



**Environmental Appeal Board
Forest Appeals Commission
Oil and Gas Appeal Tribunal**

Public Interest Disclosure Act

Procedures

March 31, 2022

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Introduction

Overview

Section 9 of the *Public Interest Disclosure Act (PIDA)* requires the chief executive of a government body to create procedures to handle disclosures submitted under *PIDA*. The following procedures fulfill that requirement for the Chair of the Environmental Appeal Board, the Forest Appeals Commission, and the Oil and Gas Appeal Tribunal.

The Ombudsperson has distinct *PIDA* procedures. Employees requesting advice or reporting wrongdoing to the Ombudsperson should contact them for more information.

There are also other boards and tribunals for which employees of the Environmental Appeal Board provide services and make decisions. These boards and tribunals are: the Community Care and Assisted Living Appeal Board, the Health Professions Review Board, the Hospital Appeal Board, the Financial Services Tribunal, and the Industry Training Appeal Board. These boards and tribunals are covered by *PIDA*, but operate under different processes. Please contact the relevant board or tribunal for more information.

Employees and former employees of the Board may disclose to the Environmental Appeal Board, wrongdoing done by anyone in, or relating to, any ministry, government body, or government office. Any such disclosures related to ministries, government bodies, or government offices other than the Environmental Appeal Board, Forest Appeals Commission, and Oil and Gas Appeal Tribunal will be referred to an appropriate authority, as described in these procedures.

Scope

These procedures apply to disclosures received under *PIDA* from employees and former employees of the Environmental Appeal Board, Forest Appeals Commission, and Oil and Gas Appeal Tribunal, and to referred disclosures from the Ombudsperson or a Designated Officer.

Accessibility Statement

The Environmental Appeal Board, Forest Appeals Commission, and Oil and Gas Appeal Tribunal support accessibility in its policies, procedures, and tools. These bodies:

- are committed to ensuring all employees and former employees are able to access the *PIDA*-related policies, procedures, and tools;
- strive to keep abreast of legal developments related to accessibility; and

- aim to equalize power-relations to ensure fair investigations and outcomes, and to continuously improve our accessibility.

Definitions

“Boards” means the Environmental Appeal Board, Forest Appeals Commission, and Oil and Gas Appeal Tribunal.

“Chair” means the Chair of the Boards.

“Designated Officer” means a senior official of the Boards that the Chair has designated to receive requests for advice under *PIDA*, receive disclosures under *PIDA*, or investigate disclosures under *PIDA*. Depending on the nature of the designation, each Designated Officer is either an Information Officer or an Investigation Officer.

“Discloser” means an employee or former employee of the Boards who makes a disclosure of wrongdoing or seeks advice about making a disclosure under *PIDA*.

“Disclosure” means a disclosure made by a discloser in accordance with *PIDA*.

“Employee” means an employee of the Boards and includes former employees.

“Information Officer” means a Designated Officer who has been designated to receive requests for advice under *PIDA*.

“Investigation Officer” means a Designated Officer who has been designated to receive and investigate disclosures under *PIDA*.

“Protected Acts” means seeking advice about making a disclosure, making a disclosure, or cooperating with a *PIDA* investigation.

“Public Body” means a ministry, office or government body as defined in *PIDA*.

“Reprisal” means reprisal as defined in section 31(1) of *PIDA*.

“Respondent” means a person alleged or found to have committed wrongdoing.

“Wrongdoing” means wrongdoing as defined in section 7(1) of *PIDA*.

Disclosure Procedures

Designated Officers

1. The Chair designates the following Designated Officers:
 - a) the General Counsel of the Boards, as the Investigation Officer; and
 - b) the Chair; the Vice Chair, Service Delivery; and the Director, Supported Boards as Information Officers.
2. The General Counsel may delegate their authority to staff or a contractor to assess and investigate disclosures at their discretion and as required in the circumstances.

Requests for Advice

3. An employee who is considering making a disclosure under *PIDA* may seek advice about doing so from:
 - (a) their union representative or employee association representative;
 - (b) a lawyer;
 - (c) their supervisor;
 - (d) the Information Officers; or
 - (e) the Ombudsperson.
4. The supervisor or Information Officer may require the employee to make the request for advice in writing.¹
5. Supervisors and the Information Officer will document all requests for advice received under *PIDA*, and maintain a written record of the advice provided.
6. Supervisors and the Information Officer are to clarify that a request for advice is being made under *PIDA* in cases where there is ambiguity.
7. Employees may wish to specify that they are requesting advice under *PIDA*.
8. Employees who seek advice from the people set out above are protected from reprisal under *PIDA*. No person can adversely affect a person's employment or

¹ *PIDA*, s. 11.

working conditions because the employee sought advice about making a disclosure.

9. This protection applies whether or not the employee decides to make a disclosure.

Making a Disclosure

10. Employees can report allegations of wrongdoing under *PIDA* by making a disclosure to their supervisor, the Investigation Officer or the Ombudsperson. Allegations made to other persons are not covered by *PIDA*. In limited circumstances, employees may make public disclosures: see paragraphs 23-28.
11. Employees can make disclosures of wrongdoing as defined in section 7(1) of *PIDA*, which says:

This Act applies to the following wrongdoings in or relating to a ministry, government body or office, including wrongdoings that occurred before the coming into force of this Act:

- (a) a serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada;
 - (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 an employee's duties or functions;
 - (c) a serious misuse of public funds or public assets;
 - (d) gross or systemic mismanagement;
 - (e) knowingly directing or counselling a person to commit a wrongdoing.
12. Employees can make disclosures, in good faith, about wrongdoings that they reasonably believe have occurred or are about to occur. Employees can make disclosures about wrongdoings that occurred before *PIDA* was in force, as long as the wrongdoing occurred during their employment, or the employee learned of the wrongdoing during their employment.

