

# Investigating Disclosures of Wrongdoing

Guidance for  
Designated Officers



**Public Interest  
Commissioner**  
*of Alberta*

# TABLE OF CONTENTS

Key Considerations

Investigation Planning

Investigative Strategies

Managing Confidentiality

Ensuring Procedural Fairness

The Rights of Parties

# KEY CONSIDERATIONS

## PURPOSE OF INVESTIGATIONS

Public interest disclosure investigations are significant and important. Their purpose is to identify serious wrongdoing happening in your organization so that it can be stopped and remedied. Investigations not only help protect your organization, but they also serve the broader public interest.

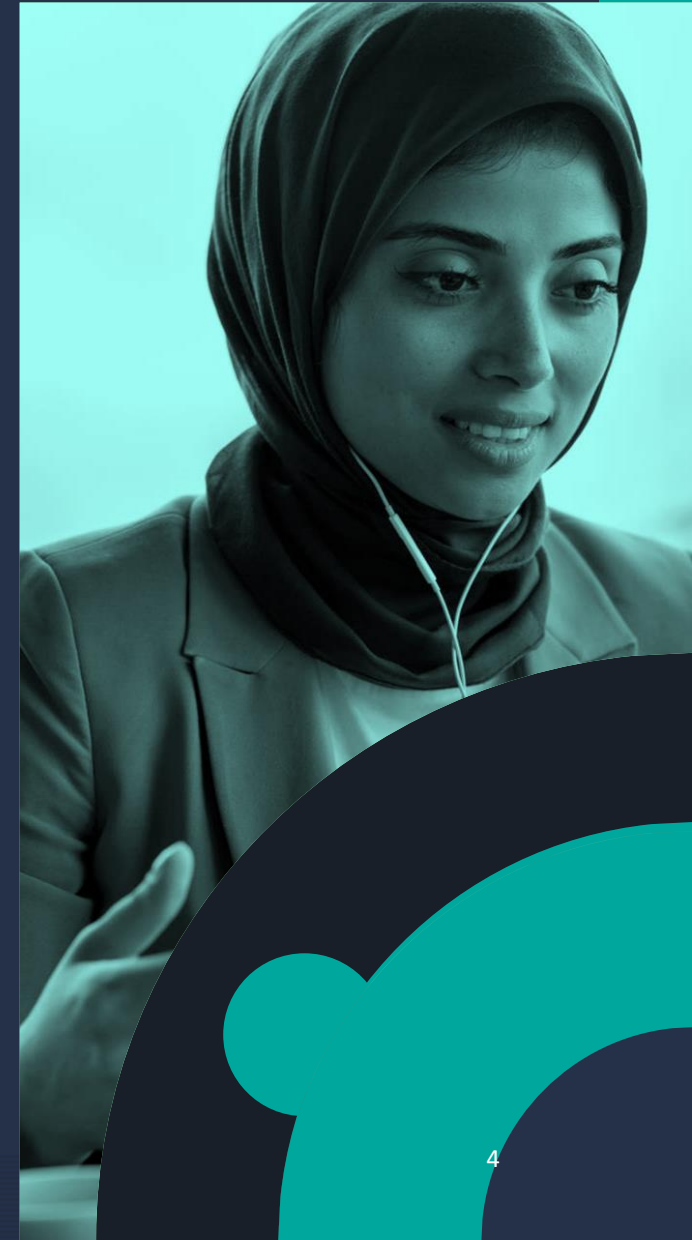
# KEY CONSIDERATIONS Cont'd

## ROLE OF THE DESIGNATED OFFICER

While investigating disclosures of wrongdoing, the role changes from their regular position to that of the Designated Officer, and their accountabilities and reporting line shift directly to the Chief Officer. Designated Officers have autonomy to make decisions and investigate disclosures free of influence from any other supervisor.

## PROTECTION OF EMPLOYEES

The key point of the *Public Interest Disclosure (Whistleblower Protection) Act* is whistleblower protection. This includes not only the employee(s) who comes forward to report the wrongdoing, but also those employees who are involved in the investigation.



# INVESTIGATION PLANNING

An Investigation Plan is a blueprint of your investigation. It puts the Designated Officer's mind to what is needed for the investigation, and what the investigation is intended to achieve.

It clearly defines the scope of the investigation

It sets a clear path for the work that needs to be done

It ensures thoroughness and professionalism in the investigation

It supports organized investigations, effective decision making and reduces conflict

## SCOPE OF INVESTIGATION

The scope establishes the extent and confines of your investigation. The scope is determined by forming a question to address the specific allegation.

Scope: “Whether John Smith grossly mismanaged public funds by improperly awarding a 1 million contract for consulting services.”

\* The scope carries through the entire investigation. It ensures an investigation remains on track, and that all parties clearly understand what is being investigated. Any change in scope must be communicated to the parties.

