

Civil Service Renewal Policy Framework

The Public Interest Disclosure (Whistleblower Protection) Act

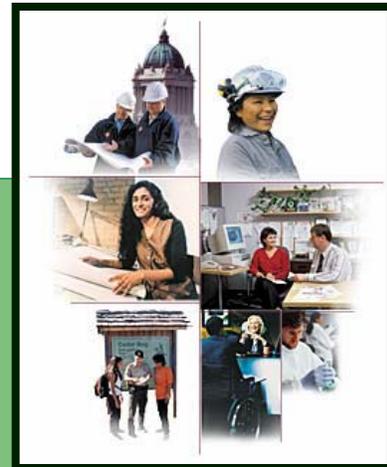
The purpose of *The Public Interest Disclosure (Whistleblower Protection) Act* (the “Act”) is to facilitate the disclosure and investigation of significant and serious matters in or related to the public service (wrongdoing).

The Act provides a process for the disclosure of significant and serious wrongdoing and protection against reprisals for persons who make such disclosures.

Under section 10 of the Act, an employee or officer of a government department, office or government body may make a disclosure to:

- his or her supervisor
- the department’s designated officer
- the Ombudsman

The Act does not affect protections or obligations offered by existing statutes (e.g., *The Child and Family Services Act*, *The Workplace Safety and Health Act*.)



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THE PUBLIC INTEREST DISCLOSURE (Whistleblower Protection) ACT



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PROCEDURES FOR SUPERVISORS

Background

The purpose of *The Public Interest Disclosure (Whistleblower Protection) Act* (the “Act”) is to facilitate the disclosure and investigation of significant and serious matters in or related to the public service (wrongdoing).

The Act provides a process for the disclosure of significant and serious wrongdoing and protection under the Act against reprisals for persons who make such disclosures.

Under section 10 of the Act, an **employee or officer** of a government department, office or government body may make a disclosure to:

- his or her supervisor
- the department’s designated officer
- the Ombudsman

The Act also establishes protection for **persons contracting with the public service**, and for **private sector employees**, who provide information to the Ombudsman about alleged wrongdoing in or relating to the public service.

Under subsection 14(1) of the Act, an employee may make a disclosure to the public if he or she believes that the matter constitutes an imminent risk and specific danger to the life, health, or safety of persons or to the environment, such that there is insufficient time to make the disclosure under section 10. The employee must first make the disclosure to an appropriate law enforcement agency, or in a health-related matter, to the chief medical officer of health. Disclosure to the public is subject to any direction the agency or officer considers necessary in the public interest.

Supervisors may receive a disclosure from an employee. The following procedures are designed to manage the receipt and transfer of disclosures within departments and are intended for the use of supervisors.

The **identity of the persons** involved in the disclosure process, including employees who make disclosures, witnesses and persons who are alleged to be responsible for a wrongdoing, **must be protected**. As well, Information that comes to a person’s attention or knowledge through the performance of their duties under the Act must be protected and must not be disclosed except as required under this or another Act.

The **Act does not affect protections or obligations offered by existing statutes** (e.g., *The Child and Family Services Act, The Workplace Safety and Health Act*).

It is the responsibility of the head of each department, body or office to develop procedures to implement the Act, including how to receive and manage disclosures made by employees requesting protection under the Act.

THE PUBLIC INTEREST DISCLOSURE (Whistleblower Protection) ACT



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General Procedures for Handling Disclosures and Disclosure Files

1. Under section 12 of the Act, disclosures must be received in writing and must include the following information, if known:
 - a description of the wrongdoing
 - the name of the person(s) alleged to have committed the wrongdoing or about to commit the wrongdoing
 - the date of the wrongdoing
 - whether the wrongdoing has already been disclosed and a response received
2. Upon receipt, each disclosure must be marked to show the date of receipt.
3. Each disclosure must be maintained in a separate file.
4. Disclosures and disclosure files must be kept and handled in paper form only. To maintain confidentiality, information received (including disclosures) by electronic mail must be printed and the electronic mail deleted. The electronic mail must not be forwarded or responded to using the “reply” option.
5. Disclosure files must be treated as strictly confidential, maintained in a secure manner and location, and protected from unauthorized access.
6. Care must be taken at all times to protect the identity of the disclosing employee, any witnesses, and the alleged wrongdoer.
7. All written information regarding the disclosure obtained as a result of the receipt of the disclosure, or the review of the disclosure, must be included in the disclosure file. All pertinent information obtained verbally must be documented in writing in the disclosure file and dated and signed by the person receiving the information.

