

## Whistleblower Protection:

### Procedures for disclosures under the *Public Interest Disclosure (Whistleblower Protection) Act*

August 21, 2018

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## 1. Introduction and background

This document lists procedures for managing inquiries and requests for advice and disclosures under the *Public Interest Disclosure (Whistleblower Protection) Act* (PIDA). These procedures are required under section 5 of PIDA (discussed below) and are also consistent with the NRCB's commitment to fulfill its mandates under the *Natural Resources Conservation Board Act* and *Agricultural Operation Practices Act*, by maintaining high standards of professionalism and ethics, and by operating with integrity, accountability, and trust.

The NRCB submitted these procedures to the Public Interest Commissioner for review and received approval on August 21, 2018.<sup>1</sup>

Consistent with this commitment, the NRCB encourages its employees to disclose instances of wrongdoing in the organization.<sup>2</sup> In addition, the NRCB is committed to providing a positive and supportive work environment in which employees can seek advice with respect to disclosing wrongdoings, and to make such disclosures, without fear of reprisal.

These NRCB policies are in line with PIDA, whose focus is to “facilitate the disclosure and investigation of significant and serious matters” relating to a public entity that an employee believes may be “unlawful, dangerous to the public or injurious to the public interest.” Toward that end, PIDA also aims to: protect employees who make those disclosures; manage, investigate and make recommendations with respect to disclosures and reprisals; and, more generally, to promote public confidence in the administration of government.<sup>3</sup>

### 1.1 Disclosure of wrongdoing

Under PIDA, a “disclosure” refers to a good faith disclosure of a “wrongdoing” which the act sets out as follows:

3(1) This Act applies in respect of the following wrongdoings in or relating to departments, public entities, offices or prescribed service providers or relating to employees:

- (a) a contravention of an Act, a regulation made pursuant to an Act, an Act of the Parliament of Canada or a regulation made pursuant to an Act of the Parliament of Canada;
- (b) an act or omission that creates
  - (i) a substantial and specific danger to the life, health or safety of individuals other than a danger that is inherent in the performance of the duties or functions of an employee, or
  - (ii) a substantial and specific danger to the environment;

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1. PIDA section 5(4) and (9).

2 An employee may also disclose wrongdoing about another department, public entity, office, or prescribed service provider other than the NRCB (see the list of offices in PIDA s. 1(h.1) and what “prescribed service provider” means in s. 1(j.1)). In that case, the designated officer may refer the disclosure to another department, public entity, or office of the Legislature if the disclosure would more appropriately be dealt with there (PIDA s. 5(2)(b)).

3. PIDA s. 2(2). PIDA applies to GOA departments, as well as to public entities including include agencies, boards, and commissions that, like the NRCB, are Provincial corporations under the Financial Administration Act (FAA). PIDA also applies to offices (of MLAs, ministers, the Premier) and to “prescribed service providers” (to be set out in regulations, not yet enacted at the time of revising these procedures). PIDA s. 2(1); Regulations. 2(1)(a); FAA s. 1(1)(r)(i).

- (c) gross mismanagement, including an act or omission that is deliberate and that shows a reckless or willful disregard for the proper management of
  - (i) public funds or a public asset,
  - (ii) the delivery of a public service, including the management or performance of
    - (A) a contract or arrangement identified or described in the regulations, including the duties resulting from the contract or arrangement or any funds administered or provided under the contract or arrangement, and
    - (B) the duties and powers resulting from an enactment identified or described in the regulations or any funds administered or provided as a result of the enactment,
  - or
  - (iii) employees, by a pattern of behaviour or conduct of a systemic nature that indicates a problem in the culture of the organization relating to bullying, harassment or intimidation;<sup>4</sup>
- (c.1) a wrongdoing prescribed in the regulations;
- (d) knowingly directing or counselling an individual to commit a wrongdoing mentioned in clauses (a) to (c.1).<sup>5</sup>

In PIDA and in this document, “employee” means an individual employed by the NRCB, or an individual who has suffered reprisal and is no longer employed by the NRCB. “Employee” does not include a contractor or a board member.

The term “prescribed service provider” appears in PIDA, but to date the regulations have not been enacted to prescribe a list of service providers. That list will be unlikely to name the NRCB.