## ROLES AND RESPONSIBILITIES

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A Designated Officer may engage other persons to assist with an investigation or retain subject matter experts.

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Define the roles and responsibilities of the persons who may be involved in an investigation to ensure a clear understanding of their tasks and obligations.

## INVESTIGATIVE STEPS

This part of the investigative plan puts the Designated Officer's mind to what needs to be done for the investigation. It focuses their tasks and creates a thorough and efficient investigation.

Consider:

- When to notify parties
- What records may be needed
- What type of analysis may be required. (e.g., financial records may require analysis by a professional accountant)
- Who may need to be interviewed

## IDENTIFY CONFLICTS OF INTEREST

An actual conflict or perceived conflict of interest must be dealt with at the onset of an investigation. The investigation plan should identify any perceived conflicts and how they were addressed.

For example:

1. An alternate Designated Officer was appointed as the alleged wrongdoer is a friend.
2. The Designated Officer previously addressed the issue in their regular work capacity. The mitigating step may be to seek advice from the Public Interest Commissioner's office.

## SET TIMELINES

The Public Interest Disclosure Regulation establishes timelines for the expeditious management of disclosures. Designated Officers have 120 business days to conclude and report on the investigation, unless an extension is granted.

Set a timeline and milestones for your case.

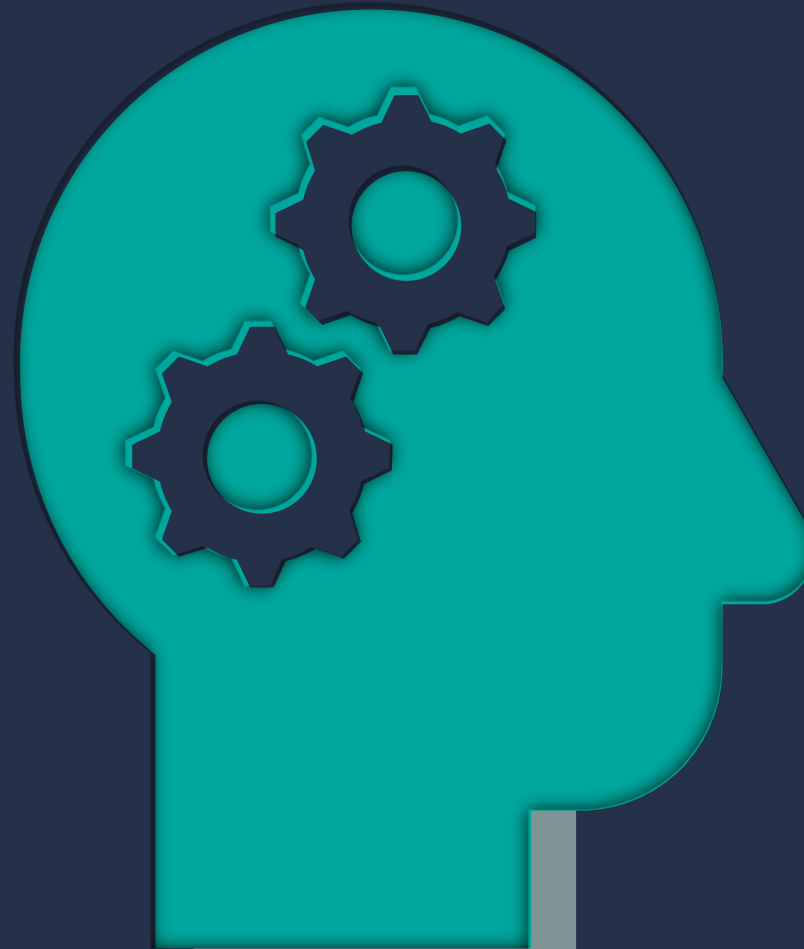
Consider whether, based on the circumstances of the matter, whether extensions of time will be required.



## MANAGE RECORDS AND CONFIDENTIALITY

Document where records will be stored, who will have access and what controls will be established to manage the confidentiality of information.

# INVESTIGATIVE STRATEGIES



## USE OF EXPERTS

The Designated Officer is responsible for the management and investigation of disclosures, and for decision making. However, the Designated Officer is not required to be solely responsible for the investigative work.

The types of wrongdoing that may be investigated under the Act are broad and may require a specific skillset and level of expertise that Designated Officers may not have. Designated Officers have the discretion to engage other employees or retain subject-matter experts with the skills, expertise and ability to assist the Designated Officer with the investigation. This may include:

- Auditors or Accountants
- Lawyers
- Internal or external investigative experts
- I.T. and data forensic experts
- Human Resource professionals

# INTERVIEWING

Consider the purpose of interviews to obtain information and allow the parties to provide their perspectives.

Interviews should not try to seek an admission of guilt.

Interviews should be conducted by those trained and experienced to do so.

