



**PUBLIC INTEREST
COMMISSIONER**

**A report of the Public Interest Commissioner
in the matter of disclosures of wrongdoing
and a complaint of reprisal under the
*Public Interest Disclosure
(Whistleblower Protection) Act***

Case: #PIC-16-03861

Allegations concerning a department within Alberta
Health Services

April 4, 2017



THIRD PARTY RULE

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Dr. Verna Yiu
President and CEO
Alberta Health Services
10030 – 107 Street NW, Floor 14
Edmonton, AB T5J 3E4

Dear Dr. Yiu:

I am pleased to provide my report, “Allegations concerning a department within Alberta Health Services” as required by section 22 of the *Public Interest Disclosure (Whistleblower Protection) Act*.

A handwritten signature in blue ink, appearing to read "Peter Hourihan".

Peter Hourihan, B.Admin, LL.B
Public Interest Commissioner

Edmonton, Alberta
April 4, 2017



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Foreword

An effective public service depends on the commitment of everyone who works in it to maintain the highest possible standards of honesty, openness and accountability. The *Public Interest Disclosure (Whistleblower Protection) Act* (the Act) creates a confidential avenue for public servants to speak out about wrongdoings or make complaints of reprisal. Employees of public entities can choose to report internally or, in limited circumstances, directly to the Public Interest Commissioner (the Commissioner). Whether the matter is investigated by the public entity or the Commissioner, Albertans expect the investigation will be thorough, objective and complete. Whistleblowers have the same expectation, and must have confidence their concerns will not be met with reprisal. Management needs to ensure this and should embrace whistleblowing as an opportunity to make positive change.

Mandate

The Act came into force June 2013, and facilitates the disclosure and investigation of wrongdoing or reprisals occurring in government departments, offices of the Legislature and public entities (including provincial agencies, boards and commissions, post-secondary academic institutions, school boards, charter schools, accredited private schools that receive grants, and public sector health entities).

The Commissioner is an independent Officer of the Legislature, who reports to the Legislative Assembly as a whole. The purpose of an investigation by the Commissioner is to bring the wrongdoing to the attention of the affected department, public entity or office of the Legislature and to recommend corrective measures. This promotes confidence in the administration of the department, public entity or office of the Legislature and encourages whistleblowers to come forward without fear of reprisal. Our larger aim is to promote a culture in the public sector where employees and managers share a common goal of reporting, investigating and changing practices to prevent or remedy wrongdoings.

The Act stipulates the Commissioner must prepare a report on completion of an investigation which sets out the findings, reasons for those findings and any recommendations considered appropriate respecting the disclosure and the wrongdoing. This report fulfills that requirement.



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Allegations

On October 21, 2016, the Commissioner received a disclosure of wrongdoing and a complaint of reprisal from the complainant, a former project manager at an Alberta Health Services (AHS) department.

This investigation examined the following allegations:

1. The department's executive director and/or the project management team lead grossly mismanaged public funds by circumventing policies and procedures governing the planning and financing of projects with reckless or willful disregard for the efficient management of government resources, thereby committing a wrongdoing under section 3(1)(c) of the Act;
2. The executive director and/or the team lead knowingly directed or counselled the complainant to commit a wrongdoing in contravention of section 3(1)(d) of the Act; and,
3. The executive director, the team lead, and/or the operations facilitator engaged in reprisal actions against the complainant as a result of the complainant declining to participate in the alleged wrongdoings, thereby committing a reprisal as defined in section 24 of the Act.

Overview

The complainant was employed on a probationary basis at an AHS department from July 2015 until January 2016. The complainant alleged, during this period, the executive director and/or the team lead violated corporate policy and/or process insofar as they:

- i. Directed funds be spent on a departmental project (Project A) without having an approved project charter in place.
- ii. Engaged a vendor prior to having an approved project charter in place for another departmental project (Project B). It was further alleged this engagement was a "handshake deal" whereby the vendor would not invoice the department for services until the project charter was in place, implying that procurement and contracting policies were circumvented.

During an October 2015 meeting, the complainant alleged the team lead directed funds be spent on a project without a project charter. Believing this to be against corporate processes and policies, the complainant offered to spend funds only in exchange for written authorization from the team lead or another superior. After the meeting, the complainant claimed to have suffered reprisal measures from the team lead, the executive director and the operations facilitator that adversely affected the complainant's employment/working conditions, culminating with the complainant's resignation from the department. The alleged reprisal measures included:

- i. False reporting of co-worker feedback;
- ii. Surprise meetings with unsupported accusations;
- iii. Last minute, surprise requests;
- iv. Separate inferior work tools compared to other project managers;



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- v. An approved expense account was withheld;
- vi. Work overload (i.e., assigned too many projects);
- vii. Insults and derogatory remarks in the presence of other project management office staff; and
- viii. Performance reviews supported by innuendos, untruths, general comments and no specifics.

Our investigation included the analysis of applicable legislation and AHS policies, the analysis of records provided by the complainant, the analysis of records provided by AHS, an analysis of an investigation report by AHS Internal Audit related to the complainant's allegations of financial misconduct in the department's projects, and an analysis of two AHS human resource investigation reports related to the complainant's allegations of bullying and harassment at the department.

Findings

1. The actions of the department's executive director and/or the department's team lead do not constitute a gross mismanagement of public funds. AHS policies do not require project charters (or other project management documents) be in place prior to spending funds or engaging a vendor in support of departmental projects. I did not find this to be a wrongdoing under the Act.
2. Neither the executive director nor the team lead directed or counselled the complainant to commit wrongdoing.
3. The executive director, the team lead and/or the department's operations facilitator did not reprise against the complainant as a result of the complainant having declined to participate in an alleged wrongdoing. The complainant neither contacted AHS' designated officer or my office while employed at the department, nor declined to participate in the alleged wrongdoing. Instead, the complainant attempted to negotiate written authorization from a departmental superior in exchange for participation in activities that are not wrongdoings. I find no reprisal occurred under the Act.