If an employee makes a disclosure to their supervisor, the supervisor must forward it to the Investigation Officer as soon as possible. If the Investigation Officer is the subject of the allegations, the supervisor may suggest the disclosure be submitted to the Ombudsperson.

13. Employees who wish to make a disclosure must do so in writing. Employees are encouraged to use the **Disclosure Form**.² Disclosures must include the following information, if known:
- (a) A description of the wrongdoing;
 - (b) The name(s) of the person alleged
 - (i) to have committed the wrongdoing, or
 - (ii) to be about to commit the wrongdoing;
 - (c) the date(s) of the wrongdoing;
 - (d) whether the information or conduct that is being disclosed relates to an obligation under another enactment and, if so, a reference to the enactment;
 - (e) whether the wrongdoing has already been disclosed under *PIDA* or another enactment;
 - (f) if paragraph (e) applies, the name of the person to whom the disclosure was made and the response, if any, that has been received.³
14. Employees can also make disclosures to their supervisor or the Investigation Officer by email or mail. Employees are encouraged to note that they are making a public interest disclosure and to ensure that their disclosure includes the required information.
15. If an initial disclosure is not made in writing, the supervisor or Investigation Officer will assist the employee to document their disclosure using the Disclosure Form.

Anonymous Disclosures

16. Employees who wish to make a disclosure may do so anonymously. However, an anonymous disclosure cannot be considered if the Investigation Officer cannot determine whether the discloser is an employee or former employee of the Boards.
17. The Investigation Officer will consider anonymous disclosures only where they reasonably believe that the discloser is an employee or former employee.
18. Anonymous disclosers should ensure that they have provided enough details about the allegations to allow the Investigation Officer to assess whether an investigation is called for under *PIDA*. Anonymous disclosers should consider providing contact

² Appendix A .

³ *PIDA*, s. 15.

information so that the Investigation Officer can follow up to obtain more information about the disclosure as needed.

19. Employees are encouraged to bring forward their disclosures and to identify themselves in doing so. Investigation Officers will inform anonymous disclosers that:

- they will only share the discloser's identity with their express permission or for a lawful purpose;
- remaining anonymous does not mean that their employer or colleagues will not suspect who made the disclosure;
- *PIDA* provides protection from reprisal for disclosers, and the Chair does not tolerate retaliation against disclosers;
- without knowing the identity of the discloser, the Investigation Officer cannot conduct a reprisal risk assessment or take measures to mitigate any risk of reprisal to the discloser;
- if the anonymous discloser does not provide their contact information, the Investigation Officer may not have sufficient information to assess their disclosure; and
- anonymous disclosers may not receive information about the conduct of any investigation into the disclosure, including any summary of the results.

20. If the Investigation Officer is unable to establish that an employee made the disclosure, the Investigation Officer will close the file.

Multiple Disclosers

21. If multiple disclosers come forward at the same time regarding the same alleged wrongdoing, the Investigation Officer may assess and investigate the disclosures together as a single matter.

22. The fact that multiple disclosers have come forward about the same alleged wrongdoing will not be shared with the other disclosers. Each discloser will have protections from reprisal under *PIDA* and will be interviewed separately.

Public Disclosures

23. Section 16 of *PIDA* provides that an employee may make a public disclosure where they "reasonably believe that a matter constitutes an imminent risk of a substantial

and specific danger to the life, health or safety of persons, or to the environment.”⁴ An employee must take the following steps prior to making an urgent public disclosure:

- (a) consult the relevant protection official, as follows:
 - in respect of a health-related matter, the Provincial Health Officer;
 - in respect of an environmental matter, Emergency Management BC; and
 - in any other case, the appropriate police force;
- (b) receive direction from the protection official about whether to make the disclosure, and if so, on what conditions; and
- (c) where the protection official approves the disclosure, make the disclosure in accordance with any conditions the protection official imposes.

24. There are a number of limits on the kind of information that an employee can share when making a public disclosure. Employees must not share information that is subject to a restriction under an enactment of BC or Canada. This means employees must not share information that they are prohibited from sharing under a statutory oath or any statute or other regulation.

25. In addition, *PIDA* does not authorize the release of information in a public disclosure that is:

- protected by solicitor-client privilege
- protected by any common law rule of privilege, or
- subject to public interest immunity, including cabinet privilege.

26. If the protection official directs the employee not to make the disclosure public, the employee must not make it public. The protections for employees in *PIDA* may not apply to employees who do not follow the protection official's advice.

27. Immediately after making the disclosure public, the employee must advise their supervisor or the Investigation Officer about the public disclosure and then make the disclosure to their supervisor, Designated Officer or the Ombudsperson.

28. If the Investigation Officer investigates a disclosure following a public disclosure, they will contact the protection official to gather information regarding the steps

⁴ *PIDA*, s. 16(2).

that the protection official has taken in response to the subject matter of the disclosure. The Investigation Officer will consider the information obtained when assessing whether further investigation is warranted.

Reprisal

29. Reprisal is prohibited under *PIDA*. Reprisal is defined in section 31(1) of *PIDA* as follows:

31 (1) A person must not take any of the following measures of reprisal against an employee, or counsel or direct that any of the following measures of reprisal be taken against an employee, by reason that the employee has, in good faith, sought advice about making a disclosure, made a disclosure or cooperated with an investigation under this Act:

- (a) a disciplinary measure;
- (b) a demotion;
- (c) a termination of employment;
- (d) any measure that adversely affects the employee's employment or working conditions;
- (e) a threat to take any of the measures referred to in paragraphs (a) to (d).

30. Employees are protected from reprisal when they engage in any of the Protected Acts.

31. Employees are protected from any person taking an adverse measure against them which impacts their employment because they did a Protected Act under *PIDA*. An adverse measure can include termination, suspension and demotion, as well as subtler measures like bullying, ostracizing or a workplace transfer.

