

The Public Interest Disclosure (Whistleblower) Protection Act

MANITOBA GOVERNMENT POLICY AND PROCEDURES

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--PART 1--THE PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWER PROTECTION) ACT-- POLICY AND PROCEDURES

Policy Statement

The Manitoba government is committed to enhancing accountability and transparency by strengthening the ethical environment and framework.

Application of Procedures

- 1.1. The Public Interest Disclosure (Whistleblower Protection) Act (PIDA) facilitates the disclosure and investigation of significant and serious wrongdoing in or relating to public bodies and protects employees who make disclosures from reprisal.
- 1.2. The Manitoba government is a public body under PIDA and is responsible for establishing and maintaining procedures in accordance with section 5 (1) and 5 (2) of PIDA. This procedural document serves to meet that requirement.
- 1.3. Matters that do not relate to wrongdoings defined by PIDA will continue to be managed in accordance with other internal operational policies and procedures.

Purpose

- 1.4. The purpose of this policy and supporting procedures is to:
 - a. comply with section 5 (1) and 5 (2) of PIDA
 - b. describe the roles and responsibilities related to PIDA
 - c. provide guidance on the management and investigation of disclosures
 - d. support employees who come forward to report wrongdoing, and make them aware of the protection provisions afforded to them by PIDA
 - e. serve as a sample procedure document for other public bodies that fall under the jurisdiction of PIDA

--PART 2--ROLES AND RESPONSIBILITIES

Manitoba Ombudsman

- 2.1. “The Ombudsman” means the Ombudsman appointed under The Ombudsman Act. The Manitoba Ombudsman reviews and investigates disclosures of wrongdoing and complaints of reprisal made under The Public Interest Disclosure (Whistleblower Protection) Act by employees of a public body. The Manitoba Ombudsman also provides advice to employees, designated officers and the public. A person who is not an employee may provide information to the Ombudsman if he or she reasonably believes that a wrongdoing has been committed or is about to be committed.

Chief Executive

- 2.2. Every chief executive must designate a senior official to be the designated officer that will receive and manage disclosures by their employees. The chief executive is responsible for establishing and maintaining procedures in accordance with section 5 (1) of PIDA for their respective public body. The chief executive must ensure that information about PIDA and the disclosure procedures are communicated annually to their employees. The Manitoba Ombudsman is also entitled to a copy of the procedures upon request and can make recommendations for improvements.

Designated Officer

- 2.3. Designated officers are senior officials responsible for investigating disclosures of wrongdoing made to the employee’s supervisor or to the designated officer. A designated officer is an individual appointed by the chief executive of the respective public body, under section 6 of PIDA. The designated officer is responsible to provide advice to employees who are considering making a disclosure. If no designation is made, the chief executive of the public body is the designated officer.

Supervisors

- 2.4. Supervisors are anyone who has a reporting relationship with employees. Supervisors may receive a disclosure from an employee. The supervisor must refer the disclosure to their designated officer. Supervisors must ensure they protect the identity of the disclosing employees and any information related to the disclosure remains confidential.

Employees

- 2.5. Employee means an employee or officer of a department, government body or office. Employees who believe wrongdoing is occurring within their public body are protected from reprisal when they report the wrongdoing to their designated

officer, supervisor or the Manitoba Ombudsman. Employees have a responsibility to report wrongdoing in good faith, to cooperate during an investigation, and to provide any information the designated officer or the Manitoba Ombudsman may require. The disclosing employee has a responsibility to protect information related to the disclosure, including the identity of persons involved in the disclosure process.

