



**PUBLIC INTEREST
COMMISSIONER**

**A report of the Public Interest Commissioner
in the matter of a disclosure under the
*Public Interest Disclosure
(Whistleblower Protection) Act***

Referenced Case: #PIC-14-01990

Allegations of wrongdoing concerning
Innovation and Advanced Education and
Alberta Innovates – Technology Futures

July 17, 2015



Generic language is used in this report to protect the identity of the parties involved.

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Rod Skura
Deputy Minister
Innovation and Advanced Education
10155 - 102 Street, Floor 6
Edmonton, AB T5J 4L6

Dear Deputy Minister Skura:

As Deputy Minister of Innovation and Advanced Education, you are the department's Chief Officer for the purposes of the *Public Interest Disclosure (Whistleblower Protection) Act*. I am pleased to provide my report, "Allegations of wrongdoing concerning Innovation and Advanced Education and Alberta Innovates – Technology Futures," as required by section 22 of the Act.

This investigation has found one count of wrongdoing under section 3(1)(c) of the Act and another under section 3(1)(d). Recommendations related to these findings of wrongdoing are outlined on pages 10 and 11.

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

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

Edmonton, Alberta
July 17, 2015



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Stephen Lougheed
President and Chief Executive Officer
Alberta Innovates – Technology Futures
250 Karl Clark Road
Edmonton, AB T6N 1E4

Dear Mr. Lougheed:

As President and Chief Executive Officer of Alberta Innovates – Technology Futures, you are the corporation’s Chief Officer for the purposes of the *Public Interest Disclosure (Whistleblower Protection) Act*. I am pleased to provide my report, “Allegations of wrongdoing concerning Innovation and Advanced Education and Alberta Innovates,” as required by section 22 of the Act.

This investigation has found one count of wrongdoing under section 3(1)(c) of the Act and another under section 3(1)(d). Recommendations related to these findings of wrongdoing are outlined on pages 10 and 11.

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

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Forward

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 covered by this legislation 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.

The Act came into force June 2013, and facilitates the disclosure and investigation of significant and serious matters 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).

Section 22(1) of 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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Mandate

The Commissioner is an independent Officer of the Legislature, who reports to the Legislative Assembly as a whole. Investigators conduct investigations and provide advice as required in respect of disclosures and complaints of reprisals for employees of provincial government and other jurisdictional public entities.

The Act states the purposes of the office are:

- (a) 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,
- (b) to protect employees who make those disclosures,
- (c) to manage, investigate and make recommendations respecting disclosures of wrongdoing and reprisals,
- (d) to promote public confidence in the administration of departments, public entities and offices of the Legislature ...

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.

Wrongdoings are defined in the Act as:

- (a) a contravention of an Act, a regulation made pursuant to an Act, an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada;
- (b) an act or omission that creates
 - (i) a substantial and specific danger to the life, health or safety of individuals other than a danger that is inherent in the performance of the duties or functions of an employee, or
 - (ii) a substantial and specific danger to the environment;
- (c) gross mismanagement of public funds or a public asset;
- (d) knowingly directing or counselling an individual to commit a wrongdoing mentioned in clauses (a) to (c).

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.



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Allegations

This matter relates to the practices of Innovation and Advanced Education (IAE), a Government of Alberta Ministry, and Alberta Innovates – Technology Futures (AITF). AITF is a research and innovation corporation established under section 2 of *Alberta Research and Innovation Regulation*. Being publicly funded and reporting to the Minister of IAE, AITF is a public entity as defined in section 2(1)(a) of the *Public Interest Disclosure (Whistleblower Protection) Regulation*.

Between October 6 and December 16, 2014, the Commissioner received several disclosures of wrongdoing from an employee alleging practices within IAE and AITF constituted wrongdoings as defined in the Act.

We determined three (3) issues of potential wrongdoing were jurisdictional to our office. These allegations formed the scope of our investigation:

- 1) Whether one (1) or more staff manipulated a procurement process and, in so doing, contravened an Act or regulation made pursuant to an Act contrary to section 3(1)(a) of the Act;
- 2) If one (1) or more staff manipulated a procurement process, whether that constituted gross mismanagement of public funds or a public asset contrary to section 3(1)(c) of the Act; and
- 3) Whether one (1) or more staff knowingly directed or counselled an individual to commit a wrongdoing defined in the Act contrary to section 3(1)(d) of the Act.

Findings

- 1) Concerning the allegation one (1) or more staff manipulated a procurement process and, in so doing, contravened an Act or regulation made pursuant to an Act, contrary to section 3(1)(a) of the Act, we determined there was no wrongdoing in that regard.
- 2) Concerning the allegation one (1) or more staff manipulated a procurement process, thereby committing a gross mismanagement of a public asset in contravention of section 3(1)(c) of the Act, we found the allegation to be founded. The procurement process was manipulated by IAE employees on seven (7) occasions and once involving an AITF employee working in consort with an IAE employee to manipulate the results.
- 3) Concerning the allegation one or more staff knowingly directed or counselled an individual to commit a wrongdoing contrary to section 3(1)(d) of the Act, we found the allegations involving two (2) IAE employees and one (1) AITF employee to be founded.