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Allegation of gross mismanagement of public funds

Process of Investigation

The investigation sought to determine if the actions of the executive director and the team lead, in managing projects for the department, constituted a wrongdoing under the Act by grossly mismanaging public funds.

In determining whether a gross mismanagement occurred, the facts of the matter are examined to determine whether the act or omissions are deliberate and exhibit a reckless or willful disregard for the efficient management of government resources.

The investigation was limited to the departmental projects identified in the complainant's allegations that could meet the threshold of gross mismanagement, specifically:

- i. Project A; and
- ii. Project B.

Facts of the Investigation

The complainant alleged having been directed by the team lead to spend funds on Project A in support of a planned meeting in September or October 2015 related to the project. The complainant further alleged the department engaged the vendor under an agreement not to bill for services until the project charter was in place. The complainant did not believe corporate processes allowed for project funds to be spent without a project charter in place.

Whether or not an approved project charter is required before spending department funds or engaging a vendor on a project

The department is required to adhere to AHS policies and does not have separate policy for the approval of financial expenditures. AHS policies supersede the department's internal processes and do not require a project charter be in place prior to spending funds or engaging a vendor on a project. Costs associated with the department's projects are reconciled by AHS Finance. In a separate investigation, AHS Internal Audit found no material violations of AHS policy, which was supported by our review.

Whether or not a vendor was engaged in potential violation of AHS contracting and procurement policy

The vendor's practice is not to seek compensation for its services unless it incurs incremental costs. During the complainant's employment period at the department, the vendor's services to the department under Project B were considered "in-kind services" and were not compensated.



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AHS' Internal Audit reported that a contract between the department and the vendor would become necessary once the department had to compensate the vendor directly. AHS Internal Audit determined that AHS policies do not specify a requirement for a contract among parties involving in-kind services and recognizes a need for clarity in this regard.

Project B was submitted for approval in June 2016 and stated that a legal contract would be developed for the department to procure services from the vendor during fiscal year 2017-18.

Conclusion

The allegations of gross mismanagement in Projects A and B are unsupported. There is nothing in the department's or AHS policies requiring an approved project charter prior to spending project funds or engaging a vendor, nor is written authorization required from a manager to direct a subordinate to spend funds without a charter. The department did not violate AHS policy by receiving uncompensated (i.e., in-kind services) from the vendor for Project B; however, AHS is aware it may need to consider clarifying its policy on contracting for that type of arrangement.

Allegation of counselling a wrongdoing

Process of Investigation

The Act defines directing or counselling a wrongdoing as a separate and distinct wrongdoing. The investigation sought to determine if the complainant was directed or counselled by the executive director and/or the team lead to commit gross mismanagement of public funds.

Conclusion

The investigation established that spending public funds on departmental projects in the absence of a project charter does not constitute a wrongdoing. Therefore, the executive director and the team lead did not commit a wrongdoing by directing or counselling the complainant to engage in that activity.



Allegation of a reprisal as a result of declining to participate in a wrongdoing

Process of Investigation

Section 24 of the Act states no reprisal action shall be taken, directed or counselled against an employee who has, in good faith, sought advice about making a disclosure, made a disclosure, cooperated in an investigation under this Act, declined to participate in a wrongdoing or done anything in accordance with the Act. A reprisal action may include measures (or the threat of measures) that adversely affects the employee's employment or working conditions.

This investigation sought to determine if a protected disclosure occurred, if the complainant declined to participate in an alleged wrongdoing, and if they suffered a reprisal as a result that culminated in their resignation from the department.

Facts of the Investigation

Whether or not a protected disclosure occurred

There is no record of any contact between the complainant and either our office or AHS' designated officer during the former's employment period at the department in relation to any alleged wrongdoing(s) or reprisal at the department, nor did the individual seek advice about declining to participate in the activity of concern.

Whether or not the complainant declined to participate in an alleged wrongdoing

The complainant was asked verbally by the team lead to spend funds to advance Project A. The complainant believed doing so without an approved project charter was gross mismanagement and insisted written authorization was necessary. However, the complainant's records contained multiple references indicating the complainant did not decline to participate, but instead attached a condition to participation in what that individual later alleged to be a wrongdoing – i.e., agreeing to spend funds without a project charter in exchange for written authorization from a departmental superior.

Whether or not departmental managers reprised against the complainant

The complainant advised that the October 2015 meeting with the team lead triggered the reprisals by departmental managers. However, the department's management identified issues with the complainant's attitude or performance prior to this meeting, first occurring in July 2015 and continuing through December 2015. Performance management of the complainant was initiated based on these concerns. A decision was ultimately made to extend the complainant's probationary employment period.



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The complainant submitted a resignation letter in January 2016, having been informed days earlier that an additional six months of probation would be required for that individual.

Following the complainant's resignation, AHS conducted two human resources investigations into the complainant's allegations of bullying and harassment at the department. Neither investigation supported the allegations. The report from the second investigation found the complainant had been performance managed.

Conclusion

During the complainant's employment period, that individual did not make a protected disclosure or seek advice from the designated officer or our office in relation to an alleged wrongdoing or reprisal. The complainant did not decline to participate in a wrongdoing; however, the individual attempted instead to exchange participation for a superior's written authorization to engage in an activity that was not a violation of AHS' policy.

This issue stems from an unresolved difference of opinion between the complainant and their management with respect to departmental project management practices that are subordinate to AHS policies. The evidence does not support the alleged measures taken against the complainant were a reprisal resulting from their declining to participate in an alleged wrongdoing. I do not find a reprisal has occurred.