-- PART 3 --PROCEDURES FOR EMPLOYEES TO REPORT WRONGDOING

Reportable types of wrongdoing

- 3.1. PIDA facilitates the disclosure and investigation of “wrongdoing” in or relating to public bodies:
 - a. an act or omission constituting an offence under an Act of the Legislature or the Parliament of Canada, or a regulation made under an Act
 - b. an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of an employee
 - c. gross mismanagement, including of public funds or a public asset
 - d. knowingly directing or counselling a person to commit a wrongdoing described in clauses (a) to (c)

Request for advice

- 3.2. An employee who is considering making a disclosure, may request advice from their designated officer, or the Manitoba Ombudsman. Employees are protected from reprisal under PIDA when seeking advice. The designated officer or the Manitoba Ombudsman may require the request to be in writing. Requesting advice in writing is encouraged.

Reporting wrongdoing

- 3.3. An employee can make a disclosure of wrongdoing to their supervisor, designated officer or the Manitoba Ombudsman. Employees are encouraged to make any disclosures as soon as they become aware of a potential wrongdoing, as the quality of evidence and the ability to make corrective measures may decrease with time.
- 3.4. The disclosure must be in writing and provide the following information, if known:
 - a. a description of the wrongdoing
 - b. the names of the person or persons alleged to have committed or about to commit a wrongdoing
 - c. the date of the wrongdoing
 - d. if the matter has already been raised and the response received
- 3.5. Employees may report the wrongdoing to their supervisor or designated officer using the prescribed Disclosure of Wrongdoing Form (see PIDA website for the available Form), or by other means, as long as the disclosure is in writing.
- 3.6. Employees should clearly indicate they are making a disclosure under The Public Interest Disclosure (Whistleblower Protection) Act.

- 3.7. Employees who choose to report an alleged wrongdoing to the Manitoba Ombudsman, may do so by submitting the prescribed form on Manitoba Ombudsman's website or by other means, as long as the disclosure is in writing.
- 3.8. When an employee discloses an alleged wrongdoing to the Manitoba Ombudsman, the Ombudsman may take any steps he or she considers appropriate to help resolve the matter within the public body, including referring the matter to a designated officer. If the matter is referred, the Manitoba Ombudsman may inquire about the steps taken or proposed steps to be taken to deal with the matter.

Anonymous disclosures

- 3.9. Anonymous disclosures may make the disclosure more difficult to investigate or substantiate, however anonymous disclosures will be acted on, whenever possible.

Making a public disclosure about an urgent matter – imminent risk

- 3.10. Under subsection 14 (1) of PIDA, an employee may make a disclosure to the public where the subject matter constitutes an imminent risk of a substantial or specific danger to the life, health or safety of individuals, or to the environment.
- 3.11. The employee must first make the disclosure to an appropriate law enforcement agency, or in the case of a health-related matter, the chief public health officer. Disclosures to the public are subject to any direction that the agency or officers consider necessary in the public interest.
- 3.12. Immediately after a disclosure is made under subsection 14 (1) of PIDA, the disclosing employee must also make a disclosure about the matter to their supervisor or designated officer. The applicable procedures apply.
- 3.13. The designated officer must notify the chief executive that a public disclosure has been made.

--PART 4--REPORTING REPRISALS

Reporting Reprisals

- 4.1. PIDA protects employees from reprisal who have, in good faith:
 - a. requested advice about making a disclosure from a supervisor, the designated officer, or the Manitoba Ombudsman
 - b. made a disclosure under PIDA
 - c. cooperated in an investigation under PIDA

- 4.2. Any employee or former employee who believes they have been reprisal against for taking any of the above actions must make a written complaint of reprisal directly to the Manitoba Ombudsman.

- 4.3. A reprisal is defined as taking, directing or counseling someone to take or direct:
 - a. disciplinary measure
 - b. demotion
 - c. termination of employment
 - d. any measure that adversely affects his or her employment or working conditions;
 - e. threat to take any of the measures referred to in clauses (a) to (d)

- 4.4. A reprisal is an offence under PIDA, and anyone who reprises against an employee for taking an action under 4.1, is liable to prosecution under PIDA.