Use an Interview Plan to ensure a structured, purposeful interview.

## INTERVIEWING Cont'd

Consider the effectiveness of in-person interviews vs. written responses. Written responses may be prudent if:



The interviewee will need time to refresh their memory on certain events



The interviewee will need to review and assess a number of records



The interviewee will be able to provide more articulate and useful answers to questions in writing



The interviewee is in potential jeopardy and a greater duty of fairness is required

# TASK TRACKING

Tracking of investigative tasks will help organize the outstanding work required on a case and assign responsibilities. Task tracking is particularly important on complex cases that require substantial investigative work, or where multiple persons have been delegated to assist with the investigation.

INVESTIGATION TASK TRACKING				
CASE: 24-12345				
TASK #	ASSIGNED	TASK	OWNER	COMPLETE
1	2024.01.20	Investigation Plan	A.Smith	2024.02.01
2	2024.02.02	Interview witness A	B.Peterson	
3	2024.02.02	Financial statement audit	J.Anderson	

# RECORDS MANAGEMENT

Public interest disclosure investigations can be substantial and complex. In the absence of case management software, it is necessary to create a records management structure. Prior to beginning your investigative work, create a structure that suits the needs of your case.

- Analysis
- Disclosure
- Interviews
- Investigation Plan
- Legal Opinions
- Records
- Reports
- Statutes and Policy Documents
- Task List

## SEEK ADVICE

The Public Interest Commissioner is a resource for Designated Officers to obtain information and advice:

Consultation re disclosure

14(2) A Designated Officer may request advice from the Commissioner with respect to the management and investigation of a disclosure.

## MANAGING CONFIDENTIALITY

The *Public Interest Disclosure (Whistleblower Protection) Act* requires organizations have procedures to protect the identity of individuals involved in the disclosure process, including the whistleblower, individuals alleged to have committed the wrongdoings and witnesses, and procedures respecting the confidentiality of information collected during investigations.

Confidentiality is not only a requirement; it is necessary to gain employee confidence in internal whistleblower procedures and investigations. However, confidentiality is subject to the principles of natural justice and procedural fairness and when disclosure is required by law.

## USE SEPARATE EMAIL ACCOUNT

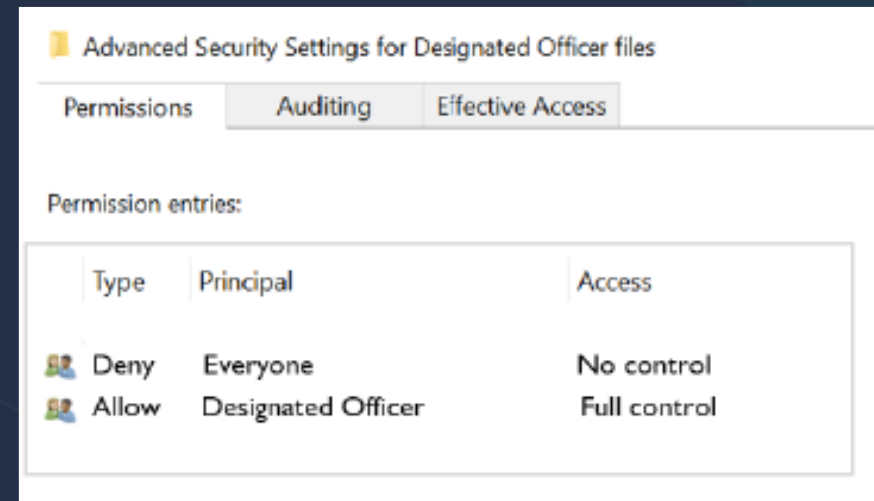
“designatedofficer@corporation.ca”

Using a dedicated email address for your role as Designated Officer will help separate your functions from your regular duties, provides a clear point of contact for employees, and provides a clear understanding that the employee is contacting you as the Designated Officer and the protection provisions of the Act apply.

A dedicated email can also remain the same if the Designated Officer changes in an organization.

## RESTRICT RECORDS ACCESS

Public interest disclosure records should be segregated from all other regular file structures where shared user accesses may be in place. Strict permissions should be established granting access only to the Designated Officer and individuals granted access by the Designated Officer.



## INTERVIEW OFFSITE

If interviews of employee are needed, ensure they are conducted away from their regular workplace. This prevents other employees, or the witness's supervisors, potentially becoming aware of their involvement. It provides the witness with a safe and comfortable environment to share information.

Designated Officers are conducting investigations for, and reporting to, the organizational head. Employees do not require permission from their supervisor to speak with Designated Officers or to share records with them.

## SHARE ACCESS OR USE ENCRYPTION

If possible, avoid emailing records and draft reports. Emails may be viewed and accessed by others, and there is the risk of emails being forwarded to unauthorized recipients. Consider sharing access to records if your system permits it. Alternatively, consider encrypting or password protecting sensitive records prior to emailing them.

