

Employee Fact Sheet

THE PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWER PROTECTION) ACT (PIDA)

What Employees of the Alberta Public Service Need to Know About Making a Disclosure of Wrongdoing or Complaint of Reprisal

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Overview

The Alberta government is committed to maintaining high standards of professional values and ethics in responding to the needs of Alberta citizens. Elected officials, senior management and employees share a common interest in ensuring the public sector operates with integrity, accountability and trust.

To build on protections already in place under Alberta laws, as well as existing Alberta Public Service (APS) practices and processes, The Public Interest Disclosure (Whistleblower Protection) Act (PIDA) came into effect June 1, 2013. This law has now been updated and expanded. PIDA gives employees of government institutions a clear process for disclosing concerns about wrongdoing in the APS, and provides protection from reprisal. Wrongdoing includes matters such as (a) illegal acts, (b) acts or omissions that create threats to life, health, safety of individuals, or substantial danger to the environment, or (c) gross mismanagement of public funds or assets, in the delivery of a public service, or gross mismanagement of employees (bullying, harassment or intimidation of a systemic nature).

This fact sheet provides information for employees of the APS who wish to disclose a wrongdoing. It provides guidance to possible disclosing employees about how to do a disclosure in a way that meets the requirements of the law, and therefore protects the employees from reprisal. It has been updated to include the amendments passed in 2017 and proclaimed in force as of March 2018. The Government

of Alberta has a single designated officer for all departments to receive disclosures. When “designated officer” is used in this document, it refers to that individual. If a member of the APS wishes to make a request for advice or a disclosure to the designated officer, they should email the designated officer at Whistleblower@gov.ab.ca or contact the office at 780-644-5602. Alberta’s Lieutenant Governor has appointed a Public Interest Commissioner (“the Commissioner”), who is an Officer of the Legislature and can be reached at Office of the Public Interest Commissioner info@pic.alberta.ca or 1-855-641-8659.

How is a “disclosure” different from making a “request for advice”?

PIDA applies to departments, government offices (members of the Legislative Assembly, Office of the Premier and offices of a Minister), Offices of the Legislature, as well as public entities and prescribed service providers, both set out in the *Public Interest Disclosure (Whistleblower Protection) Regulation* (“the Regulation”). The public entities currently included are provincial corporations (as defined in the *Financial Administration Act*), certain education entities (i.e. school boards, charter schools, the regional authority of a Francophone Education Region under the *School Act*, and private schools that are accredited and receive public funding), as well as certain prescribed public health entities (i.e. a regional health authority, CapitalCare Group Inc., Covenant Health, etc.)

The organizations identified in PIDA and the Regulation, discussed above, will be referred to as “PIDA organizations”.

An “employee” is an individual currently employed by any of these organizations, or an individual previously employed by any of these organizations who has suffered a reprisal.

What is a “wrongdoing” under PIDA?

The following are wrongdoings under PIDA:

- a contravention of a federal or provincial Act or Regulation
- an act or omission that creates a substantial and specific danger to the life, health or safety of individuals, not including dangers inherent to the employee’s job
- an act of omission that creates a substantial or specific danger to the environment;
- gross mismanagement of
 - public funds or a public asset
 - the delivery of a public service, or
 - employees, or
- knowingly directing or counselling someone to commit any wrongdoing described above.

Gross mismanagement includes “an act of omission that is deliberate and that shows a reckless or wilful disregard for ... proper management”.

Delivery of a public service includes management or performance of “a contract or arrangement”, or “duties and powers resulting from an enactment”, either of which must be identified or described in the Regulation. This will be finalized at a later date.

Gross mismanagement of employees is a pattern of behaviour or conduct, systemic in nature, that relates to bullying harassment or intimidation. PIDA is not intended to deal with routine human resource matters. This instance of wrongdoing is meant to address circumstances where internal mechanisms have failed and the conduct has become systemic and cultural in the organization. APS employees must have used or considered all other available mechanisms for addressing bullying or harassment complaints, including processes under a collective agreement or human resource policies, such as the Respectful Workplace Policy, before a disclosure involving gross mismanagement of employees can be investigated.

What is a “request for information or advice” under PIDA?

