



**PUBLIC INTEREST
COMMISSIONER**

Procedures Checklist for Chief Officers

Public Interest Disclosure (Whistleblower Protection) Act
***with Amendments (2018)**

The *Public Interest Disclosure (Whistleblower Protection) Act* (the Act) applies to provincial government departments, offices of the legislature, Members of the Legislative Assembly and their offices, public entities prescribed in the regulations, and service providers prescribed in the regulations. Public entities include:

- Provincial agencies, boards, commissions and crown corporations;
- Health sector organizations;
- Post-secondary institutions;
- Education sector including school boards, charter schools and private schools.

All applicable entities are required to establish procedures as outlined in Section 5, for receiving and investigating disclosures made by employees under the Act. The attached checklist will assist Chief Officers in drafting new procedures or maintaining existing procedures, to ensure all necessary legislated requirements are included.

Responsibilities:

✓	SECTION	REQUIREMENT
<input type="checkbox"/>	Sec 5(1)	Requires every chief officer to establish and maintain written procedures, including time periods, for managing and investigating disclosures for employees for whom the chief officer is responsible.
<input type="checkbox"/>	Sec 7	States a chief officer may designate a senior official to the designated officer for the purposes of managing and investigating disclosures. If no designation is made, the chief officer will also be the designated officer for the purposes of the Act.
<input type="checkbox"/>	Sec 6	States every chief officer must ensure information about this Act and the procedures established are widely communicated to employees the chief officer is responsible for.

Wrongdoing to which the Act applies:

Procedures should clearly identify the wrongdoings covered by the legislation to ensure employees understand the difference between “wrongdoing” and other non-jurisdictional issues.

✓	SECTION	REQUIREMENT
<input type="checkbox"/>	Sec 3 *New requirement	Defines wrongdoings 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;



**PUBLIC INTEREST
COMMISSIONER**

		<p>b) An act or omission that creates 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</p> <p>c) A substantial and specific danger to the environment;</p> <p>d) Gross mismanagement, including an act or omission that is deliberate and that shows a reckless or wilful disregard for the proper management of</p> <ul style="list-style-type: none"> (i) Public funds or a public asset, (ii) The delivery of a public service, including the management or performance of <ul style="list-style-type: none"> (A) A contract or arrangement identified or described in the regulations, including the duties resulting from the contract or arrangement or any funds administered or provided under the contract or arrangement, and (B) The duties and powers resulting from an enactment identified or described in the regulations or any funds administered or provided as a result of the enactment, or (iii) Employees, by a pattern of behaviour or conduct of a systemic nature that indicates a problem in the culture of the organization relating to bullying, harassment or intimidation; <p>e) A wrongdoing prescribed in the regulations;</p> <p>f) Knowingly directing or counselling an individual to commit a wrongdoing mentioned in the above clauses.</p>
--	--	--

Minimum Procedural Requirements:

This section sets out the minimum requirements for procedures as outlined in Section 5 of the Act. These points are critical to having compliant procedures.

✓	SECTION	REQUIREMENT
<input type="checkbox"/>	Sec 5(2)(a)	Procedures for receiving and reviewing disclosures, including setting time periods for making recommendations to the department, public entity or office of the Legislature respecting any corrective measures that should be taken;
<input type="checkbox"/>	Sec 5(2)(b)	Procedures for referring a disclosure to another department, public entity or office of the Legislature if the disclosure would more appropriately be dealt with there;
<input type="checkbox"/>	Sec 5(2)(c) & Sec 30 *New requirement	Procedures consistent with section 30 and any regulations that apply, for referring a disclosure to the Commissioner 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;
<input type="checkbox"/>	Sec 5(2)(d)	Procedures for reviewing and investigating disclosures in accordance with the principles of procedural fairness and natural justice;



**PUBLIC INTEREST
COMMISSIONER**

<input type="checkbox"/>	Sec 5(2)(e)	Procedures for investigating other wrongdoings if, during the investigation of a disclosure, the designated officer has reason to believe that another wrongdoing has been committed or may be committed;
<input type="checkbox"/>	Sec 5(2)(f) & Sec 30 *New requirement	Procedures consistent with section 30 and any regulations that apply, for referring an alleged offence if during an investigation of a disclosure, the designated officer has reason to believe that an offence has been committed under an Act or regulation or under an Act or regulation of the Parliament of Canada;
<input type="checkbox"/>	Sec 5(2)(g)	Procedures consistent with this Act and any regulations that apply, respecting the confidentiality of information collected in relation to disclosures and investigations, which procedures would apply unless there is an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment.
<input type="checkbox"/>	Sec 5(2)(h)	Procedures consistent with this Act and any regulations that apply, for protecting the identity of individuals involved in the disclosure process, including the employee making the disclosure, individuals alleged to have committed the wrongdoings and witnesses, subject to any other Act or regulation and to the principles of procedural fairness and natural justice;
	Sec 5(2)(i)	Procedures for reporting the outcomes of investigations of disclosures;
<input type="checkbox"/>	Sec 5(2)(j)	Procedures for enforcement and follow-up of any disciplinary action or corrective measures taken or directed pursuant to this Act;
<input type="checkbox"/>	Sec 5(2)(k)	Procedures respecting any other matter specified in the regulations.