--PART 5--SUPERVISOR PROCEDURES FOR RECEIVING DISCLOSURES

- 5.1. The supervisor must acknowledge receipt of the disclosure made by the employee within 5 business days. The supervisor must determine how the disclosing employee wishes to receive communication and respect the wishes of the employee.
- 5.2. The supervisor must advise the disclosing employee that a designated officer will undertake a review of the allegation. The supervisor must promptly refer the matter to the designated officer. The designated officer will determine if the allegation warrants an investigation based on the definition of wrongdoing. If the subject relates to a matter under the supervisor's responsibilities, the supervisor must discuss with the designated officer whether any action is required by the supervisor.
- 5.3. Relevant verbal communication should be documented and stored in a confidential manner.
- 5.4. The supervisor must advise the disclosing employee that the identity of the persons involved in the disclosure process, including witnesses and persons alleged to be responsible for wrongdoing, must be confidential to the fullest extent possible.
- 5.5. The supervisor must arrange with the designated officer how the disclosing information will be forwarded in a secure and confidential manner. The supervisor must not keep any information including copies, related to the disclosure.
- 5.6. If the subject matter of the disclosure involves the designated officer, the supervisor must forward the relevant information to the chief executive. The supervisor must advise the disclosing employee that a review of the disclosure will be undertaken by or under the direction of the chief executive.
- 5.7. Supervisors should direct any questions about PIDA or their responsibilities, to the designated officer or the Manitoba Ombudsman and not to human resources.

--PART 6--DESIGNATED OFFICERS

PROCEDURES FOR MANAGING AND INVESTIGATING DISCLOSURES OF WRONGDOING

Assessment of disclosure by a designated officer

- 6.1. A designated officer who receives a disclosure from an employee or from a supervisor must assess the disclosure and take the appropriate action. Disclosures containing allegations of serious, imminent danger or risk must be acted upon immediately in accordance with section 14 (1) of PIDA. (See section 3.10)
- 6.2. The designated officer must acknowledge receipt of the disclosure made by the employee within 5 business days. The designated officer must determine how the disclosing employee wishes to receive communication and respect the wishes of the employee.
- 6.3. Relevant verbal communication should be documented and stored in a confidential manner.
- 6.4. The designated officer must determine whether a disclosure pertains to the public body of the employee who made the disclosure. If the designated officer determines that the disclosure relates to another public body, the designated officer must refer the matter to the designated officer of that public body.
- 6.5. Within 4 weeks, the designated officer must decide if an investigation is required, and notify the employee who made the disclosure of the decision and rationale.

Investigating disclosures of wrongdoing

- 6.6. The purpose of an investigation into a disclosure of wrongdoing is to bring the wrongdoing to the attention of the appropriate public body and to recommend corrective measures.
- 6.7. A designated officer must conduct an investigation in accordance with the procedures established by the chief executive. An investigation is to be conducted as informally and quickly as possible.
- 6.8. The designated officer may decide **not** to investigate a disclosure, or may cease an investigation, if he or she is of the opinion that
 - a. the subject matter of the disclosure could more appropriately be dealt with, initially or completely, according to a procedure provided for under another Act
 - b. the disclosure is frivolous or vexatious, or has not been made in good faith

