrongdoing and any recommendations made or corrective measures taken in relation to the wrongdoing or the reasons why no corrective measure was taken.- (section 32(2)(a)-(c))</li> </ul> </li> <li>• The report under subsection 32(1) must be included in the annual report of the department if the annual report is made publicly available, and if the annual report is not made publicly available the chief officer must make the report under subsection 32(1) available to the public on request. – (section 32(3))</li> </ul>
Commissioner's Annual Report	<p>The Commissioner must report annually to the Legislative Assembly on the exercise and performance of the Commissioner's functions and duties under this Act, setting out:</p> <ul style="list-style-type: none"> <li>i. the number of general inquiries made to the Commissioner relating to this Act;</li> <li>ii. the number of disclosures received by the Commissioner under this Act, the number of disclosures acted on and the number of disclosures not acted on by the Commissioner;</li> <li>iii. the number of investigations commenced by the Commissioner under this Act;</li> <li>iv. the number of recommendations the Commissioner has made and whether the departments, public entities or offices of the Legislature to which the recommendations relate have complied with the recommendations;</li> <li>v. the number of complaints of reprisals received by the Commissioner under this Act, the number of complaints or reprisals acted on and the number of complaints of reprisals not acted on by the Commissioner;</li> <li>vi. whether, in the opinion of the Commissioner, there are any systemic problems that may give rise to or have given rise to wrongdoings; and</li> <li>vii. any recommendations for improvement that the Commissioner considers</li> </ul>

appropriate. – (section 33(1)(a)-(g))

The report under subsection (33)(1) must be given to the Speaker of the Legislative Assembly, who must table a copy of it in the Legislative Assembly within 15 days after receiving it if the Legislative Assembly is sitting or, if it is not, within 15 days after the start of the next sitting. – (section 33(2))

Where is it in the public interest to do so, the Commissioner may publish a special report relating to any matter within the scope of the Commissioner's responsibilities under this Act, including a report referring to and commenting on any particular matter investigated by the Commissioner. – (section 33(3))