Recommendations and observations relative to these findings are addressed later in this report on pages 10 and 11.



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Overview

The Commissioner's office was contacted by an employee who disclosed concerns about the procurement processes IAE and AITF used to short-list and select contracted resources. The disclosure alleged contracting managers identified their preferred resources to the IAE manager responsible for maintaining a standing list of pre-qualified resources with an understanding the IAE manager would manipulate scores to support the selection of the preferred resource.

Additionally, it was alleged one or more employees altered preferred candidates' skills and experience inventory scores and/or the weighted values assigned to qualification criteria. The adjustments elevated preferred resources to be at the top of (or near the top of) lists of candidates to be considered for contracted positions. The altered lists were provided to managers and resulted in the selection of preferred resources in cases identified to the Commissioner.

Following the onset of our investigation, IAE and AITF staff were asked to produce documentation that supported the identification and selection of candidates. Existing documentation was turned over to the investigator. Where documentation was lacking or did not exist, one or more staff members fabricated documentation to create the illusion an approved process had been followed.

Our investigation encompassed the review and analysis of disclosure materials, procurement documents, trade agreements, and IAE and AITF policies and procedures. Twenty (20) individuals were interviewed or provided information relevant to the investigation.

In part to protect the identity of the disclosing employee, our investigation did not set out to discover or prove each example where a process was allegedly circumvented. The scope of the investigation was instead set to determine whether departures from the approved process described below, if any, were isolated events or common practice and whether the disclosures as alleged were wrongdoings as defined in the Act.

Facts of the Investigation

Regarding the allegation one (1) or more staff manipulated the procurement process contrary to an Act or regulation

The investigator established procurement processes managed by IAE and AITF are defined within request for qualification (RFQ) documents and are intended to meet standards contained in interprovincial trade agreements. The investigation focused on eight (8) instances where the procurement process for contracted resources was alleged to have been manipulated and the contract was valued in excess of \$100,000.



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The approved process was described as:

- A vendor or resource would complete and submit a skills matrix identifying the mandatory and desired qualifications a candidate employed through the vendor (a resource) possessed for a specific posting as it related to criterion listed in an RFQ.
- An IAE staff member would transcribe scores as submitted by the resource or vendor into a spreadsheet.
- The raw scores, adjusted by factoring a pre-determined weighted value, resulted in a weighted score for each category of skill or experience, and an aggregate overall score for each candidate.
 - For example, a candidate might earn ten (10) points for eight (8) or more years' experience, five (5) points for five (5) to eight (8) years' experience, two (2) points for three (3) to five (5) years' experience, and no points for less experience. If experience was given a weighted value of three (3), the candidates would earn thirty (30), fifteen (15), six (6) or zero (0) points toward their overall ranking, depending on their score.

The investigator examined evaluation tabs and evaluation spreadsheets of procurement processes identified in the disclosures, and determined candidate scores were manipulated by reassigning how points were awarded to specific candidates or by changing weighted values. By manipulating these two values, preferred candidates received more points overall and would be ranked higher amongst the list of other candidates. Often the preferred candidate was a contracted resource already working under contract for the contracting manager's work area.

In a number of the cases, a short list of candidates was presented to an individual responsible for selecting the resource. Based on the short list and previous experience with the candidate, the preferred candidate was selected.

There is no indication wrongdoings were committed for personal gain or participating staff received any personal benefit from preferred candidates or their vendors.

Section 3(1)(a) of the Act notes a wrongdoing occurs when an employee of a public entity contravenes another act or regulation. The contravention of policy or an interprovincial trade agreement is not a contravention of an act or regulation. Therefore the manipulation of evaluation tab scores or the evaluation spreadsheet, while wrong, did not constitute a wrongdoing within the Act.

Regarding the allegation one or more staff manipulated the procurement process committing gross mismanagement of a public asset

Having established manipulation of the evaluation tab scores and weighted values occurred, the investigator reviewed the circumstances wherein processes had been manipulated.

Our investigator confirmed the process was manipulated on eight (8) occasions between June and December 2014 to favour a preferred candidate. He also identified two (2) other instances where the process was believed to have been manipulated; one sharing characteristics of manipulation observed in the eight (8) investigated cases, and another in which an IAE senior manager self-disclosed she manipulated the process results. These two (2) additional cases were out-of-scope for this investigation and were not fully examined.



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Of the eight (8) instances our office investigated, one (1) involved an AITF manager working with an IAE manager to manipulate the process. The remaining seven (7) involved an IAE manager counseling or directing a subordinate staff member to manipulate the results.