- c. so much time has elapsed between the date, when the subject matter of the disclosure arose and the date when the disclosure was made that investigating it would not serve a useful purpose
 - d. the disclosure relates to a matter that results from a decision-making process on a public policy or operational issue
 - e. the disclosure does not provide adequate particulars about the wrongdoing as required by section 12 of PIDA
 - f. the disclosure relates to a matter that could more appropriately be dealt with according to the procedures under a collective agreement or employment agreement
 - g. if there is another valid reason for not investigating the disclosure
- 6.9. A decision not to investigate and the rationale must be communicated to the person who made the disclosure.
- 6.10. The designated officer will notify the chief executive prior to initiating an investigation into a disclosure of wrongdoing. The designated officer must ensure any information provided to the chief executive protects all identities and is managed in a confidential manner.
- 6.11. The designated officer may consult with the chief executive, the Manitoba Ombudsman and any other person considered necessary for the purposes of the investigation. This includes arranging for legal advice to further the purposes of PIDA.
- 6.12. The designated officer may require an employee to provide information or record(s) and give written or oral replies to questions, for the purpose of an investigation.
- 6.13. If during an investigation the designated officer has reason to believe that another wrongdoing has been committed or may be committed, the designated officer may investigate the wrongdoing and notify the chief executive.
- 6.14. If more than one disclosure of wrongdoing is received by a designated officer with respect to the same matter, a single investigation may be conducted rather than a separate investigation.
- 6.15. The designated officer must conclude an investigation within a suitable timeframe that is consistent with procedural fairness and natural justice.
- 6.16. Procedural fairness and natural justice principles must be upheld at all times. The disclosing employee, the alleged wrongdoer and the chief executive must be advised of the outcome within the same timeframe. The chief executive may extend the original timeframe to complete the investigation where necessary. Please see Part 7 for more information on procedural fairness.

- 6.17. In conducting investigations, designated officers should strive to maintain balance between timeframes and procedural fairness.
- 6.18. If a timeframe is extended, the designated officer will maintain ongoing communication with the disclosing employee regarding the status of the investigation.
- 6.19. At the conclusion of an investigation, the designated officer must prepare a report outlining the allegations investigated, whether the investigation found wrongdoing and recommendations for corrective measures. The chief executive must be provided with a copy of the report.
- 6.20. The designated officer must inform the employee who made the disclosure, the results of the investigation. The designated officer may do so in a manner and at a time considered appropriate. The designated officer must provide as much information as possible while ensuring confidentiality.

Referring disclosures of wrongdoing

- 6.21. The designated officer may refer a disclosure of wrongdoing to an alternate authority, including the Manitoba Ombudsman. Factors in considering whether to refer a disclosure of wrongdoing include:
 - a. Whether the subject matter of the disclosure would more appropriately be dealt with by another authority (Related to another department)
 - b. The complexity of the subject matter of the disclosure
 - c. Whether a perceived conflict of interest may exist
 - d. If the subject matter pertains to an individual that supersedes the hierarchal position of the designated officer
- 6.22. As a result of an employee seeking advice or the receipt, review or investigation of a disclosure, the designated officer may become aware of a situation that is not a wrongdoing under PIDA, but requires attention. In said situations, designated officers are responsible to take the appropriate action to ensure the matter is addressed. This responsibility may arise under an Act, policy or a public service responsibility.

PART 7--PROCEDURAL FAIRNESS, NATURAL JUSTICE, AND CONFIDENTIALITY

Ensuring procedural fairness and natural justice

- 7.1. Disclosures of wrongdoing are investigated in accordance with the principles of procedural fairness and natural justice. For example, the alleged wrongdoer has the right to know the nature of the disclosure, receive relevant information as required, and be given an opportunity to respond to the disclosure.
- 7.2. If wrongdoing is found, the respondent and alleged wrongdoer must be provided the opportunity to make representations prior to finalizing the report. This may be done through legal counsel.
- 7.3. The designated officer must recuse themselves from an investigation where they believe they are in a conflict of interest, or when they believe a bias exists. The chief executive may appoint an alternate individual to function as the designated officer, or may refer the matter to an alternate authority.
- 7.4. The parties involved also have the right to have the matter reviewed and determined by an impartial, unbiased decision-maker. If the designated officer is aware or becomes aware of any actual, potential, or perceived conflict of interest or bias, they should refer the matter immediately to their chief executive, or if this is not possible, to Manitoba Ombudsman.