An employee who is considering making a disclosure may request information or advice about their decision.

A request for advice may be made to the employee’s supervisor, the designated officer or chief officer, or the Commissioner. Any of these can require the request for advice to be in writing.

What is a “disclosure under PIDA?”

A disclosure under PIDA is reporting of an alleged wrongdoing, made in good faith, relating to any of the PIDA organizations. Disclosures must be in writing. See Question 7 for more information about the disclosure process.

How is a “disclosure” different from making a “request for advice”?

A request for advice does not trigger an investigation by either the designated officer or the Commissioner, though making the request provides the employee with protection against reprisal.

Please note: an employee may not make a disclosure to their supervisor. A disclosure may only be made to the designated officer or the Commissioner.

What is a “reprisal” under PIDA?

PIDA provides protection for employees from “reprisal”. That is, from measures being taken against the employee because they, in good faith, asked for advice about making a disclosure, made a disclosure, co-operated in an investigation or declined to participate in a wrongdoing.

Examples of a reprisal include a dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of a job location, reduction in wages, change in hours of work or reprimand or any measure that adversely affects the employee’s employment or working conditions. Reprisal also includes a threat to take any of the measures mentioned above.

Please Note

Employees who make disclosures in a manner and process other than that provided for in PIDA (for example, a public disclosure) are not protected from reprisal.

What is the process for making a disclosure of wrongdoing?

An employee of any PIDA organization may make a disclosure of wrongdoing to the designated officer, and/or directly to the Commissioner. (If the chief officer for any particular PIDA organization has not named a designated officer, the chief officer is the designated officer.)

When filing a disclosure of wrongdoing, the employee must demonstrate that they had a reasonable belief that a wrongdoing has been committed or is about to be committed. In addition, the disclosure:

- must be made in good faith;
- must be made in writing;
- must be on the prescribed form; and
- must follow the requirements of PIDA.

Written disclosures of wrongdoing must include the following information, if known by the disclosing employee:

- detailed description of the alleged wrongdoing
- date of the alleged wrongdoing
- name of the individual(s) alleged to have committed or be about to commit the wrongdoing
- a copy of any disclosure made to either the designated officer or Commissioner, about the same matter
- a copy of any response received in respect of disclosure of a wrongdoing already made under PIDA, and
- any additional information that the designated officer or Commissioner requires or any other information prescribed in the Regulation.

How do I know if it's a wrongdoing under PIDA?

An employee does not have to know if something is a wrongdoing under PIDA in order to make a disclosure. To make a disclosure, an employee must reasonably believe that a wrongdoing has been committed, and the disclosure must be made in good faith.

This fact sheet is designed to assist an employee considering making a disclosure to better determine whether the behaviour in question may constitute wrongdoing as defined by PIDA. In addition, an employee considering making a disclosure may seek advice from the employee's supervisor, the designated officer or the Commissioner. Any of these individuals may require the request for advice to be made in writing.

Please note

If an employee makes a request for advice from their supervisor, the supervisor may not be able to maintain confidentiality of the information provided to the supervisor.

If an employee makes a request for advice from the designated officer or the Commissioner, the information provided in that request is confidential.

Am I protected against reprisals if I make a disclosure and no wrongdoing is found?

Yes, PIDA's reprisal protection does not depend on a finding of wrongdoing. An employee is protected from reprisal if they make a good faith (a) request for advice or (b) disclosure under PIDA.

What is the process for making a complaint of reprisal?

An employee (or former employee) may make a written complaint to the Commissioner if the employee alleges that a reprisal has been taken or directed against the employee.

The complaint of reprisal:

- must be made in good faith;
- must be made in writing;
- must be on the form prescribed in the Regulation; and
- must follow the requirements of PIDA.

Written complaints of reprisal should include any available supporting documents including the following information:

- description of either the request for advice or the disclosure made by the employee, including copies of all written materials, all relevant dates, locations etc.
- description of the reprisal(s) or threat(s) that occurred or are occurring, including all relevant dates, locations, etc., and
- any other additional information required by the Commissioner.

If the Commissioner determines that a reprisal has occurred, the file will be referred to the Labour Relations Board for a hearing to determine the appropriate remedy (*i.e.* payment for wage loss, reinstatement, payment of legal costs).