THE PUBLIC INTEREST DISCLOSURE (Whistleblower Protection) ACT



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Supervisor Responsibilities

The supervisor who receives a disclosure is responsible to:

- determine how the disclosing employee wants to receive communication on the disclosure – either written, via e-mail or verbally
- notify the designated officer about the disclosure
- transfer the disclosure in a confidential manner to the designated officer for further review and handling of the disclosure
- Maintain absolute confidentiality throughout the process

Supervisors must ensure that they protect the identity of the disclosing employee and ensure any information related to the disclosure is kept confidential. Supervisors must not discuss the receipt of a disclosure with their superiors, human resource consultants or their colleagues. Supervisors may discuss the receipt of disclosures with the designated officer.

The supervisor must seek advice from the designated officer if assistance is required with the interpretation of the Act or these procedures.

Designated Officer Responsibilities

The designated officer is responsible to receive and handle disclosures from disclosing employees who go directly to the designated officer and to receive and handle disclosures transferred from supervisors.

Handling of disclosures by a designated officer includes the review of disclosures received as well as the subsequent investigation of a disclosure, if required. The designated officer must ensure that any investigation is conducted in accordance with principles of procedural fairness and natural justice.

The designated officer may seek advice from Civil Legal Services or the Civil Service Commission, depending on the nature of the advice required.

Section 34 of the Act provides that the designated officer may arrange for legal advice to be provided to employees and others involved in any process or proceeding under the Act, if this legal advice is necessary in the designated officer's opinion to further the purposes of the Act.

THE PUBLIC INTEREST DISCLOSURE (Whistleblower Protection) ACT



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Employee Responsibility

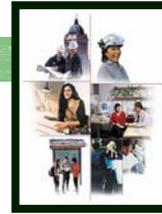
An employee who wishes to make a disclosure of wrongdoing under this Act may choose to make the disclosure to his or her supervisor, to the designated officer for the department or entity where the employee works or to the Ombudsman. To make a disclosure, the employee must have a reasonable belief that a wrongdoing has been or is about to be committed.

Disclosures must be submitted in writing in order to receive protection under the Act. The disclosure must provide a description of the wrongdoing, the names of those responsible, when the wrongdoing occurred and where the matter has already been raised and a response received.

An employee may seek advice from the designated officer or the Ombudsman and receive protection under the Act against reprisal for seeking advice. The designated officer or the Ombudsman may require the request for advice to be in writing.

The disclosing employee also has a responsibility to protect information related to the disclosure, including protecting the identity of persons involved in the disclosure process.

THE PUBLIC INTEREST DISCLOSURE (Whistleblower Protection) ACT



People Matter

Procedures for Supervisors When a Disclosure is Made

1. **Meeting with the employee:** The supervisor must arrange to privately discuss the disclosure with the disclosing employee within 10 working days of receiving the disclosure.

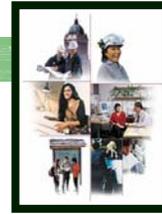
The supervisor must determine how the disclosing employee wishes to receive communication about the disclosure and respect the wishes of the employee. All verbal communication must be documented by the supervisor in writing and kept in the disclosure file.

The supervisor must advise the disclosing employee that information related to the disclosure, including his or her identity, will be protected and kept confidential to the fullest extent possible, subject to any other Act and to the principles of procedural fairness and natural justice. The supervisor must advise the disclosing employee that he or she also has a responsibility to protect information related to the disclosure, including protecting the identity of persons involved in the disclosure process.

The supervisor should inform the employee that disclosures must be submitted in writing in order to receive protection under the Act. The disclosure must provide a description of the wrongdoing, the names of those responsible, when the wrongdoing occurred and where the matter has already been raised and a response received.

2. **Explaining to the employee what will happen next:** The supervisor must advise the disclosing employee that further review and handling of the disclosure will be undertaken by or under the direction of the designated officer.
3. **Contact the designated officer:** Immediately following the discussion with the disclosing employee the supervisor must contact the designated officer regarding the disclosure. If the subject matter of the disclosure relates to a matter under the supervisor's responsibilities, the supervisor must discuss with the designated officer whether any action is to be taken by the supervisor regarding the matter. Any advice or direction given by the designated officer to the supervisor should be followed.
4. **Discuss the process with the designated officer:** The supervisor should also discuss with the designated officer the best way to forward the disclosure file in a confidential manner to the designated officer. The supervisor must forward the file in its entirety for review and handling. The disclosure file and any accompanying material (e.g., route slip, transmittal) must be marked "private and confidential" and forwarded as arranged to the designated officer. The supervisor must not keep a copy of the disclosure file or any of its contents.