Protecting confidentiality

- 7.5. Subject to the principle of procedural fairness, the designated officer must ensure the confidentiality of the information collected and must protect the identity of the persons involved in the disclosure process, including the disclosing employee, any witnesses and the alleged wrongdoer(s), to the fullest extent possible.
- 7.6. Information that comes to a person's attention or knowledge through the performance of their duties under PIDA, must be protected and must not be disclosed except as required under PIDA or another Act.
- 7.7. Disclosure files (electronic or hard copies) must be treated in a confidential manner, maintained in a secure location, and protected from unauthorized access.
- 7.8. Maintaining confidentiality and procedural fairness, provides reassurance to disclosing employees and witnesses when coming forward with information.
- 7.9. With respect to the alleged wrongdoer(s), maintaining confidentiality is important given that allegations are untested until an investigation is complete.

- 7.10. There may be situations where an individual's identity will need to be disclosed to test the credibility of allegations. Disclosing the identities of employees, witnesses, or alleged wrongdoer(s) should only occur when there is no other way to test the allegations. The individuals involved must be advised in advance if this becomes necessary.
- 7.11. The focus shall remain on detection and remedy of wrongdoing and not on the identity of the discloser or the alleged wrongdoer(s).

--PART 8-- ANNUAL REPORTING REQUIREMENTS

- 8.1. A chief executive must prepare, on an annual basis, a report on any disclosures of wrongdoing that were made to a supervisor or designated officer of the public body for which the chief executive is responsible.
- 8.2. The report must include the following information:
 - a. the number of disclosures received, acted on and not acted on
 - b. the number of investigations commenced as a result of a disclosure
 - c. in the case of an investigation that results in a finding of wrongdoing,
 - (i) a description of the wrongdoing
 - (ii) any recommendations or corrective actions taken in relation to the wrongdoing
 - (ii) the reasons why no corrective action was taken.
- 8.3. The chief executive will not publicly identify an employee who requested advice, made a disclosure of wrongdoing or complaint of reprisal, or publicly disclose identifying information within the annual report.
- 8.4. The report must be included in the annual report of the public body, if the annual report is publicly available. Otherwise, the chief executive must make the report available to the public on request.

---DEFINITIONS under The Public Interest Disclosure (Whistleblower Protection) Act

Chief Executive: means

- (a) In relation to a department, the deputy minister of that department;
- (b) In relation to an office, the officer of the Legislative Assembly in charge of the office;
- (c) In relation to a school division or a school district, the superintendent of the division or district or,
- (d) In relation to a municipality, the chief administrative officer of the municipality;
- (e) In relation to a local government district, the resident administrator of the district; and
- (f) In relation to any other government body, the chief executive officer of the body.

Department: means department of the government.

Designated Officer: means the senior official designated to receive and deal with disclosures under this Act.

Disclosure: means a disclosure made in good faith by an employee in accordance with this Act.

Employee: means an employee or officer of a department, government body or office.

Government body: means

- (a) a government agency as defined in The Financial Administration Act;
- (b) a regional health authority established or continued under The Regional Health Authorities Act;
- (c) a child and family services agency incorporated under The Child and Family Services Act;
- (d) a Child and Family Services Authority established under The Child and Family Services Authority Act;
- (e) a school division or a school district;
- (f) a municipality that is designated in the regulations as a government body for the purposes of this Act;
- (g) a local government district that is designated in the regulations as a government body for the purposes of this Act; and
- (h) any other body designated as a government body in the regulations.

Public Body: means

- (a) a department
- (b) a government body; and
- (c) an office.

Reprisal: means any of the following measures 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 this Act;

- (a) A disciplinary measure
- (b) A demotion
- (c) Termination of employment
- (d) Any measure that adversely affects his or her employment or working conditions
- (e) A threat to take any of the measures referred to in the clauses (a) to (d)

Wrongdoing: means

- (a) an act or omission constituting an offence under an Act of the Legislature or the Parliament of Canada, or a regulation made under an Act;
- (b) an act or omission that creates a substantial danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of an employee;
- (c) gross mismanagement, including of public funds or a public asset;
- (d) knowingly directing or counselling a person to commit a wrongdoing described in clauses (a) to (c)