



**Public Interest  
Commissioner**  
*of Alberta*

# Reporting Outcomes of Public Interest Disclosure Investigations

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Guidance for Designated Officers

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# Procedural Fairness in Decision Writing

Designated Officers are responsible for managing and investigating disclosures under the *Public Interest Disclosure (Whistleblower Protection) Act* (the Act) and are given the authority to make decisions that will affect the rights, privileges and interests of individuals. This triggers a **duty of fairness** towards persons impacted by their decisions.

Investigations, including reporting the outcome of investigations, must be conducted according to the principles of procedural fairness and natural justice.

Decisions must be unbiased, consider all evidence, and be based on the evidence obtained during the investigation and not irrelevant factors. Moreover, decisions must be **reasonable** and provide **adequate reasons** for why the Designated Officer came to the decision they did.



# Reasonableness

A reasonable decision does not equate to whether the decision is wrong, or whether a different conclusion could have been reached. Rather, a reasonable decision shows in a logical manner how the decision maker considered and assessed the arguments and evidence.



# Adequate Reasons

Procedural fairness requires that the decision maker provide reasons for their decision. Simply listing the evidence reviewed then making a decision does not suffice. The decision must draw a rational connection between the evidence and the conclusions, including a clear explanation of how relevant legislation, regulation or policy was applied.

Decision makers should also be able to explain what evidence was rejected, and why.



# Standard of Proof

The applicable standard of proof applied to investigations under the Act, is a balance of probabilities.

When considering whether something happened on a balance of probabilities, Designated Officers will weigh the evidence to determine whether it is more likely than not that an alleged wrongdoing has occurred.

Weighing the evidence in a decision will explain how the designated officer came to the conclusion they did.



# Effective Report Writing

Designated officers are responsible for preparing a report for the head of the organization detailing the outcome of their investigation, their decision (i.e., whether wrongdoing has occurred) and recommendations for corrective measures.

Establishing a one-size-fits-all model may not be practical, however there are fundamental elements that can be applied in writing a good report:

- Equip the audience with the context required to understand the outcomes and reasons
- Feature a clear introduction
- Use concise and plain language
- Be well-organized and structured
- Be clear and easy to follow

# Audience

The Designated Officer's report is written for the Chief Officer as the organizational head responsible for implementing corrective measures (if applicable).

However, depending on the outcome of the investigation, your report (decision) may need to be disclosed to others in the interest of procedural fairness. A decision that adversely affects a person accused of wrongdoing must be communicated to that person.

The report may also need to be disclosed to other persons when required by law, or to give effect to corrective measures.

# Pitfalls in Report Writing

- Reaching broad conclusions without supporting rationale linked to evidence
- Bringing personal feelings, emotions, or bias into the decision (or writing in a manner that may be perceived as bias)
- Failing to provide context for the reader
- Failing to provide an analysis of the evidence or explain how the evidence supports the findings
- Claiming relevant evidence was considered without doing so in the report
- Reliance on irrelevant considerations or emotionally charged statements and comments
- Use of accusatory, demeaning or unprofessional language
- Failure to address submissions and responses
- Including irrelevant evidence
- Failure to use proper names and titles
- Making a finding that does not answer the question as to whether the alleged wrongdoing occurred

# Writing Style

Using plain language is the best approach to ensure decisions are communicated effectively.

- Write out acronyms, use full names, and avoid jargon.
- Write short, clear and concise sentences using simple language.
- Say what needs to be said, and no more. This means avoiding unnecessary language.



“As it relates to approvals, there is a specific provision within the Contract Policy which outlines the requirement that all contracts, whether for products or services, are subject to the review and express approval of the ED.”



“Under the Contracts Policy, contracts must be approved by the Executive Director.”

# Report Structure

A well-structured report is essential to effectively reporting the outcome of an investigation. It not only helps organize the content of the investigation, but it also helps the reader (and particularly those impacted by the decision) navigate the issues and explain how the Designated Officer came to their conclusion.