THE PUBLIC INTEREST DISCLOSURE (Whistleblower Protection) ACT



People Matter

Procedures for Supervisors When a Disclosure is Made (Cont'd)

5. **If a disclosure involves the designated officer:** If the subject matter of the disclosure involves the designated officer, the supervisor must forward the disclosure file in its entirety to the Deputy Minister for review and handling. The disclosure file and any accompanying material (e.g., route slip, transmittal) must be marked “private and confidential” and forwarded in a confidential manner. ***The supervisor must not keep a copy of the disclosure file or any of its contents.*** The supervisor must advise the disclosing employee that further review and handling of the disclosure will be undertaken by or under the direction of the Deputy Minister.

6. **When an employee chooses to withdraw a disclosure:** If, after submitting a disclosure, the disclosing employee wishes to withdraw the disclosure, the supervisor should request that the disclosing employee provide written direction to the supervisor to do so. The supervisor should advise the employee that a disclosure may be made to the Ombudsman if the employee wishes to do so.

Upon receipt of the written withdrawal notice, the supervisor must close the disclosure file and forward the closed file to the designated officer for statistical tracking purposes only, with instructions that the disclosure has been withdrawn. The file and any accompanying material or instructions must be marked “private and confidential,” and forwarded to the designated officer in a confidential manner. The supervisor must not keep a copy of the disclosure file or any of its contents.

In the event that a disclosure is withdrawn, and depending on the nature of the disclosure, the supervisor should discuss with the designated officer whether any further action is to be taken regarding the subject matter of the disclosure.

7. **Maintaining confidentiality:** The supervisor must not disclose receipt or withdrawal of a disclosure to anyone in his or her department other than the designated officer, or in the event the disclosure relates to the designated officer to the Deputy Minister.

8. **Additional Information:** For further information or clarification, please contact your designated officer.

THE PUBLIC INTEREST DISCLOSURE (Whistleblower Protection) ACT



People Matter

Procedures when a Disclosure is made to the Public

Under subsection 14(1) of the Act, an employee may make a disclosure to the public if he or she believes that the matter constitutes an imminent risk and specific danger to the life, health, or safety of persons or to the environment, such that there is insufficient time to make the disclosure under section 10.

The employee must first make the disclosure to an appropriate law enforcement agency, or in a health-related matter, to the chief medical officer of health. Disclosure to the public is subject to any direction the agency or officer considers necessary in the public interest. The disclosing person must adhere to this direction if they want protection under the Act.

Immediately after making a disclosure to the public under subsection 14(1) of the Act, the disclosing employee must also make a disclosure about the matter to his or her supervisor or the designated officer.

If a supervisor receives such a disclosure, it is considered to be a disclosure under the Act similar to a disclosure made under section 10. Accordingly, many of the above procedures apply, as follows:

1. Upon receipt of the disclosure, the supervisor must follow the **General Procedures for Handling Disclosures and Disclosure Files**.
2. If the supervisor received the disclosure, the supervisor must immediately forward the disclosure file in its entirety to the designated officer. **The Procedures for the receipt of a disclosure when the disclosure is made to a supervisor do not apply.** The disclosure file and any accompanying material (e.g., route slip, transmittal) must be marked “private and confidential” and forwarded to the designated officer in a confidential manner. The supervisor must not keep a copy of the disclosure file or any of its contents.
3. Immediately upon receipt of a disclosure or disclosure file, the designated officer must notify the Deputy Minister that a public disclosure has been received and provide information to the Deputy Minister regarding the nature of the alleged wrongdoing so that the appropriate course of action can be taken.
4. Should the media contact a department directly it is expected that the established procedures for handling media inquiries will be followed.

THE PUBLIC INTEREST DISCLOSURE (Whistleblower Protection) ACT



People Matter

General Information

1. Cooperation with the Ombudsman

Under the Act, an employee or officer of a department may make a disclosure of alleged wrongdoing to the Ombudsman. In addition, the Act also provides that a person who is not an employee (or officer) may provide information to the Ombudsman if he or she reasonably believes that a wrongdoing has been committed or is about to be committed. The handling of these situations by the Ombudsman will be guided by Part 3 or subsection 30(1) of the Act.

