



Public Interest
Commissioner
of Alberta

Information for respondents during public interest disclosure investigations

About Our Office

The Public Interest Commissioner (the Commissioner) is an independent Officer of the Alberta Legislature responsible for investigating disclosures of wrongdoing and complaints of reprisal under the *Public Interest Disclosure (Whistleblower Protection) Act* (the Act).

The Commissioner investigates significant and serious matters within the public sector that an employee believes may be unlawful, dangerous to the public, or injurious to the public interest. The Act protects employees who come forward to report wrongdoing and participate in investigations.

Frequently Asked Questions

Why am I involved in the investigation?

The Commissioner received a disclosure of wrongdoing or complaint of reprisal and has decided to investigate the allegation(s) in the *Notice of Investigation* that you have received.

Investigations are impartial and the Commissioner does not advocate for any party, including the complainant. The purpose of an investigation is to determine if there is merit to an allegation of wrongdoing or reprisal and to recommend remedies for any wrongdoing that might have occurred.

Is the investigation confidential?

The chief officer and designated officer of your organization are typically informed of the investigation. The chief officer is the organizational head, and the designated officer is the senior official appointed to manage public interest disclosures within your organization. The designated officer functions as a liaison and responds to requests from the Commissioner's office.

Investigations are conducted discreetly and confidentially to protect the identity of the parties involved, maintain the integrity of the investigation, and avoid unnecessary reputational harm.

The Commissioner's policies and procedures require that the identity of the complainant, alleged wrongdoer, and witnesses be kept confidential, unless one of the following circumstances applies:

- Disclosing the identity is necessary to ensure procedural fairness and natural justice,
- A decision of the Commissioner is reviewed by the courts (judicial review), or
- Disclosure is otherwise required by law or a court order.

Your identity as the respondent to an allegation of

wrongdoing may be disclosed during the course of the investigation if necessary for the purpose of gathering relevant information. If wrongdoing is found, your identity may also be disclosed to give effect to recommended corrective measures.

During an investigation into a complaint of reprisal, you will be notified of the identity of the complainant in the interest of procedural fairness and natural justice. This allows you to respond to the allegation(s) and share relevant information.

Information collected during investigations is not subject to the *Access to Information Act* and cannot be obtained through an access to information request.

Can I discuss this matter with others?

It is imperative that the matter be kept confidential to protect your identity, avoid unjustified reputational harm, and to preserve the integrity of the investigation. You should not discuss the matter with colleagues or persons not involved, except to obtain legal advice or support.

A support person may be a family member, trusted friend, colleague, or union representative. Confidentiality requirements extend to individuals who are support persons. If you wish to speak with someone internal to your organization, you may seek information or advice from your designated officer.

Can I retain third-party representation?

While not required, you may wish to seek advice from a lawyer or union representative.

The role of the representative will be limited. A representative may ask questions and provide you advice; however, they may not answer questions on your behalf. Their involvement must also not interfere with or obstruct the investigation.

The Commissioner does not provide funding for third-party representation, including legal support.

How do I participate in the investigation?

You will have an opportunity to participate in the investigation and respond to the allegation(s). This may include written responses to questions or an interview, or it may be limited to providing a written response to the *Investigation Summary* which is discussed in more detail below.

If an interview is required, you will be informed in advance, allowing you time to prepare. This may include reviewing documents or records to familiarize yourself with the circumstances surrounding the allegation(s) under investigation.

The Act requires that investigations be conducted as informally as possible; therefore, interviews are conversational in nature. The investigator will record the interview to ensure the information provided is captured accurately.

The expectation is that you answer questions truthfully and as completely as possible. You may be cautioned at the beginning of the interview that knowingly withholding material information, or making a false or misleading statement, are offences under the Act.

It is understandable that due to time passing or other factors, you may not recall certain events. It's important not to speculate and, if you are unable to answer a question or do not have information to provide, to simply say so.

If you require any special accommodations for the interview, we ask that you let our office know in advance so that accommodations can be arranged. If you would like to have a representative or support person present, please make this request to the investigator prior to your interview.