Further information about reporting a reprisal, as well as a standard form, is available at: www.yourvoiceprotected.ca.

What are my obligations and responsibilities?

Disclosing employees have a number of responsibilities, including acting in good faith, following the procedures set out in the Act and Regulation, and cooperating in any investigation by the designated officer or Commissioner.

Are there offences under PIDA?

PIDA contains general offences that are punishable by fines.

Offences include:

- **Committing a Reprisal:** Discussed in the answer to question 6: “What is a reprisal under PIDA?”
- **False Statements:** No person shall knowingly withhold information or make a false statement (at any stage in the process), or counsel or direct a person to provide a false statement.
- **Obstruction:** No person shall wilfully obstruct, or counsel or direct another person to wilfully obstruct, any individual involved with the disclosure of wrongdoing process from performing a duty or function under this Act.
- **Destruction, Falsification, or Concealment:** No person shall destroy, falsify, alter, mutilate or conceal any document or thing that they know is likely to be relevant to an investigation under the Act; or counsel another person to do so.

Please note

An employee who commits a wrongdoing may be disciplined up to and including dismissal, in addition to and separate from any penalty provided for by law.

Penalties under PIDA include a fine of not more than \$25,000 (first offence) to \$100,000 (subsequent offences). It should also be noted that the Act imposes a two-year limitation on prosecution from the date the alleged offence was committed.

Can my disclosure contain confidential information?

There are a few situations in which an employee may not make a disclosure under PIDA because another law or regulation prohibits disclosure of the information.

For example, PIDA does not authorize an employee to disclose:

- information or documents that would disclose the deliberations or proceedings of the Executive Council or a committee of the Executive Council
- information that is protected by Parliamentary privilege, solicitor-client privilege or litigation privilege, or
- information that is subject to any restrictions created by or under an Act of the Legislature or of the Parliament of Canada.

If an employee does not know if specific information is subject to non-disclosure, they may request advice about this question (*i.e.* as part or all of their request for advice from the employee’s supervisor, the designated officer or the Commissioner).

Please note

An employee asking whether specific information is subject to non-disclosure must ask the question in a manner that does not disclose the actual information. For example, an employee could not provide a copy of Cabinet minutes in order to ask if the minutes disclose the deliberations or proceedings of Executive Council. They must describe the nature of the document, rather than disclose it outright. To do otherwise would be to do the prohibited disclosure.

What happens after I make the disclosure to the designated officer?

The same procedures govern the process to be followed by the designated officer for any department of the Government of Alberta. These procedures outline what takes place once a disclosure is received by the designated officer. The procedures also include strict timelines that the designated officer must follow.

[PIDA Procedures for Managing or Investigating Disclosures for Designated Officers](#)

Once a disclosure has been made to the designated officer, the following apply:

- the designated officer will determine how the disclosing employee wishes to receive future communication about the disclosure (e.g. written or verbal);
- the designated officer will review the disclosure to determine whether it pertains to a matter of wrongdoing as defined in the Act;
- if it is determined to be a possible wrongdoing, the designated officer will review and handle as appropriate, including conducting an investigation;

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- the designated officer will determine the appropriate scope of the investigation, and will identify any individuals the designated officer believes ought to be interviewed as part of the investigation;
 - the designated officer will – to the extent possible, because this is subject to procedural fairness and natural justice – maintain confidentiality of the identity of individuals involved in the investigation (including the identity of the employee who made the disclosure);
 - if it would be a conflict of interest for the designated officer to review the disclosure, either because of the nature of the alleged wrongdoing or because of the persons involved in the disclosure, the designated officer will refer the disclosure to the chief officer for the department;
 - the disclosing employee will be advised when the investigation of the disclosure is completed, and may receive a summary of the findings.

The timelines for reviewing a disclosure by the designated officer under the Regulation include:

- acknowledging the receipt of the disclosure or complaint of reprisal within five business days of receipt
- determining if an investigation is required and notifying the employee of this decision within 20 business days of receipt, and
- an investigation, if required, must be concluded within 120 business days from the date on which the disclosure of wrongdoing or complaint of reprisal is received, unless an extension of time is granted.

What happens after I make the disclosure to the Commissioner?

