


Managing and
Assessing Public
Interest Disclosures

Guidance for
Designated Officers



**Public Interest
Commissioner**

of Alberta



This document serves to provide guidance to Designated Officers on assessing disclosures of wrongdoing made by employees under the *Public Interest Disclosure (Whistleblower Protection) Act* (the Act).

- Designated Officers are encouraged to seek advice from the office of the Public Interest Commissioner on any matters pertaining to the management of disclosures.

Step 1 Preliminary Considerations

Disclosures of wrongdoing must be in writing and include the following, if known:

A description of the wrongdoing

The name of the individuals alleged to have committed the wrongdoing

The date of the wrongdoing

Any additional information reasonably required in order to investigate the matters

Step 1 Preliminary Considerations cont'd

Is the disclosure
from an employee
or non-employee?

An organization is not precluded from dealing with complaints from non-employees under the Act. If a complaint is received from a non-employee, consider whether the matter should be dealt with under another internal mechanism or whether it should be dealt with under the Act.

Non-employees are *not* subject to the Act's reprisal protections.

Step 2 Jurisdictional Assessment



Is the wrongdoing alleged to have occurred within your organization?*



Has the alleged wrongdoing occurred post-enactment (June 2013)?

If either answer is “No”, the disclosure is non-jurisdictional, and the case may be closed.

** The Act only applies to public sector organizations, including government Ministries, provincial corporations, health authorities, school boards, private and charter schools, and offices of the legislature.*

Step 3 Imminent Risk and Offence Assessment

Section 30 of the Act requires that you suspend the investigation of a disclosure in certain circumstances.

Your assessment should consider:

1. Imminent risk to life, health or safety

If the matter could constitute an imminent risk of a substantial or specific danger to the life, health or safety of individuals, or to the environment, you must inform the appropriate authority and suspend the matter.

2. Offences

If you have reason to believe that an offence has been committed under an Act or Regulation (including the *Criminal Code*), you must report the matter to law enforcement and the Minister of Justice, and suspend the matter.

Step 4 Assessing the Disclosure of Wrongdoing

Designated Officers must review disclosures of wrongdoing and make a decision regarding whether an investigation is required. The organization's procedures (established under section 5 of the Act) for managing disclosures should be referred to for guidance. Designated Officers may also consider other circumstances, outlined in the Act, for when an investigation may not be required.

Step 4 Assessing the Disclosure of Wrongdoing cont'd

An investigation *may*
not be required if
ANY of the following
apply:



The subject-matter of the disclosure could more appropriately be dealt with according to a procedure provided for under another Act or a regulation



The disclosure relates to a matter that could more appropriately be dealt with according to the procedures under a collective agreement/employment agreement or via internal policies



The disclosure is frivolous or vexatious, or has not been made in good faith



The disclosure does not deal with a wrongdoing as described in section 3 of the Act

Step 4 Assessing the Disclosure of Wrongdoing cont'd

An investigation *may*
not be required if
ANY of the following
apply:



The disclosure relates to a decision, action or matter that results from a balanced and informed decision-making process on a public policy or operational issue



The disclosure does not provide adequate particulars about the wrongdoing as required by section 13 to permit the conduct of a fair and effective investigation



More than two years has passed since the date that the wrongdoing was discovered (Note: this does not apply if the wrongdoing is ongoing)



There is another valid reason for not investigating the disclosure

Step 4 Assessing the Disclosure of Wrongdoing cont'd

Is it wrongdoing?

Section 3 of the Act specifically defines the types of wrongdoing that may be reported and investigated. The assessment should consider whether the allegations deal with a form of wrongdoing outlined in the Act:

- A contravention of an Act or Regulation,
- An act or omission that creates a substantial and specific danger to the life, health or safety of individuals, or to the environment,
- Gross mismanagement that is deliberate and shows a reckless or wilful disregard for the proper management of:
 - public funds;
 - public assets;
 - the delivery of a public service, or
 - employees.
- Counselling others to commit a wrongdoing.

If the allegation does not deal with a form of wrongdoing under the Act, then the complainant may be referred to an alternate and more appropriate mechanism to address their concern, if they so decide.