32. No person can take a reprisal against an employee, including supervisors, co-workers, senior executive or alleged wrongdoers.

33. The Ombudsperson is responsible for investigating complaints of reprisal from public bodies under *PIDA*'s jurisdiction. If an employee believes that a reprisal has been taken against them, they may contact the Ombudsperson's office to make a complaint.

Assessment Procedures

34. The Investigation Officer is responsible for receiving disclosures and assessing whether they are made by an employee and meet the threshold for wrongdoing.
35. The Investigation Officer may receive a disclosure describing wrongdoing in or relating to any ministry, government body, or government office. Where the Investigation Officer receives disclosure of wrongdoing that is not in or related to the Environmental Appeal Board, Forest Appeals Commission, or Oil and Gas Appeal Tribunal, the Investigation Officer will refer the disclosure to either the Designated Officer of the relevant , or to the Ombudsperson.
36. The Investigation Officer will conduct this initial assessment prior to determining whether an investigation is warranted.

Initial Interview

37. The Investigation Officer will confirm receipt of a disclosure to an employee within 3 business days. The Investigation Officer will conduct an initial interview with a discloser as soon as possible after receipt of a disclosure. The interview, and any subsequent interviews, will be conducted in a manner and place that maintains the confidentiality of the identity of the discloser.
38. The purpose of the interview is to gather more information about the nature of the disclosure and to assess whether it meets the threshold for wrongdoing. The interview also allows the Investigation Officer to determine how urgent the matter is, and to consider any risk of reprisal to the discloser.

Risk Assessments

39. The Investigation Officer is responsible for conducting two types of risk assessments: an urgency assessment and a reprisal risk assessment. Both assessments will be conducted as soon as is reasonably possible. The assessments are then conducted throughout the life of a file, but in particular, as new information is received indicating the presence of a risk or when the file moves to a new phase (from assessment, to investigation, to reporting).

Urgency Assessment

40. The Investigation Officer will assess whether the disclosure raises a matter which requires an urgent response. Urgent responses may be required where the subject matter of the disclosure indicates a serious risk to life, public health or safety, or the environment. This includes disclosures made following an urgent public disclosure unless information indicates that any serious risk has already been addressed. An urgent response may also be required where:

- the alleged wrongdoing has not occurred and there is an opportunity to intervene before it occurs;
- there is a high risk that evidence will be lost or destroyed;
- there is an imminent risk of significant financial harm; or
- there is a high risk of reprisal for the discloser (see Reprisal Risk Assessment Tool⁵).

41. Where a matter poses a risk of significant harm to the environment or the health or safety of persons, the Designated Officer will consider whether the public interest reporting provision in section 25 of the *Freedom of Information and Protection of Privacy Act* may be applicable. Where the Investigation Officer believes section 25 may apply, the Investigation Officer will consult the Chair.

Reprisal Risk Assessment

42. Employees are protected from reprisal under *PIDA* for doing any of the Protected Acts.

43. The Investigation Officer must conduct a reprisal risk assessment when they receive a disclosure. The reprisal risk assessment is intended to ensure any risks of reprisal are identified and managed as much as possible.

44. The Investigation Officer will use the **Reprisal Risk Assessment Tool**⁶ for more information about when and how to assess the risk of reprisal and how to manage that risk.

⁵ See Appendix B.

⁶ See Appendix B.

Gathering Information

45. The Investigation Officer is responsible for reviewing the employee's disclosure form or other written submission to ensure it meets the content requirements in section 15 of *PIDA*.
46. If the content requirements are not met, the Investigation Officer will identify the information that is outstanding and ask the discloser to provide that additional information, if known. See **Practice Directive: Interpreting Wrongdoing**⁷ for the type of information needed to complete an assessment.
47. If the employee makes their disclosure verbally, the Investigation Officer will require the employee to follow-up with a written disclosure, as described in paragraph 15, above.

Assessing the Disclosure

48. The Investigation Officer will assess the disclosure to confirm the following:
 - a. the discloser is an employee or former employee⁸ of the Boards;
 - b. the alleged wrongdoing occurred in or relating to a public body;
 - c. the allegations meet the threshold of wrongdoing for at least one of sections 7(1)(a) to (e); and
 - d. the disclosure is in writing and contents of the disclosure meet the requirements of section 15.
49. In determining whether the allegations meet the threshold for wrongdoing, the Investigation Officer should consult **Practice Directive: Interpreting Wrongdoing**⁹, which sets out the test and considerations for each type of wrongdoing.
50. If the Investigation Officer determines that the allegations, if proven, would meet the threshold of wrongdoing, the Investigation Officer will also consider whether there is a reasonable basis to support an investigation. The Investigation Officer will assess whether the discloser has provided some evidence that could support a

⁷ See Appendix C.

⁸ If the employee is a former employee, the alleged wrongdoing must have occurred or been discovered during the employee's employment: *PIDA*, s. 2(a)(ii).

⁹ See Appendix C.

conclusion that the alleged wrongdoing occurred. Mere speculation on the part of the discloser without any evidentiary support is not enough.

Deciding Whether to Investigate

51. Once the assessment of a disclosure is complete, the Investigation Officer must determine whether or not to investigate. The Investigation Officer will decide whether to investigate within 30 days of receipt of the disclosure.
52. If the Investigation Officer concludes that the assessment will require more than 30 days, they will notify the Chair of the disclosure, the delay, the reasons for the delay, and the expected date on which the assessment will be complete and a decision made as to whether to investigate.

