



Public Interest
Commissioner
of Alberta

Information for persons who report wrongdoing or reprisal

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

Will I know if the Commissioner investigates my complaint of reprisal or disclosure of wrongdoing?

Once your complaint of reprisal or disclosure of wrongdoing has been assessed, you will be informed whether the Commissioner has initiated an investigation, and if so, the specific issues that will be investigated.

The Commissioner investigates disclosures of wrongdoing and complaints of reprisal unless the matter is not jurisdictional or there is another reason not to investigate as described in section 19 of the Act. For example, the Commissioner is not required to investigate matters that do not deal with wrongdoing or where there is another more appropriate authority that could investigate.

The Commissioner has discretion in how to manage disclosures of wrongdoing. One option is to refer the disclosure to your designated officer to manage. Your designated officer is the senior official within your organization responsible for investigating disclosures of wrongdoing under the Act. In certain circumstances, the Commissioner may also consider an informal resolution process. If either of these options are considered, the Commissioner's office will consult with you.

Complaints of reprisal can not be referred to a designated officer and are always managed by the Commissioner.

Will the Commissioner's office provide me advice and support?

The Commissioner's office can provide advice as it relates to the Act and the protections that it provides. Note that the Commissioner's office conducts impartial investigations and does not act as an advocate for any party.

Will my identity be kept confidential?

Investigations are conducted discreetly and confidentially to afford you the ability to speak freely and outside the knowledge of others, including your employer.

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

- Procedural fairness may require your identity be revealed if it is necessary for the alleged wrongdoer to be able to adequately respond to the allegations.
- Records that reveal your identity may be disclosed if a decision of the Commissioner is reviewed by the courts (judicial review).
- Disclosure is otherwise required by law or a court order.

In any of these circumstances, the Commissioner's office will notify you in advance of such a disclosure. Although confidentiality cannot be guaranteed, the Act is intended to protect the identities of whistleblowers, witnesses, and alleged wrongdoers.

For Complaints of Reprisal

If the Commissioner commences an investigation into your complaint of reprisal, **your employer and the respondent will be made aware of your identity** in the interest of procedural fairness and natural justice. Your employer and the person alleged to have committed the reprisal must know your identity to be able to properly respond to the allegation(s) and provide 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.

I have concerns that I will be retaliated against. How am I protected?

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 from reprisal when they 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 by their designated officer or the Commissioner.

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

Can I discuss this matter with others?

The Act provides protections for individuals who seek advice about making a disclosure of wrongdoing from a supervisor, a designated officer or the Commissioner. These are safe avenues to discuss your concerns.

If the Commissioner or your designated officer initiates an investigation, 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. For these reasons, you should not discuss the matter with colleagues or others 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. While the Act protects employees from reprisal when they make a disclosure of wrongdoing or participate in an investigation under the Act, it does not protect employees who disclose confidential information outside of their organization (e.g., to the media).

Can I retain third-party representation?

While not required, should you wish to seek advice from a third-party representative you may speak to your lawyer or a 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.

Will I be asked to participate in the investigation?

You may be asked to provide additional records or information during an investigation. This may include a request for written responses to questions or an interview. 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 is 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.

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?

Investigators may provide you with specific records to obtain clarification or your perspective. At the conclusion of an investigation, an opportunity to review the evidence is afforded to parties directly affected by the outcome of the investigation. Disclosures of wrongdoing relate to matters of public interest and are generally not personal matters that directly affect an individual complainant. Complaints of reprisal, however, do directly affect a complainant.

If the outcome of the investigation directly affects you, you may have the opportunity to review the evidence collected. This may include records and statements provided during interviews. This information will be compiled in an *Investigation Summary*.

The *Investigation Summary* provides parties the opportunity to review the preliminary investigative findings, and to provide a response which may include the correction of factual errors, errors of law, or other 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 respondent 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 the 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. The Commissioner will notify you of the decision and that a report to the head of the affected organization has been made.

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. The identities of witnesses and whistleblowers are not disclosed in any public reporting by the Commissioner.

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