The structure of a Designated Officer's report is discretionary. However, a structure may include:

- Foreword
- Overview
- Investigation Objective
- Definitions and Legal Framework
- Key Evidence
- Investigative Findings
- Analysis
- Conclusions
- Recommendations

# Foreword

- Overview
- Investigation Objective
- Definitions and Legal Framework
- Key Evidence
- Investigative Findings
- Analysis
- Conclusions
- Recommendations

It can be helpful to write a report in a manner that assumes the reader has no prior knowledge of the Act, nature of the investigation, or the authority of the decision-maker. A foreword may be helpful to:

- Provide an overview of the Act
- Provide an explanation of the purpose of investigations under the Act
- Provide an explanation of the role of the Designated Officer

# Overview

The overview provides a background of the matter and sets the context for the rest of the report. It may include:

- A history of the matter
- A summary of the issue under investigation
- The investigative steps that were taken
- A brief summary of the outcome of the investigation

# Investigation Objective

Identify the specific issues the investigation sought to determine. For example:

Whether the contract awarded by John Doe to a consulting firm was improper and constitutes a gross mismanagement of public funds, as per section 3(1)(c)(i) of the *Public Interest Disclosure (Whistleblower Protection) Act*.

## **Important**

The issues are identified prior to the start of the investigation and the parties are informed of the issues when notified of the investigation. The wording of the issues must remain verbatim through the investigation and reporting. If the issues are reported differently than the parties were first informed, it may result in concerns with procedural fairness.

# Definitions and Legal Framework

Depending on the case, the report may include a section that outlines the legislation, policy and definitions of terminology which were relied on in making the decision.

References to legislation should be specific and clearly indicate the relevant provisions considered. Exact excerpts are preferable.

# Key Evidence

Identifying the evidence relied on during the investigation helps ensure the report is thorough and that all relevant evidence was considered. It also provides confidence to the parties that the investigation was fair and comprehensive.

Depending on the extent of the investigation, the evidence may be outlined in the report or as part of a schedule of records appended to the report.

# Investigative Findings

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Investigations under the Act may be substantive and include a significant amount of information. Context provides clarity. Document the findings of the investigation by providing context first. This helps the reader understand the purpose for the findings that follow. If the reader does not understand the reason for the evidence being presented, the report becomes difficult to follow.

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Introduce the relevant parts of any applicable laws, policies, procedures or directives at the onset. This establishes their importance in the reader's mind and sets the context for the findings that follow.

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Report events in chronological order where possible. This helps the reader understand the timeline of events.

# Investigative Findings Cont'd

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Outline the facts established by the evidence without including personal opinion.

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It is not necessary to include all evidence collected during the investigation, only the evidence that is relevant to the issue, and that is being relied on to make the decision.

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Write clear and concise sentences using simple language.

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# Investigative Findings Cont'd

## Issue-driven subheadings

Using issue-driven subheadings in a report helps organize the key elements of the investigation in a concise and logical manner.

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### > Investigative Findings

Issue-driven subheadings

The contracting and procurement policy

The request for the contract

Approval and awarding of the contract

The conflict of interest

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# Analysis

The analysis is the interpretation of the evidence. It explains how the evidence led to the conclusion and establishes the **reasons** for the decision.

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In situations where there is conflicting evidence, the report should identify the rationale for giving one piece of evidence more weight than another, or why certain evidence presented by parties was discounted.

# Conclusions

The conclusion should be clear and answer the specific question as to whether, based on the analysis of evidence, wrongdoing as described in the Act has occurred.

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Example:

*"I find that John Doe improperly awarded a contract for consulting services with a wilful and reckless disregard for proper management of public funds, constituting a gross mismanagement as per section 3(1)(c)(i) of the Public Interest Disclosure (Whistleblower Protection) Act."*

# Communicating and Reporting Outcomes

Section 5(2)(i) of the Act requires every jurisdictional entity to establish procedures for reporting the outcomes of investigations of disclosures. This includes procedures for reporting outcomes to the Chief Officer or Commissioner (if applicable), to the complainant and persons accused of wrongdoing.