No Investigation

53. If the disclosure is not made by an employee or former employee, or if the wrongdoing alleged does not relate to a public body, the Investigation Officer must refuse to investigate under *PIDA*.
54. If the disclosure does not meet the threshold for wrongdoing under section 7, or there is no reasonable basis to support an investigation, the Investigation Officer must refuse to investigate under *PIDA*.
55. Where the disclosure meets the assessment criteria, the Investigation Officer must consider whether they are prohibited from investigating under *PIDA*.¹⁰
56. The Investigation Officer is prohibited from investigating if the disclosure relates primarily to:
 - (a) a dispute between an employee and the Boards respecting their employment;
 - (b) a matter relating to law enforcement;
 - (c) a matter relating to the prosecution of an offence; or
 - (d) the exercise of an adjudicative function of a court, tribunal or other statutory decision maker, including a decision, or the processes or deliberations that have led to or may lead to a decision, by the court, tribunal or other statutory decision maker.

¹⁰ *PIDA*, s. 9(2)(g)(ii).

57. If the Investigation Officer determines they are not prohibited from investigating, they will consider whether they should exercise their discretion to refuse to investigate based on whether¹¹:

- (a) the disclosure provides sufficient details or particulars about the wrongdoing;
- (b) the disclosure is frivolous or vexatious;
- (c) the disclosure was made in good faith;
- (d) the investigation of the disclosure would serve a useful purpose, including whether it could reasonably be completed given the length of time between the reported wrongdoing and the date of the disclosure;
- (e) the disclosure relates solely to a public policy decision;
- (f) the disclosure has been referred to another appropriate authority for investigation; and
- (g) the disclosure has already been or is being appropriately investigated.

58. The Investigation Officer may seek additional sources of information when deciding whether to investigate.

59. The Investigation Officer will notify the discloser of a decision not to investigate the disclosure, and will provide reasons for their decision in writing. The Investigation Officer may recommend other mechanisms for addressing the discloser's concerns, if they are aware of any.

Referral to the Ombudsperson

60. Where the Investigation Officer determines that the disclosure is eligible for investigation under *PIDA*, the Investigation Officer will consider whether the disclosure, in whole or in part, would be more appropriately investigated by the Ombudsperson. In assessing whether to refer a disclosure to the Ombudsperson, the Investigation Officer will consider:

- the level and position of the alleged wrongdoer(s);
- potential conflicts of interest or perceptions of conflict;
- the likelihood of voluntary compliance of witnesses;
- whether the disclosure involves sensitive political or social issues;

¹¹ *PIDA*, s. 9(2)(g)(ii).

- implications to the public interest;
- the risk of reprisal to the discloser; and
- any other relevant factors that arise on the facts of the case.

61. The Investigation Officer will consult with the Chair before determining whether the investigation would be more appropriately completed by the Ombudsperson, unless the Chair is alleged to have done wrongdoing in the disclosure. After any required consultation, the Investigation Officer will decide whether to refer the investigation to the Ombudsperson.

62. The Investigation Officer will inform the discloser in writing of a referral to the Ombudsperson.

Report to Law Enforcement

63. If the Investigation Officer believes that an offence relating to a request for advice, a disclosure, or a reprisal complaint under *PIDA* may have been committed, they can refer the matter to a law enforcement agency. Such a report can be made regardless of whether the disclosure is meets the threshold for wrongdoing and whether the Investigation Officer decides to investigate the allegations. In deciding whether to make a report, the Investigation Officer will consider the seriousness of the allegations and whether the alleged offence may be a criminal offence.

64. The victim of any alleged offence will be consulted prior to a report being made, unless consultation poses health and/or safety concerns.

65. The Investigation Officer will not report an offence without first consulting the Chair, unless the Chair is implicated in the alleged offence.

66. The Investigation Officer will provide no more information to law enforcement than is necessary to make the report.

Postponing or Suspending an Investigation

67. The Investigation Officer may postpone or suspend an investigation if they:

- (a) report an alleged offence to law enforcement prior to, or during an investigation;
- (b) consider that investigation may compromise another investigation; or

- (c) become aware that the alleged wrongdoing being investigated is also being investigated in the prosecution of an offence.
68. The Investigation Officer must consult with the Chair before postponing or suspending an investigation, unless the Chair is implicated in the wrongdoing.
69. The Investigation Officer must notify the discloser of any decision to postpone or suspend an investigation, unless the Investigation Officer considers that the notification would compromise another investigation.

Investigation Procedures

70. If the Investigation Officer decides a disclosure warrants investigation under *PIDA*, the Investigation Officer must investigate in accordance with Part C of these procedures, and in accordance with the principles of procedural fairness and natural justice.

Notifying Parties

Notice to Discloser

71. The Investigation Officer must notify the discloser of the decision to investigate.¹² The notification may be brief and may be provided orally or in writing. The notification will include a description of the scope of the investigation. If only part of the disclosure will be investigated, the Investigation Officer will provide the discloser reasons for their decision not to investigate the rest of the disclosure.

Notice to Chair

72. Generally, the Investigation Officer will provide notice to the Chair of the decision to investigate. Notice may be delayed until an appropriate time if the Investigation Officer considers that notification may compromise the investigation or expose the discloser to reprisal.

¹² *PIDA*, s. 9(2)(g)(i).

73. If the Chair is alleged to be responsible for the wrongdoing, the Investigation Officer will notify the Deputy Attorney General or their delegate.

Notice to Respondents

74. The Investigation Officer will notify any respondents that their conduct is being investigated at an appropriate time, taking into account the need to protect the integrity of the investigation and the respondents' rights to procedural fairness. Respondents will in all cases receive notice of the allegations prior to being interviewed.

Requiring Another Body to Suspend or Postpone an Investigation

75. *PIDA* does not limit the authority of a public body to undertake other investigations while a Investigation Officer investigates a disclosure of wrongdoing. However, where there is, on first glance ("*prima facie*") evidence that a government body began a non-*PIDA* related investigation in order to compromise a different disclosure investigation under *PIDA*, the Investigation Officer may require that body to suspend or postpone its investigation.¹³

76. The Investigation Officer will not suspend or postpone another investigation without first consulting the Chair, except in circumstances where the Chair is implicated in the wrongdoing.