During the investigation, the Commissioner's office may also ask that you provide records or information relevant to the matter. It is important to retain records, as destruction of records relevant to an investigation is an offence under the Act.

Can I share confidential or privileged information?

The Act authorizes you to disclose any information requested by the Commissioner. This includes confidential information, financial information, personal information, and individually identifying health information, which, in other circumstances, may be protected by privacy laws.

The Act, however, does not authorize sharing information or documents that are protected by solicitor-client privilege, litigation privilege, parliamentary privilege, or quality assurance records.

Will I be able to review the evidence collected throughout the investigation?

You will have the opportunity to review evidence collected during the investigation. This may include records and statements provided in interviews with the complainant and witnesses. This information will be compiled in an *Investigation Summary*.

The *Investigation Summary* provides you the opportunity to review the preliminary investigative findings, and to submit a response which may include the correction of any factual errors, errors of law, or any additional information that may not have been considered. A response to the *Investigation Summary* is optional. Depending on the submissions received, further investigation may be conducted.

The *Investigation Summary* is not a decision of the Public Interest Commissioner.

Can I cross-examine the complainant or any witnesses?

Parties may not cross-examine each other. Investigations under the Act are not quasi-judicial proceedings. Rather, the Commissioner undertakes an administrative investigation to gather evidence and determine the veracity of the allegation.

An opportunity to correct factual errors or errors of law, and to provide any additional information that may not have been considered, can be submitted at the *Investigation Summary* stage.

How does the Commissioner make a finding?

The Commissioner reviews an *Investigation Report* and considers the evidence collected during the investigation, including responses to the *Investigation Summary*. The Commissioner then decides whether the facts of the matter support a finding of wrongdoing or reprisal.

The standard of proof for a finding of wrongdoing or reprisal is a balance of probabilities. This means the Commissioner must examine the relevant evidence and determine whether it is more likely than not that the alleged event(s) occurred.

What happens at the end of an investigation?

At the conclusion of the investigation, the Commissioner provides a report to the head of the affected organization explaining the findings and recommendations for corrective measures, if any. If wrongdoing is found to have occurred, these recommendations may apply directly to you.

The Commissioner will notify you of the decision and the reasons for the decision. The individual(s) who made the complaint, and any others directly affected by the outcome of the investigation, will also be informed of the Commissioner's decision.

The Commissioner's recommendations for corrective measures vary depending on the nature of the matter and the severity of the finding(s); however, all recommendations aim to correct the wrongdoing and prevent future occurrences. The outcome of recommendations are monitored by the Commissioner.

In some circumstances, the Commissioner may choose to make a public report on a matter if it is in the public interest.

The Commissioner is also required to report annually to the Legislative Assembly on investigations resulting in findings of wrongdoing, any recommendations made, and whether those recommendations have been implemented.

What is a reprisal?

Allegations of reprisal are treated very seriously and are investigated by the Commissioner. "Reprisal" is any measure taken that adversely affects the employment or working conditions of an employee as the result of their involvement in these activities.

The Act protects employees who seek advice about making a disclosure of wrongdoing from their supervisor, designated officer, or the Commissioner. The Act also protects employees when they make such disclosures or cooperate in investigations.

A reprisal is an offence. Individuals who commit a reprisal could be subject to prosecution resulting in substantial monetary penalties and may also be subject to civil liability and other remedial action including termination of employment. The Act also provides a mechanism for remedies through the Alberta Labour Relations Board to persons who have suffered reprisal.

It is imperative that you not take any measures that may be perceived as a reprisal, including attempting to identify a whistleblower.

How long will an investigation take?

The amount of time to conclude an investigation depends on several factors. These include the complexity of the wrongdoing being investigated, the number and severity of the allegations, the volume of records requiring analysis, the number of parties involved, and time requirements associated with ensuring procedural fairness obligations have been met.

The lead investigator assigned to the case will keep you updated as the investigation progresses.

Need more information? Contact the office of the Public Interest Commissioner at 780-641-8659 or info@pic.alberta.ca