Factors relevant to a finding of wrongdoing include:

- Manipulation of the procurement process on eight (8) or more occasions speaks to the frequency of wrongdoing over an extended duration.
- Manipulation of the procurement processes was committed by, under the direction of, or with the support of a manager and senior manager.
- Results of the manipulated procurement processes were presented as valid and reliable results by participants involved in the manipulation. This was intentionally deceitful. The investigation identified one (1) instance wherein a senior manager unknowingly acted on manipulated results when selecting the successful resource.
- Chapter 1.1 of the RFQ notes the fundamental objective of using an open process is “to maximize the benefit to ... Alberta Innovation and Advanced Education (IAE), while offering vendors a fair and equitable opportunity to participate.” This did not occur.
- The frequency, duration and nature of the manipulations is a clear departure from the approved process and objective of an open procurement process. Manipulating the results jeopardized the process used to identify qualified and competent resources and could deter other applicants from participating.
- When our investigator requested documentation related to the procurement process, missing or non-existent documentation was fabricated and presented as confirmation that a valid and reliable process had occurred. This too was intentionally deceitful.

The investigation supports the allegation of gross mismanagement per section 3(1)(c) of the Act.

Regarding the allegation one (1) or more persons counselled or directed a person to commit a wrongdoing

Having established managers from IAE and AITF participated in or condoned the manipulation of the process, the investigator sought to determine whether they instructed employees to manipulate the evaluation tabs or weighted values. The investigator determined a manager from AITF working in consort with an IAE manager, counselled an IAE employee on one (1) occasion to manipulate the scores and weighted values. In the remaining seven (7) instances we investigated, one (1) or more IAE managers directed or counseled an IAE employee to manipulate the scores and weighted values. The offending managers admitted to the investigator that manipulating the process had been a common and accepted practice.

The investigation supports the allegation one (1) or more persons directed or counselled an individual to commit a wrongdoing per section 3(1)(d) of the Act.



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Comments

In cases where a finding of wrongdoing is supported, the Commissioner may make recommendations to assist agencies to address the matter appropriately and advance public confidence. The Commissioner monitors the status of recommendations to ensure they are implemented.

In circumstances where wrongdoing as defined by the Act is not found, yet a practice or action is identified as not right, observations identified through our independent investigation are documented for the benefit of the public entity to consider the observations and implement changes deemed appropriate. Observations are not monitored in the same manner as recommendations. The Commissioner communicates his observations to public entities to enable organizations to remedy what might otherwise become a wrongdoing under the Act if they were to continue.

We are pleased to report IAE and AITF have begun the process of reviewing and strengthening policies and procedures to correct improper practices. We expect they will continue to work towards resolving the concerns and establishing a positive work environment.

Recommendations

- 1) Policies and procedures concerning the procurement of contracted resources should be examined and modified to ensure appropriate processes and safeguards are in place. Procedures should be detailed enough to guide employees or contracted services to create and manage an evaluation processes, including:
 - Validating submissions for accuracy;
 - Scoring submissions;
 - Assigning weighted values to required or desired skills and experiences; and
 - Establishing minimum standards and processes to be undertaken once a short list has been produced (e.g., whether to interview candidates or include mandatory reference checks) and whether there will be approved exceptions to those standards.
- 2) Employees should receive training to ensure they understand and fulfill their responsibilities to comply with approved processes. Training should include a component to assist employees to identify and address ethical dilemmas.
- 3) Documents supporting the processes should be retained and secured in accordance with government records management policies.
- 4) IAE and AITF should implement an evaluation and selection audit schedule.
- 5) IAE and AITF should review the circumstances giving rise to the identified wrongdoings and determine what, if any, action it will take to address the wrongdoings, including disciplinary action.



Observations

Three (3) observations are forthcoming from this investigation.

- 1) The first relates to the timing of procurement processes:

Staff suggested manipulation of the approved process occurred to preserve the continuity of services within the department. Anticipating the need for a contracted service and/or beginning the process of selecting a contracted resource earlier would preclude this line of thinking and the false sense of urgency that might otherwise arise.

- 2) The second relates to new or renewed contracts being issued to a previously contracted resource:

IAE may wish to flag and review instances when resources are selected for a new contract within three (3) months of the expiration of a previous contract. Doing so is effective in preventing contract splitting or potential conflicts of interest.

- 3) The third relates to changing cultural norms:

Managers within IAE up to senior management, and a manager of AITF, failed to recognize the impropriety and potential consequences of manipulating these processes. Instead, the behaviour was accepted as how business was to be done. Efforts to counteract and redress the culture of acceptance will have to reach all who participated in or witnessed these practices, whether senior manager or clerk.

The Commissioner thanks those parties who were forthcoming during this investigation for their cooperation. He specifically acknowledges and appreciates the employee who disclosed this matter for the employee's commitment to improving the public sector and this individual's courage and confidence demonstrated by bringing these matters to our attention.