Maintaining Confidentiality

77. The Investigation Officer and supervisors may collect, use and disclose personal information for the purpose of *PIDA* where the personal information is included in a disclosure or is for the purpose of an investigation or report.

78. Information about the identity of the discloser is confidential. No person may share personal information about a discloser that could enable the identification of the discloser as the person who made the disclosure, unless:

- a) the information is being provided or used for the purposes of *PIDA*, including as necessary to effectively manage the disclosure in accordance with *PIDA* and the principles of natural justice and procedural fairness;
- b) the information is being provided or used in connection with another lawful purpose;

¹³ *PIDA*, s. 18.

- c) the discloser has given express consent, in writing, to the release or use of the personal information; or
- d) the personal information has previously been lawfully published.

79. Where necessary to effectively carry out an investigation, the Investigation Officer may share that the employee who made the disclosure was a witness and a source of evidence. Wherever possible, the Investigation Officer will not share or confirm that the employee made the disclosure.

80. The Investigation Officer will explain the confidentiality provisions in *PIDA* to the discloser.

81. Information and documents obtained in the disclosure process will be stored in a safe and secure manner and must be protected from unauthorized access, use and disclosure.

Obtaining Documentary and Written Evidence

82. The Investigation Officer will seek information in the order, format and fashion that they determine is most appropriate and effective. They may contact whomever is most appropriate to obtain records related to the allegations.

Conducting Interviews

General

83. Interviews of disclosers, respondents and witnesses will be conducted in the order and format (i.e. in-person, telephone or video) appropriate for the circumstances. Efforts should be made to accommodate the individual's preferences and accessibility needs.

84. Interviewees will be provided notice of an interview date, time and place along with the general nature of the interview. Interviews may be held outside the workplace as necessary to maintain confidentiality and the integrity of the investigation.

85. In some cases, it may be necessary for the Investigation Officer to provide the interviewee with copies of documents in advance of the interview, including where doing so will enhance the effectiveness of the interview and/or to accommodate the interviewee's needs.

86. The Investigation Officer will remind each witness of the prohibition in section 6(3) of *PIDA* and explain the prohibition against reprisal in section 31(1) of *PIDA*.

Respondent Interviews

87. Respondents are afforded a high level of procedural fairness. They must be provided notice that they are under investigation and the opportunity to respond to the allegations against them. If documents will be discussed in an interview with a respondent, the Investigation Officer will consider providing advance opportunity for the respondent to review the documents unless they have reason to believe that doing so could compromise the investigation.

88. If, during an interview of a witness, the Investigation Officer receives information that raises concerns that the witness may be implicated in a wrongdoing, they must stop the interview and inform the person of this concern. The person will then be treated as a respondent and provided the same level of procedural fairness provided to all respondents. The interview will be rescheduled to allow sufficient time for the person to prepare for the interview and seek advice should they choose.

Presence of Third Parties

89. Interviewees are permitted to have a support person present during the interview, such as a family member or friend. Requests for the attendance of a union representative or lawyer will be considered on a case by case basis.

90. Interviewees must obtain permission for any third party to attend at least 5 days in advance of the scheduled interview. Third parties may not be permitted in an interview in the following circumstances:

- they are a witness or respondent in the investigation;
- they were not requested by the interviewee to attend;
- they did not receive permission to attend; or
- their presence would present a conflict of interest or jeopardize the integrity of the investigation.

Investigating Other Wrongoings

91. If, during an investigation, the Investigation Officer reasonably believes that another wrongdoing has been committed, the Investigation Officer may investigate

that wrongdoing.¹⁴ The same policies and procedures that apply to disclosures, with necessary modifications, will apply to other potential wrongdoings identified during the course of an investigation.

Discontinuing an Investigation

92. At any time after an investigation has commenced, the Investigation Officer may discontinue an investigation for the reasons set out in paragraphs 55-56 above. If the Investigation Officer decides not to complete an investigation after it has begun, they must notify the discloser, in writing, with reasons.

Timelines

93. Investigations will be completed and a draft report prepared within six months from the decision to investigate. If the Investigation Officer concludes that the investigation will require more than six months to complete, they must notify the Chair of the delay, the reasons for the delay, and the expected date on which the investigation will be completed.

¹⁴ *PIDA* s. 9(2)(h).

Reporting Procedures

Draft Investigation Report

94. After gathering, reviewing and analyzing the evidence, the Investigation Officer will prepare a draft investigation report. The report will include the allegations, applicable laws and policies, evidence, analysis, findings and any recommendations to address findings of wrongdoing, as applicable.
95. Recommendations may be developed through a consultative process between the Investigation Officer and the Chair.

Draft Report to Person(s) Adversely Affected

96. In accordance with the principles of procedural fairness, the Investigation Officer will provide all those who may be adversely affected by any findings or recommendations in the investigation report with the opportunity to make representations before the draft investigation report is finalized. Representations may be provided orally or in writing.
97. Generally, the Chair, any respondents and other individuals who may be adversely impacted by the investigation report will be provided the opportunity to make representations. The Investigation Officer may provide a copy of the draft report, excerpts of the report, or a summary of evidence and findings as the context requires.
98. The Investigation Officer will review and consider all representations received before finalizing the investigation report.

Final Reports

1. The final investigation report will be provided to the Chair, unless they are implicated in founded wrongdoing. If the Chair is implicated in founded wrongdoing, the report will be provided to the Deputy Attorney General.
2. The final investigation report must include:
 - (a) the findings;
 - (b) the reasons to support the findings; and
 - (c) any recommendations.