## AVOID USING NAMES

The identities of the whistleblower and witnesses must be protected and not disclosed to other persons unless necessary to ensure procedural fairness or required by law. This includes during the investigation process and as part of final reporting on the matter. The focus of the investigation is on the wrongdoing and not who reported it.

To help distinguish persons who provided information, consider using witness numbers or an alternate identifier in reports.

It is also important to protect the identity of someone accused of wrongdoing. Persons accused of wrongdoing can suffer harm to their reputation, even if an investigation vindicates them. If wrongdoing is found, then it may be necessary to disclose their identity.

## DO NOT DISCUSS

Public interest disclosure investigations are serious matters with serious implications. Designated Officers have the discretion to engage other persons for assistance and obtain information from any employee who may have relevant information. However, Designated Officers must exercise caution in the extent of information that is shared. The investigation and persons involved must not be discussed with persons who are not involved or who are not required to know.

Designated Officers should seek advice from the Public Interest Commissioner, their Chief Officer, or from legal counsel as required.

WHEN MAY IT BE  
NECESSARY TO  
DISCLOSE  
INFORMATION,  
INCLUDING THE  
IDENTITY OF  
WHISTLEBLOWERS  
AND WITNESSES?

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Due to an imminent risk to life, health or safety

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If it is necessary to ensure the right to procedural fairness and natural justice

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When required by law (i.e., an order of a court or judicial review)

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If necessary to give effect to corrective measures

## ENSURING PROCEDURAL FAIRNESS DURING INVESTIGATIONS

The right to procedural fairness and natural justice in an investigation must be respected, including individuals making disclosures, individuals alleged to have committed a wrongdoing and witnesses.

## FAIR PROCESS

The Act requires public sector organizations have procedures for the management and investigation of disclosures of wrongdoing.

These procedures establish expectations for the parties on how the investigation will occur. A deviation from established procedures may create the perception of an unfair process.

# IMPARTIAL DECISION MAKING

Designated Officers must remain impartial and free from bias during the investigation of public interest disclosures. Bias can arise based on circumstances (perceived conflict of interest) or how an investigator conducts themselves. A reasonable apprehension of bias is the legal standard for disqualifying administrative decision makers for bias. Failing to recognize and mitigate bias can disqualify the decision maker and result in organizational risk.

## BEST PRACTICE

### Check yourself

Consider if actual bias or reasonable apprehension of bias exists. If so, take mitigating steps which may include an alternate Designated Officer being appointed.

### Keep an open mind

The investigator is biased if the case is or appears pre-determined.

## THE RIGHT TO BE HEARD

Persons accused of wrongdoing have the right to respond to the allegations and the evidence against them. This must be a fair and meaningful process and not carried out in a perfunctory manner. This may include allowing persons to provide information during interviews or through written responses and submissions.

### BEST PRACTICE

Prepare a summary of your investigation including the facts and evidence collected. Provide the summary to the respondent to allow them to review all evidence being relied on, correct any factual errors or misinterpretations of law, and submit any other evidence that may not have been considered.

# RIGHTS OF PARTIES

## RIGHT TO REPRESENTATION OR SUPPORT PERSON

Persons accused of wrongdoing, the whistleblower and witnesses have the right to obtain advice and representation from legal counsel or their union. The extent of their involvement is at the discretion of the Designated Officer; however, there should be a valid reason to prohibit a representative. The main consideration is whether their involvement is interfering with, or obstructing the investigation, or their participation presents a potential conflict of interest.

A whistleblower, witness or accused person may also ask for a support person; however, their involvement is limited and also at the discretion of the Designated Officer.

All third parties must be cautioned on their confidentiality obligations before being permitted to participate in the investigation.

## RIGHT TO PARTICIPATE

Procedural fairness mandates the participation rights of persons accused of wrongdoing. The same degree of participation may not be required for whistleblowers and witnesses. Disclosures under the Act are matters of public interest, and decisions do not necessarily affect the personal rights, privileges and interests of the whistleblower in the same manner as the person(s) accused of wrongdoing. The degree of participation during an investigation must accord with the principles of procedural fairness.

## RIGHT TO BE INFORMED OF DECISION

Procedural fairness also requires persons accused of wrongdoing to be informed of the decision and reason for the decision. This may include the Designated Officer providing the wrongdoer with a copy of their final report to the Chief Officer, or a separate written decision.

Whistleblowers must be informed that a report has been made to the Chief Officer. The extent the Designated Officer and Chief Officer wish to inform the whistleblower of the outcome of the investigation is discretionary; however, it will affect the degree of confidence the whistleblower has in the outcome of the matter and whether they wish to pursue the matter further through the Public Interest Commissioner.

# Public Interest Commissioner

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