Procedures for Making a Disclosure:

✓	SECTION	REQUIREMENT
<input type="checkbox"/>	Sec 8 *New requirement	<p>Procedures should provide direction to employees, who are considering making a disclosure, as to how to request information or advice from their supervisor, designated officer, chief officer or the Office of the Public Interest Commissioner.</p> <p>The office of the Public Interest Commissioner can be contacted Monday to Friday 08:15-12:00 / 13:00-16:30 at Toll-free province-wide: 1-855-641-8659 or via email at info@pic.alberta.ca</p>
<input type="checkbox"/>	Sec 9 *New requirement	<p>Procedures should inform employees that when they reasonably believe a wrongdoing has been committed, is about to be committed they, or could show that the employee has been asked to commit a wrongdoing, the employee may make a disclosure to their designated officer in accordance with the established procedures, or directly to the Public Interest Commissioner.</p> <p><i>Employees may make a disclosure of wrongdoing directly to the Public Interest Commissioner using the online web-form available at www.yourvoiceprotected.ca. Employees who are unable or do not wish to use</i></p>



**PUBLIC INTEREST
COMMISSIONER**

		<i>the web-form may contact the office of the Public Interest Commissioner at 1-855-641-8659.</i>
<input type="checkbox"/>	Sec 13	This section outlines the required contents of a disclosure. Disclosures must be in writing and include (a) A description of the wrongdoing; (b) The name of the individual or individuals alleged to have committed the wrongdoing, or to be about to commit the wrongdoing; (c) The date of the wrongdoing; (d) Whether a disclosure in respect of a wrongdoing has been made under section 5 and whether a response has been received, and if so, a copy of the response. (e) Any additional information the designated officer or Commissioner may reasonably require in order to investigate the matters set out in the disclosure.
<input type="checkbox"/>	Sec 3(3) Regulation	A public entity must include in their procedures a provision regarding the referral of a disclosure of wrongdoing to an alternate designated officer if the chief officer deems it appropriate. This is in circumstances when the designated officer is in a conflict of interest.
<input type="checkbox"/>	Sec 3(6) Regulation	Procedures should reflect that a single investigation can be conducted in circumstances where multiple disclosures are made on the same matter.

Timelines:

✓	SECTION	REQUIREMENT
<input type="checkbox"/>	Sec 3(7) Regulation *New requirement	This section outlines the timelines as set out by the Act. Procedures must reflect the maximum allowable timelines as follows: (a) Maximum 5 business days to acknowledge receipt of a disclosure of wrongdoing to the employee making the disclosure; (b) Maximum 20 business days from date the disclosure was received to determine whether an investigation into a disclosure and to communicate that decision to the employee making the disclosure; (c) Maximum 120 business days from the date the disclosure was made to investigate and submit the written investigation report to the chief officer.
<input type="checkbox"/>	Sec 5(1) Regulation	A maximum of 30 business days can be approved by the chief officer to extend a time limit for the management of disclosures. Further extensions can only be granted by the Commissioner.



**PUBLIC INTEREST
COMMISSIONER**

Reprisals:

✓	SECTION	REQUIREMENT
<input type="checkbox"/>	Sec 24	<p>Procedures should make it clear to employee's that they are protected from reprisals when they have in good faith, sought advice about making a disclosure, co-operated in an investigation under this Act, declined to participate in a wrongdoing or done anything in accordance with this act. Reprisals are defined as:</p> <ul style="list-style-type: none">(a) A dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of job location, reduction in wages, changes of hours of work or reprimand;(b) Any measure that adversely affects the employee's employment or working conditions;(c) A threat to take any of the aforementioned reprisals.
<input type="checkbox"/>	Sec 25	<p>The Public Interest Commissioner has exclusive jurisdiction to receive and investigate complaints of reprisal. Procedures should be established which direct employees, who believe they have been subject of a reprisal, to submit a "Complaint of Reprisal" form directly to the Commissioner. The Complaint of Reprisal must be submitted in the prescribed form and is available on the Public Interest Commissioner's website at www.yourvoiceprotected.ca.</p> <p>Employees may contact the office of the Public Interest Commissioner for advice at toll-free province-wide: 1-855-641-8659 or via email at info@pic.alberta.ca</p>

Reporting:

✓	SECTION	REQUIREMENT
<input type="checkbox"/>	Sec 32 *New requirement	<p>Every Chief Officer must prepare a report annually on all disclosures made or referred to the designated officer. Annual reports by chief officers must include the following information:</p> <ul style="list-style-type: none">(a) The number of disclosures received by or referred to the designated officer and the number of disclosures acted on, and the number of disclosures not acted on, by the designated officer;(b) The number of investigations commenced by the designated officer;(c) In the case of an investigation that results in a finding of wrongdoing, a description of the wrongdoing and<ul style="list-style-type: none">(i) Any recommendations made or corrective measures taken in relation to the wrongdoing, and(ii) If the department, public entity or office to which the recommendations relate has not taken corrective measures in relation to the wrongdoing, the reasons provided.



**PUBLIC INTEREST
COMMISSIONER**

		These reports must be included in the public entity's Annual Report if publicly available, and if the Annual Report is not publicly available the report must be made available to the public upon request.
<input type="checkbox"/>	Sec 29(2) *New requirement	Chief Officers are restricted from publically identifying, in their annual report, an employee who sought advice, made a disclosure, or made a complaint of reprisal and from disclosing individually identifying health information.

Access to Information:

<input checked="" type="checkbox"/>	SECTION	REQUIREMENT
<input type="checkbox"/>	Part 8 Amendment to FOIPP *New requirement	The <i>Freedom of Information and Protection of Privacy Act</i> (FOIPP) is amended now placing restrictions on the right of access to a record that would reveal the identity of a person who has requested advice about making a disclosure, made a disclosure, or submitted a complaint of reprisal or whose complaints have been referred to the Labour Relations Board, unless that information can reasonably be severed from a record. Procedures should highlight the restrictions to access to information requests.