Step 4 Assessing the Disclosure of Wrongdoing cont'd

Gross mismanagement of employees is described in section 3(1)(c)(iii) of the Act. An investigation may be required into this type of allegation if the disclosure is describing all the following:

- a pattern of behaviour or conduct of a systemic nature
- indicating a problem in the culture of the organization
- relating to bullying, harassment or intimidation

The Act is not intended to address:

- individual incidents of bullying or harassment
- individual conduct-related matters
- grievances between employees, or between an employee and management
- employee performance related matters

These types of incidents are not matters of public interest and may be addressed through provisions provided for in a code of conduct, respectful workplace policy, or under the terms of a collective agreement

Step 5 Is a Referral to the Public Interest Commissioner Required?

A referral to the Public Interest Commissioner may be required if:

- The subject matter of the disclosure relates to a member of executive leadership.
- The alleged wrongdoing relates to a systemic problem in the organization.
- Issues of time, resources or expertise inhibit your ability to manage the disclosure.
- There could be a perceived conflict of interest in managing the disclosure internally.

Step 6 Make a Decision

Following your assessment:





Recap

Options for managing disclosures of wrongdoing:

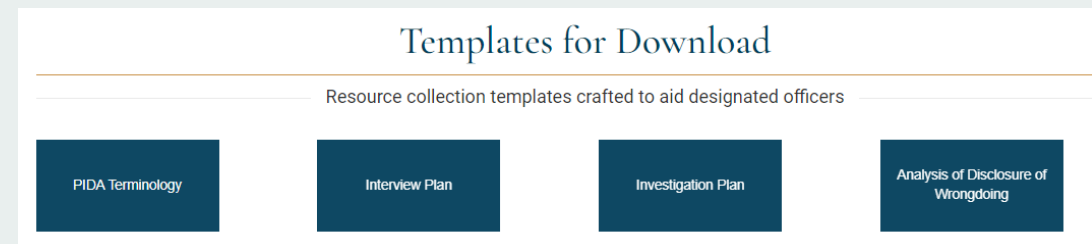
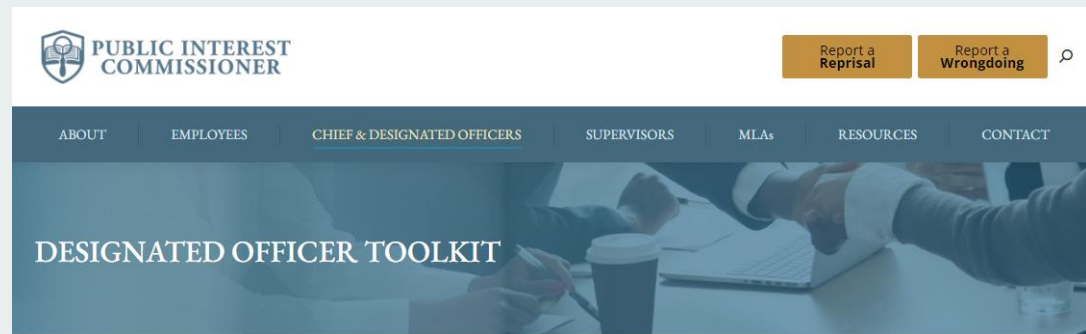
- Close the case if the matter is non-jurisdictional
- Suspend and report the matter if you have reason to believe the matter constitutes an imminent risk to life, health or safety, or an offence has occurred
- Refer the complainant to an alternate internal mechanism if the matter does not deal with a wrongdoing to which the Act applies
- Refer the complainant to the Public Interest Commissioner or to another more appropriate authority
- Investigate in accordance with your procedures

Any complaints of reprisal must be referred to the Office of the Public Interest Commissioner.



Analysis of Wrongdoing Template

This tool was developed by the office of the Public Interest Commissioner and serves as a guide to assist Designated Officers with assessing disclosures of wrongdoing and documenting their decisions.



Public Interest Commissioner

9925 – 109 Street NW, Suite 700

Edmonton, Alberta T5K 2J8

Toll Free: 1-855-641-8659

Email: info@pic.alberta.ca