An employee may make a disclosure of wrongdoing directly to the Commissioner, either without first making a disclosure to the designated officer or after having made such a disclosure and receiving a report of the outcome of the designated officer's investigation. A disclosure to the Commissioner must be in writing.

The Commissioner is not required to investigate every disclosure. PIDA provides a list of circumstances where an investigation is not required. Like the designated officer, the Commissioner may determine the scope of their investigation, which individuals will be interviewed, etc.

An employee or former employee may also make a reprisal complaint. A reprisal complaint may only be made to the Commissioner (i.e. not the designated officer).

The purposes of an investigation by the Commissioner into a disclosure or a complaint of reprisal are:

- to determine if a wrongdoing occurred;
- to bring the wrongdoing or reprisal to the attention of the affected department, public entity or office of the Legislature;
- to recommend corrective measures that should be taken (if any); and
- to promote confidence in the administration of departments, public entities and offices of the Legislature.

Can a disclosure be withdrawn?

No, a disclosure cannot be withdrawn once it has been made. However, if an employee who has made a disclosure discovers some information that would suggest the alleged behaviour is not wrongdoing, they should inform the designated officer or the Commissioner, whichever is carrying out the investigation, at their first opportunity.

How long do I have to make a disclosure?

A disclosure may be made up to two years from the day on which the alleged wrongdoing was committed.

May I bring someone with me when I make my disclosure or when I meet with the designated officer of an investigator?

Yes, an employee is able to bring someone with them for support (for example, a bargaining unit employee may bring a union representative).

What if the designated officer is away when I wish to make a disclosure?

An employee may choose to wait until the designated officer returns.

If time is of the essence and the designated officer is away, the employee may make the disclosure to the Commissioner.

Will my identity be protected?

The identity of a disclosing employee and others involved in the disclosure process, as well as the confidentiality of any information collected, will be protected by the designated officer and the Commissioner, to the fullest extent possible. Any investigation of a disclosure of wrongdoing under PIDA must also ensure that the principles of procedural fairness and natural justice are observed. In certain circumstances, the principles of procedural fairness and natural justice require the disclosure of, for example, information included in the disclosure that could reveal the identity of the disclosing employee. For example, the alleged wrongdoer has the right to know the nature of the disclosure, and to receive enough relevant information about the alleged wrongdoing to allow the alleged wrongdoer opportunity to reply to the disclosure.

Employees, and others participating in the investigation, are also responsible for maintaining confidentiality of any information they have or receive during the investigation of a disclosure.

Disclosures may only be made to the designated officer or to the Commissioner. PIDA's confidentiality protections do not apply to disclosures made to any person other than the designated officer or the Commissioner.

How are disclosures of wrongdoing reported to the general public?

The Act requires that the Chief Officer for each PIDA organization must report on an annual basis the following information:

- the number of disclosures received (and the number acted on and not acted on);
- the number of investigations conducted and the number that resulted in a finding of wrongdoing.

For all investigations that resulted in a finding of wrongdoing, the Chief Officer must include a description of the wrongdoing, the recommendations made, and the actions taken (or the reason no actions were taken).

In addition, the Commissioner must report to the Legislative Assembly on an annual basis:

- the number of general inquiries made to the Commissioner;
- the number of disclosures received by the Commissioner, the number acted on and the number not acted on;
- the number of investigations commenced by the Commissioner;
- the number of recommendations the Commissioner has made and whether the organization to which the recommendations relate have complied;
- the number of complaints of reprisal received by the Commissioner, the number acted on and the number not acted on;
- whether the Commissioner believes there are any systemic problems that may give rise or have given rise to wrongdoings; and
- any recommendations for improvement that the Commissioner considers appropriate.

Further information about making a disclosure, as well as a standard disclosure form, is available on the Public Service Commission website www.psc.alberta.ca.

The contact information for the designated officer is:

Gene Williams
Designated Officer, Alberta Public Service
12th Floor, 44 Capital Boulevard
10044 - 108 Street
Edmonton, Alberta T5J 3S8
780-644-2570
whistleblower@gov.ab.ca

Public Interest Commissioner
9925 – 109 Street, Suite 700
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yourvoiceprotected.ca