3. The Chair will consider the findings and recommendations and take corrective measures to remedy the wrongdoing and any other deficiencies identified in the report. Where the Chair declines to take corrective measures, they will set out the reasons for declining to do so in the annual report.¹⁵
4. The Investigation Officer will provide a summary of the investigation report to the discloser. Where practicable, the Investigation Officer will also provide a summary of the report to any person alleged or found to be responsible for wrongdoing. The kind of information and level of detail contained in the summary will be decided by the Investigation Officer in consultation with the Chair, on a case-by-case basis.

Annual Reporting

5. The Chair, or delegate, will report annually on any disclosures of wrongdoing received and investigated with respect to the Boards. This report may be included in the Board's Annual Report. If no disclosure of wrongdoing is received, no annual report on disclosures of wrongdoing is required. If an annual report on disclosures of wrongdoing is prepared, it must include:
 - (a) the number of disclosures received, including referrals of disclosures, and the number 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, including those made by the Ombudsperson, and
 - (iii) any corrective action taken in relation to the wrongdoing or the reasons why no corrective action was taken;
 - (d) any other information prescribed by regulation.¹⁶
6. If an annual report on disclosures of wrongdoing is prepared, it must not include any information that would:
 - (a) identify the discloser;
 - (b) identify a respondent; or
 - (c) unreasonably invade a person's privacy.¹⁷

¹⁵ *PIDA*, s. 38(2)(c)(iii).

¹⁶ *PIDA*, s. 38(2).

¹⁷ *PIDA*, s. 38(4).

7. Any annual report on disclosures of wrongdoing that is prepared will be made publicly available on the Boards' websites.¹⁸

Appendix A: Disclosure of Wrongdoing Form

The *Public Interest Disclosure Act* allows current and former employees of the Boards to report allegations of serious or systemic wrongdoing to their supervisor, the Investigation Officer, or to the Office of the Ombudsperson.

The Investigation Officer will use the information provided when assessing whether to investigate your report. Please provide as much detail as possible. If you need help completing this form, please contact your supervisor or Investigation Officer.

Contact Information

Name: _____ Pronouns: _____
Address: _____
Telephone: _____ Email: _____
Preferred contact method: _____ Preferred contact time: _____
May we leave a voice message? _____

Important: Reports under the Act may be made anonymously, but we may not be able to investigate without obtaining more information from you.

Employment Information

1. Are you a current or former employee of the Boards?

- I am a current employee
- I worked there from _____ to _____

Description of the wrongdoing

The *Public Interest Disclosure Act* applies to the following kinds of wrongdoing:

- a serious act or failure to act that, if proven, would constitute an offence under an enactment of British Columbia or Canada;

¹⁸ PIDA, s. 39.

- an act or failure to act 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 an employee's duties or functions;
- a serious misuse of public funds or public assets;
- gross or systemic mismanagement; and
- knowingly directing or counselling a person to commit a wrongdoing described above.

2. **Please describe your concerns**, keeping in mind how wrongdoing is defined, above. Explain how you learned about the wrongdoing and provide as much detail about the specific allegations as possible, including:

- where the wrongdoing happened or is likely to happen;
- who committed or is about to commit wrongdoing (name, title and contact information);
- when the wrongdoing occurred or is expected to occur; and
- please identify any applicable laws, Acts, Regulations or policies that may apply in relation to the wrongdoing.

3. Have you already reported the wrongdoing to anyone in the organization or to an external party? Please describe who you reported to, when, and their response.

4. Do you know of any other organization that is addressing these allegations? Please provide details.

5. Do you consider the matter urgent? If so, please explain why.

Evidence

6. Please attach any documents, records, correspondence, recordings or other evidence that you have in your possession that support the allegations of wrongdoing.

Declaration

- I have provided this information in good faith and on the reasonable belief that it could show a wrongdoing has been or is about to be committed.

Date

Signature

Appendix B: Reprisal Risk Assessment Tool

Purpose

This tool was created to help the Investigation Officer understand the nature of reprisal, identify reprisal risks, develop suitable mitigation strategies, and implement a plan to reduce the risk of reprisal to the discloser.

Understanding Reprisal

Reprisal is defined under section 31(1) of *PIDA*. Reprisal occurs when a person adversely impacts, or threatens to adversely impact, another person's employment or working conditions because they made a disclosure, sought advice under *PIDA* or cooperated with a *PIDA* investigation.

Reprisal can come in many forms and is not always a single high-profile event such as termination or demotion. It can be covert and informal and may come from colleagues as well as superiors. The most common types of reprisal include threats, intimidation, discrimination, harassment, undermining of authority, heavier scrutiny of work, ostracism or exclusion, questioning of motives, unsafe or humiliating work, and being made to work with alleged wrongdoers.

When to Conduct a Reprisal Risk Assessment

Conduct a reprisal risk assessment at the following times:

- as soon as practicable after receiving a disclosure;
- before beginning an investigation, as part of the investigation planning process;
- as needed during the investigation; and
- before sharing the results of an investigation, even in draft form.

Reprisal may take place at any time. Therefore, ongoing reprisal risk assessments are necessary. There are three phases to a reprisal risk assessment.

Phase 1: Risk Analysis and Evaluation

Some factors make disclosers particularly vulnerable to reprisal, and should be accounted for in assessing the risk of reprisal:

- allegations are of particularly egregious wrongdoing, for example allegations of wrongdoing:
 - over a significant period of time,
 - by a person in a high position of influence,
 - against multiple people,
 - resulting in significant harm or financial loss, or
 - that includes discrimination, harassment, or violence;
- the identities of disclosers are, or could become, known, such as where:
 - the discloser has raised the same concerns previously,
 - confidential investigation of the disclosure is not possible,
 - the discloser can be easily identified due to the nature of the allegations, or
 - the discloser told someone they would be making a disclosure.

This factor applies, even if the discloser is anonymous.