Under the Act, when an employee makes a disclosure to the Ombudsman, the Ombudsman may take steps to help resolve the matter within the department, rather than investigating the disclosure under Part 3 of the Act.

All employees and officers of a department must cooperate fully with the Ombudsman in the handling of a disclosure or information under the Act.

2. Offences and penalties under the Act

It is an offence under the Act:

- To take a reprisal against an employee or direct that one be taken against an employee because the employee has, in good faith, sought advice about making a disclosure, made a disclosure or co-operated in an investigation under the Act – section 27
- For a private sector employer to take, or threaten to take, any measure that adversely affects a private sector employee's employment or working conditions (including disciplinary measures, demotion and termination), only for the reason that the employee has, in good faith, provided information to the Ombudsman about an alleged wrongdoing, or the employer believes the employee will do so – section 31
- For a person acting or purporting to act on behalf of government (or an office or government body) to terminate a contract, withhold a payment that is due and payable or refuse to enter into a subsequent contract, only because a person contracting with government (or office or government body) or a person employed by a party to the contract, has, in good faith, provided information to the Ombudsman about an alleged wrongdoing in or relating to the public service – section 32

THE PUBLIC INTEREST DISCLOSURE (Whistleblower Protection) ACT



People Matter

General Information (Cont'd)

- For any person to knowingly make a false or misleading statement, orally or in writing, to a supervisor, designated officer, Deputy Minister (chief executive) or the Ombudsman, or to a person acting on his or her behalf or under his or her direction, in seeking advice, making a disclosure or during an investigation – subsection 33(1)
- For any person to willfully obstruct a supervisor, designated officer, Deputy Minister (chief executive) or the Ombudsman, or a person acting on his or her behalf or under his or her direction, in the performance of a duty under the Act – subsection 33(2)
- For any person to destroy, falsify, conceal or to direct, counsel or cause the destruction, falsification or concealment of a document or thing, knowing that the document or thing is likely to be relevant to an investigation under the Act – subsection 33(3)

A person who contravenes any of the above provisions is guilty of an offence and is liable on summary conviction to a fine of up to \$10,000 – subsection 33(4)

A prosecution under the Act may be commenced not later than two years after the day the alleged offence was committed – subsection 33(5)

3. Protection from liability

No action or proceeding may be brought against a supervisor, designated officer, or Deputy Minister (chief executive), or a person acting on his or her behalf or under his or her direction, for anything done or not done, or for any neglect in the performance (or intended performance) of a duty or in the exercise (or intended exercise) of a power under the Act, unless the person was acting in bad faith – section 35.

THE PUBLIC INTEREST DISCLOSURE (Whistleblower Protection) ACT



People Matter

Glossary of Terms

Designated Officer	Senior official designated in a department or entity to receive and deal with disclosures under this Act.
Disclosure	Disclosure made in good faith by an employee in accordance with the Act.
Employee	Employee means an employee or officer of a department, government body or office.
Natural Justice	Refers to situations where the person affected, for example, has the right to be heard, has the right to ask for information and has the right to respond to the allegation. (Also referred to as <i>procedural fairness</i>)
Public Service	<p>Public service is defined in the Act to mean departments of government, government bodies and offices.</p> <p>Government bodies include: government agencies as defined in <i>The Financial Administration Act</i>; regional health authorities established or continued under <i>The Regional Health Authorities Act</i>; and, child and family services agencies and authorities established/incorporated under <i>The Child and Family Services Act</i> or <i>The Child and Family Services Authorities Act</i>. Other government bodies may be designated by regulation.</p> <p>The offices included under the Act are the offices of the Auditor General, the Chief Electoral Officer, the Children's Advocate and the Ombudsman.</p>
Reprisal	The Act protects employees who make authorized disclosures against adverse employment consequences, like termination, demotion, discipline or any other negative measure.

THE PUBLIC INTEREST DISCLOSURE (Whistleblower Protection) ACT



People Matter

Glossary of Terms (cont'd)

Wrongdoing

Defined in Section 3 of the Act as follows:

- an act or omission that is an offence under an Act or regulation
- an act or omission that creates substantial and specific danger to life, health or safety of persons or the environment, but does not include dangers inherent to the employee's job
- gross mismanagement, including of public funds or a public asset
- knowingly directing or counseling a person to commit any of the above