

Fact Sheet: Workplace Investigations

The *Access to Information Act* (ATIA) includes exceptions to disclosure related to workplace investigations.

What Is a Workplace Investigation?

A workplace investigation is an employer-initiated process used to examine allegations of misconduct or breaches of workplace policies. The process may involve gathering and reviewing evidence, interviewing relevant parties, documenting findings, and reporting conclusions.

Workplace Investigations and the ATIA

The ATIA establishes a right of access to records in the custody, or under the control of a public body, subject to limited and specific exceptions. One such exception is section 24 of the ATIA.

Section 24 sets out the circumstances under which a public body can refuse to disclose information related to a workplace investigation: specifically, information the disclosure of which could reasonably be expected to:

- (a) interfere with, prejudice or otherwise harm a workplace investigation, or*
- (b) cause harm to a witness or third party or prevent a witness from coming forward as a witness, in a workplace investigation.*

Definitions

The ordinary meaning of words used in this section includes:

Subsection (a):

- *Interfere with* means to prevent something from working effectively or from developing successfully.
- *Prejudice* means to unfairly influence a person or matter so that an unreasonable opinion or decision results.
- *Harm* means to damage something or someone or make something worse.

Subsection (b):

- *Witness* means a person who sees an event take place or who has information relevant to the matter at issue.
- *Third party* means an individual that is not directly involved in the investigation but is nonetheless linked or tied to the investigation in some way.

Application of Section 24

The exceptions under section 24 are intended to protect the integrity of workplace investigations and to prevent harm to witnesses and third parties who may be involved in those investigations.

A public body must determine, on a case-by-case basis, whether releasing the information would reasonably be expected to interfere with, prejudice, or otherwise harm a workplace investigation or cause harm to a witness or third party.

When considering whether to withhold information under this section, a public body may wish to consider the following:

- Section 24 is a discretionary exception and may be applied to either general information or personal information related to a workplace investigation.
- Unlike section 23 (Disclosure harmful to law enforcement), which applies to law enforcement matters, section 24 specifically protects information related to workplace investigations. In certain circumstances, both sections may be used to withhold the same record where the information meets the requirements of each exception.
- In applying section 24, all relevant factors must be weighed including the objects and principles of ATIA.

- Depending on the nature and content of the records, section 24 may also be applied alongside other relevant exceptions, including section 20 (Disclosure harmful to personal privacy), where the requirements of those exceptions are met.

It should be noted that section 24 does not affect the availability of information through other processes such as legal proceedings, grievance processes or other established human resources procedures.