- the disclosers are in vulnerable positions, for example where:
 - the discloser has expressed a fear of reprisal;
 - the respondent(s) has/have seniority over the disclosure or can easily affect the discloser's working conditions;
 - the discloser's performance has been or is being managed;
 - the discloser works part-time, as a contractor, and/or in isolation;
 - there are current or historical social or cultural inequities or power imbalances, including those based on gender, race, and sexual orientation, that may disadvantage the discloser and/or advantage the respondent(s);
 - there are insufficient supervisory arrangements for respondent(s) or others likely to commit a reprisal; or
 - allegations include discrimination, harassment, and/or violence.
- the respondent(s) or others are motivated to commit reprisals, such as where:
 - respondent(s) will likely experience adverse consequences as a result of the investigation;
 - the identity of the respondent(s) cannot remain confidential during the investigation;
 - respondent(s) will be removed from the organization during the investigation; or

- respondent(s) and the discloser have had a strained relationship previously; and
- there are other dynamics that suggest a potential for reprisal, such as where:
 - the discloser does not have a support network in the organization;
 - the discloser and respondent(s) socialize outside of work;
 - there is a history of conflict in the workplace that involves the discloser, the respondent(s), management and/or colleagues; or
 - there is a workplace culture that facilitates conflict, discrimination, or harassment.

Phase 2: Reprisal Risk Mitigation Strategies

Once the risk of reprisal has been evaluated, strategies can be used to minimize this risk during the investigation. Some strategies include:

- general strategies, such as:
 - keeping the identity of the discloser confidential;
 - developing a support strategy for the discloser and the respondent(s);
 - communicating at regular intervals with the discloser and the respondent(s);
 - proactively reinforcing *PIDA*'s prohibitions against reprisal with the respondent(s) and any person cooperating with an investigation;
 - where appropriate, delaying or limiting workplace awareness of the investigation, such as by collecting evidence after work hours;
 - consulting with the discloser about alternate work arrangements, such as changing reporting arrangements, work hours, or work locations;
 - delaying notification to the Chair of the Boards and/or the respondent(s) where natural justice permits;
 - carefully considering how and when to notify the respondent(s) of the allegations against them; and
 - ensuring disclosure is completed in an appropriate timeframe;
- interview strategies, such as:
 - assigning an alias ("Witness A", for example) for use on all documents that may be used during interviews, or may otherwise be in a public sphere, to avoid accidentally identifying the discloser;
 - including the discloser in the usual interview process, if it would be expected that everyone in the workplace would be interviewed; and

- not discussing the details of the allegations that may be known only to the discloser, except as necessary to conduct an effective and procedurally fair interview;
- counselling the discloser that they should:
 - only discuss any wrongdoing with the Designated Officer, a union representative (if applicable), or legal counsel, or seek confidential emotional support from a person, like a spouse, significant other, therapist or counsellor, or someone else in a position of trust;
 - ensure the means of communicating with the Designated Officer is private;
 - ensure they do not alert any respondent(s) about their disclosure;
 - only assist the Designated Officer when requested and should not seek out information or evidence on their own initiative; and
 - notify the Designated Officer immediately of any reprisal measure, threat of a reprisal measure, or suspicion that reprisals are occurring or have been threatened;
- counselling witnesses that:
 - the investigation is confidential and that they are not allowed to disclose any personal information that could allow disclosers to be identified,
 - they should not discuss their interview or their evidence with colleagues, and
 - PIDA's reprisal protection provisions and confidentiality provisions apply to witnesses;
- counselling the respondent(s) that they should:
 - only discuss the disclosure and alleged wrongdoing with the Designated Officer, union representative (as applicable), or legal counsel, or to seek emotional support on the disclosure and alleged wrongdoing from a support person; and
 - not take any adverse measures against any employees whom they know or suspect made the disclosure.

Phase 3: Risk Management Plan

After considering the strategies above, develop a plan to eliminate or minimize reprisal risks. The risk management plan should be customized according the particular circumstances and subject matter of the disclosure.

Consider what actions are appropriate, who will take these actions and when they will be executed. Mitigating multiple risks may require multiple actions.

Repeat the reprisal risk assessment and re-evaluate the risk management plan on an ongoing basis, as the risks and mitigation strategies may evolve over the course of an investigation.

Appendix C: Practice Directive – Interpreting Wrongdoing

This practice directive provides guidance to the Investigation Officer in interpreting the meaning of “wrongdoing” under the *Public Interest Disclosure Act*. The legislation that applies to disclosures of wrongdoing may change from time to time. In the case of a conflict with any applicable statute or regulation, the statute or regulation will override this practice directive.

Section 7(1) of *PIDA* defines wrongdoing as follows:

- 7(1)** This Act applies to the following wrongdoings in or relating to a ministry, government body or office, including wrongdoings that occurred before the coming into force of this Act:
- (a) a serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada;
 - (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 an employee's duties or functions;
 - (c) a serious misuse of public funds or public assets;
 - (d) gross or systemic mismanagement;
 - (e) knowingly directing or counselling a person to commit a wrongdoing described in paragraphs (a) to (d).

There are two main elements of wrongdoing under this definition:

- the act or omission must have occurred in or relating to a ministry, office or government body (“public bodies”), and
- the act or omission must meet the test for at least one type of wrongdoing.

Location of the wrongdoing

PIDA applies to wrongdoings “in or relating to” a public body. The term “relating to” speaks to a real and substantial connection between the wrongdoing and the public body.

Usually, an alleged wrongdoing will be clearly “in” a public body. However, where it is unclear and/or a relationship to a public body is alleged, the Investigation Officer will need to determine whether the wrongdoing relates to that public body. The test is whether there is a “real and substantial connection” between the wrongdoing and the public body.