## To Chief Officer

For the purposes of section 5(2)(i) of the Act, a Designated Officer must provide his or her investigation report to the Chief Officer, in writing, on or before the date identified in section 3(7)(c) of the Regulation.

## To Complainant

Disclosures made under the Act are public interest matters and not personal matters. The Designated Officer must inform the complainant that a report has been made to the Chief Officer, however, has discretion in the extent of information provided. The extent of information provided may, however, determine the degree of confidence the complainant will have in the outcome.

## To Commissioner

When a disclosure is referred to a Designated Officer by the Commissioner, the Designated Officer must provide their report to the Commissioner.

## To Wrongdoer

The person accused of wrongdoing must be informed of the decision and reasons. The manner in which this is reported may depend on the outcome. An adverse conclusion may require the Designated Officer provide their full report detailing their findings, analysis and conclusion. An investigation that is unfounded may only require an explanation via correspondence.

# Recommendations and Observations

- Recommendations for corrective measures are made to the Chief Officer when wrongdoing is found. The objective is to recommend corrective measures that will remedy the wrongdoing, prevent a re-occurrence and instill confidence in the administration of the organization. The proposed corrective measures should be commensurate to the seriousness of the wrongdoing found, practicable, and include timelines for their implementation.
- In circumstances where wrongdoing is not found, a Designated Officer is not restricted from making other observations where a practice or action is identified as a concern. This permits the organization to implement changes as necessary and prevent the issue from escalating to a potential wrongdoing.

# Recourse for Parties

A complainant can request the Commissioner investigate any matter by making a complaint directly to the Commissioner, regardless of whether it has been investigated by a Designated Officer.

## Disclosure to the Commissioner

15.1(1) An employee referred to in section 9 may make a disclosure directly to the Commissioner despite Part 2 and any provision in the procedures established under section 5 that states:

