

# Public Interest Disclosure Investigations

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Key considerations for Designated Officers  
investigating disclosures of wrongdoing under the  
*Public Interest Disclosure (Whistleblower Protection) Act*



**PUBLIC INTEREST  
COMMISSIONER**



## Key Considerations Overview:

1. Have a distinct role and process
2. Avoid conflicts of interest
3. Maintain confidentiality
4. Plan the investigation
5. Distinguish wrong vs. “wrongdoing”
6. Ensure procedural fairness
7. Apply meaningful corrective measures





## Key Consideration: *Maintain Confidentiality*

- Confidentiality is a critical component to whistleblower protection. It includes:
  - *The whistleblower*
  - *Witnesses*
  - *Alleged wrongdoer*
- Confidentiality is necessary not only to protect the whistleblower and those employees who assist the investigation, but to protect the alleged wrongdoer from unnecessary harm or damage to their reputation.
- Limit persons in the know to only those necessary for the purpose of the investigation (designated officer discretion).
- Exceptions:
  - *Reporting to chief officer (also has duty of confidentiality)*
  - *Where required by law*
  - *Where necessary to give effect to corrective measures*

## **Key Consideration:** *Plan the investigation*

- **Consider the nature of the matter and determine the expertise and resources required. This may include:**
  - Deploying internal resources
  - Retaining subject-matter experts
  - Seeking assistance from the Commissioner's office
  
- **Develop an investigation plan**
  - Define the issue of investigation
  - Determine the scope of work
  - Plan investigation process, evidence required, and persons to be interviewed

*Designated officers are not expected to have the expertise to investigate all types of matters brought to them. The expectation is they manage the investigation of the disclosure as they see fit.*

## **Key Consideration:** *Distinguish wrong vs. wrongdoing*

- “**Wrongdoing**” is specifically defined in the Act. Wrongs are other concerns identified during the investigation that do not rise to the level of wrongdoing.
- Designated officers are not precluded from addressing other wrongs discovered during an investigation; however, a finding of “wrongdoing” must conform to the definition within the Act.
- Only the Commissioner may investigate reprisal complaints under the Act.

Wrongdoing	Wrong
→ <i>Contraventions of law</i>	→ <i>Contraventions of policy</i>
→ <i>Acts or omissions creating a danger to life, health or safety of individuals or the environment</i>	→ <i>Contraventions of codes of conduct</i>
→ <i>Gross mismanagement of public fund, public assets or the delivery of a public service</i>	→ <i>Individual instances of bullying, harassment or intimidation</i>
→ <i>Gross mismanagement of employees</i>	→ <i>Poor management decisions</i>

## **Key Consideration:** *Ensure procedural fairness*

- **Right to have the matter reviewed impartially and free from bias**
  - If designated officer feels they are unable to review the matter impartially, it is incumbent on them to recuse themselves.
  
- **Right to respond to the allegations and the evidence supporting the findings**
  - This does not include identifying the whistleblower or witnesses.
  - Designated officers have discretion on process. Responses may be received orally (interview) or in writing.
  - **Recommendation:** Allow persons potentially impacted by a decision to review and respond to preliminary findings.

*Investigations conducted under the Public Interest Disclosure (Whistleblower Protection) Act must be conducted in accordance with the principals of **procedural fairness** and **natural justice***



## **Key Consideration:** *Ensure procedural fairness*

### → **Right to a decision and reasons**

- Designated officers should document their decisions and reasons. This includes the decision whether to investigate a disclosure and findings following an investigation as to whether wrongdoing has occurred.
- Decisions and reasons for the decision must be provided to the complainant and alleged wrongdoer(s).
- Complainants have the right of appeal to the Public Interest Commissioner.

### → **Right to have matter addressed without undue delay**

- Disclosures under the Act are serious matters of public interest and should be given preference.
- Obtain additional resources (internal, external) if needed.
- Keep parties informed and provide reasonable expectations.

**Key Consideration:** *Apply meaningful corrective measures*

- An investigation finds wrongdoing – corrective measures fix it.
- Designated officers recommend corrective measures. Chief officers are responsible for applying them.
- Corrective measures must be meaningful:
  - Do they resolve the wrongdoing?
  - Do they prevent future occurrences?
  - Do they recover losses or damages to employees or the employer?
  - Do they instill employee confidence?
  - Do they instill public confidence?



## Need some assistance?

Contact the office of the Public Interest Commissioner for advice or assistance on managing and investigating public interest disclosures.

### By Phone

Edmonton 780.641.8659

Toll Free 1.855.641.8659

### By Email

[info@pic.alberta.ca](mailto:info@pic.alberta.ca)

Visit the Commissioner's website for additional information and resources at [www.yourvoiceprotected.ca](http://www.yourvoiceprotected.ca).