This must be assessed in the specific context and facts, and in particular, on the nature of any relationship between the public body and other organization or actor and the nature of the alleged wrongdoing.

Factors that may assist in determining whether a wrongdoing occurred in relation to a public body include whether:

- the organization or actor is an agent, delegate or service provider of the public body or otherwise contracted to perform a function of the public body;
- the public body provided all or part of the organization's operating budget;
- the organization is required to adhere to the public body's administrative or ethical rules;
- the public body has control of or audit responsibilities over the organization;
- the nature of the wrongdoing relates to the public body's assets, programs, services or employees; and
- the wrongdoing was carried out in the course of exercising the public body's duty or authority.

Type of wrongdoing

An act or omission must also meet the test for at least one type of wrongdoing set out in section 7 to be considered a wrongdoing under *PIDA*. There are five types of wrongdoing and an act or omission may qualify as more than one type of wrongdoing.

Each type of wrongdoing is discussed in turn, below. The essential components of that type (or the test to be met) are described, as are some considerations that may assist the assessment of whether that type of wrongdoing was done.

Offences

Section 7(1)(a) of *PIDA* defines wrongdoing to include "a serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada."

When determining whether the act or omission is serious, consider:

- **intention:** whether the act or omission was deliberate, an abuse of power, discriminatory, done in bad faith, done for a malicious purpose, or done for personal gain;
- **gravity:** whether the act or omission was a marked departure from normally recognized and accepted standards of conduct or ethical obligations, and whether

it disproportionately impacted persons, communities, or groups that have been historically marginalized, such as Indigenous Peoples, people who are racialized, women, people who are LGBTQ2S+, and immigrants;

- **the position of the alleged wrongdoer:** whether the alleged wrongdoer is in a position with a high level of seniority, authority, responsibility, or trust, or benefitted from any imbalance in a power relationship; and
- **consequences:** whether the act or omission adversely impact:
 - the public body's employees,
 - those who use the public body's services,
 - others,
 - the public body's ability to carry out its mission, or
 - public trust in the public body.

Substantial and specific dangers

Section 7(1)(b) of *PIDA* states that wrongdoing is serious where it is “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 an employee's duties or functions.”

A substantial danger is a risk or situation that a similarly situated person or an ordinary person in the same context would reasonably consider to be serious in nature. It would likely result in a real harm to the life, health or safety of a person or persons. Consider:

- would the act or omission be reasonably likely to result in real harm to life, health or the safety of a person or persons, or to the environment; and
- what is the nature, level, or severity of that danger.

The danger is considered specific where it is clearly identifiable, and is an actual threat that has a reasonable expectation of occurrence within a foreseeable time. In addressing this, consider:

- what is the actual threat;
- who or what in particular is at risk;
- whether it reasonably likely to occur, and if so, when; and
- how, in particular, is the danger created or how did the harm occur.

When considering whether the danger is inherent in the performance of an employee's duties or functions, consider:

- what kind of danger is normally expected of, essential to, or characteristic of the job; and
- whether the danger is a marked departure from what is normally expected or from what normally occurs.

Serious misuse of public funds/assets

Section 7(1)(c) defines serious wrongdoing to include "a serious misuse of public funds or public assets".

When considering whether funds or assets were misused, consider how they were used and whether this was unauthorized or irregular, and what is normally expected or required in the circumstances.

When considering whether the misuse was serious, consider whether the misuse:

- was deliberate, an abuse of power, discriminatory, done in bad faith, done for a malicious purpose, or done for personal gain;
- was committed by a person in a position with a high level of seniority, authority, responsibility, or trust;
- was recurrent, frequent, or systemic;
- adversely affected:
 - the public body's employees,
 - those who use the public body's services,
 - others,
 - the public body's ability to carry out its mission, or
 - public trust in the public body; and
- involved a high dollar value or was otherwise significant, including whether it disproportionately impacted persons, communities, or groups that have been historically marginalized.

Gross /systemic mismanagement

Section 7(1)(d) of *PIDA* states that "gross or systemic mismanagement" qualifies as serious wrongdoing. This refers to the mismanagement of public resources, including contracts, projects, time, human resources, etc.

Mismanagement is considered “gross” where it is done to a high or serious degree, beyond ordinary mismanagement. Consider whether the mismanagement was:

- deliberate, aggressive, reckless, an abuse of power, unlawful, discriminatory, dishonest, or done in bad faith;
- done by someone in a position with a high level of seniority, authority, responsibility, or trust;
- for an improper purpose, such as personal gain or promoting of private interests;
- disproportionately impacted persons, communities, or groups that have been historically marginalized;
- related to matters of significant importance or involved significant government resources;
- involved unreasonable and serious errors;
- involved negligence that was so reckless or indifferent as to be considered “gross”;
- involved a serious or significant breach of an applicable code of conduct or standard of ethics; and
- created a substantial risk or significant adverse impact on the ability of an organization, office, unit, or staff member to carry out the public body’s mandate.

Mismanagement is “systemic” where it is a broad, longstanding, social, cultural, or organizational issue. Consider:

- the history, frequency, and recurrence of the mismanagement;
- the number of people responsible for or affected by the mismanagement;
- the knowledge or acceptance of the mismanagement in the public body; and
- the mismanagement is inherent to the public body’s structure, policies, or practices.

Directing or counselling a wrongdoing

Section 7(1)(e) states that “knowingly directing or counselling a person to commit a wrongdoing described in paragraphs (a) to (d)” constitutes wrongdoing.

Counselling someone to actively do something or to fail to do something can meet this definition. The direction must, however, be clear and purposeful.

Note: Counselling or directing someone else to do the act or omission is a wrongdoing, whether or not the person receiving the direction or counsel acts, or intends to act, upon

those instructions. The person directing or counseling the wrongdoing need not be in a supervisory role to the person receiving the direction or counsel.