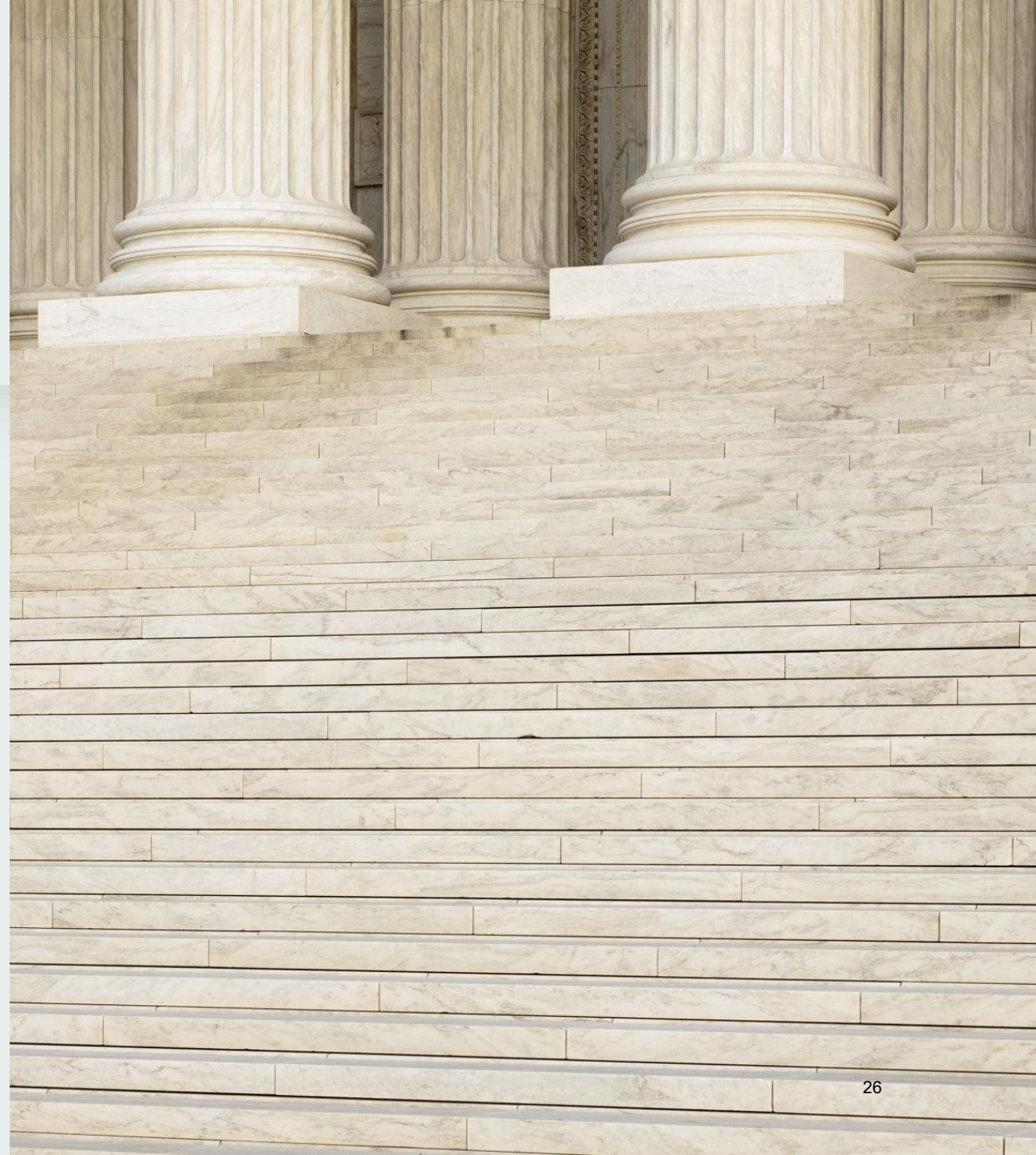
(a) that the decision of the department, public entity or office is final,

(b) that no appeal lies in respect of the decision of the department, public entity or office, or

(c) that the decision of the department, public entity or office may not be challenged, reviewed, quashed or called into question.

*The Commissioner may consider a request to investigate a matter already investigated by the Designated Officer if:*

- 1) The Designated Officer declined jurisdiction of a matter that is jurisdictional under the Act
- 2) The Designated Officer did not take adequate steps to investigate the subject matter of the disclosure
- 3) The Designated Officer made a decision incorrect by law
- 4) The Designated Officer did not consider relevant evidence
- 5) The decision is not supported by the evidence
- 6) The Designated Officer was biased or influenced in their investigation
- 7) The investigation did not conform to the principles of procedural fairness and natural justice
- 8) Corrective measures have not been taken to remedy a wrongdoing



# Recourse for Alleged Wrongdoers

Alleged wrongdoers can seek **judicial review** of decisions made by Designated Officers. Those judicial reviews are brought against the entity that the Designated Officer is part of, not the Public Interest Commissioner.

For organizations jurisdictional to the **Ombudsman**, the decision of a Designated Officer is reviewable by the Ombudsman for fairness.



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*Key takeaways for reporting outcomes:*

- 1) The key principles of procedural fairness to keep in mind at the decision writing stage include providing adequate reasons for the decision and reasonableness of the decision.
- 2) The Designated Officer's report is for the Chief Officer; however, depending on the outcome, others may require the report.
- 3) Provide context before details.
- 4) Demonstrate the thought process in the analysis - describe to the reader how the evidence led to the conclusion.
- 5) Consider the benefits of an issue driven report structure.
- 6) Decisions made by a Designated Officer may be subject to judicial review.
- 7) **Seek advice from the office of the Public Interest Commissioner when needed.**



# Public Interest Commissioner

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