The terms “chief officer” and “designated officer” are used in PIDA and in this document. These are statutory roles under PIDA. In practice, for the NRCB, the “chief officer” is the chief executive officer, and the “designated officer” is the chief legal officer – operations.

## 1.2 Prohibition against reprisal

One of PIDA’s primary tools for protecting employees who make disclosures is in section 24, which prohibits persons from taking “reprisals” against an employee who requests advice about a disclosure, makes a disclosure, cooperates in an investigation, declines to participate in a wrongdoing, or does anything in accordance with PIDA. Violations of the act’s prohibition against reprisals are an offence and are subject to penalties under the act.<sup>6</sup> (Appendix A summarizes additional offences under PIDA.)

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4. Under PIDA s. 19(1.1), the Public Interest Commissioner will not begin an investigation into a disclosure alleging gross management in relation to employees before being satisfied that internal mechanisms have been used or considered.

5. PIDA s. 3(1). Note: this definition does not apply to alleged wrongdoings for reporting of investigations into wrongdoing by the chief officer and Public Interest Commissioner (ss. 32(2)(c) & 33(1)(d)), for systemic problems in the opinion of the Public Interest Commissioner (s. 33(1)(f)), in disciplinary action or corrective action (s. 53.1), or as otherwise provided in regulations (see PIDA s. 1(n)).

6. The penalty for a conviction under PIDA, s. 49 is up to \$25,000 for a first offence and up to \$100,000 for subsequent offences.

Under the act, a reprisal is one or more of the following actions:

24(2) No person shall take or direct, or counsel or direct a person to take or direct, any of the following measures against an employee of a department, a public entity, an office of the Legislature, the Office of the Premier, an office of a minister or a prescribed service provider for the reason that the employee took an action referred to in subsection (1):

- (a) a dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of job location, reduction in wages, change in hours of work or reprimand;
- (b) any measure, other than one mentioned in clause (a), that adversely affects the employee's employment or working conditions;
- (c) a threat to take any of the measures mentioned in clause (a) or (b).<sup>7</sup>

### 1.3 Procedures for disclosures

Section 5 of PIDA provides another key tool for protecting employees, by requiring every "chief officer" of a public entity to adopt written procedures for "managing and investigating disclosures" by the entity's employees. (The NRCB's chief executive officer is the chief officer for PIDA disclosures, except with respect to the administration and operation of the board and its own staff.)<sup>8</sup> Section 5 states the minimum content of these procedures. The PIDA Regulation, AR 71/2013, lists several additional requirements. The procedures below are meant to meet these requirements and to further the NRCB's aim of encouraging employee disclosure of wrongdoings.

## 2. Process for disclosure of wrongdoing

At this time, the chief executive officer is the NRCB's "chief officer" under PIDA, and the chief legal officer – operations is the NRCB's "designated officer" under PIDA. The disclosure process focuses on steps the designated officer shall follow on receipt of a written disclosure and a request for advice regarding a future disclosure.

Part 2.3 of this document describes the exceptions to the designated officer. In these cases, the person who receives the disclosure shall follow the procedures set out in this policy.

The disclosure process is to be applied consistently with principles of procedural fairness and natural justice. Chief among these principles are that disclosures should be addressed objectively and rationally. Another principle is that an alleged wrongdoer should generally be informed of the nature of a disclosure, and be given a reasonable opportunity to respond.

### 2.1 Considering a disclosure

Employees considering making a disclosure of a wrongdoing may request information or advice from:

- their supervisor,
- the designated officer,
- the chief officer, or

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7. PIDA, s. 24(2).

8. PIDA s. 1(a.1) and PIDA Regulation, s. 2(2)(b).

- the Public Interest Commissioner.<sup>9</sup>

The supervisor, designated officer, chief officer or Public Interest Commissioner may require such a request to be in writing.

## 2.2 When a disclosure may be made

If an NRCB employee reasonably believes they have information that a wrongdoing has been committed or is about to be committed, or that the employee has been asked to commit a wrongdoing, the NRCB encourages the employee to make a disclosure about that wrongdoing to

- the designated officer  
and/or
- the Public Interest Commissioner<sup>10</sup>

When considering whether to make disclosures, employees should be aware of the distinction between a “wrongdoing” as defined above, on the one hand, and employment grievances or performance management issues, on the other hand. Matters falling under the latter categories are addressed under the policies in the NRCB’s Human Resources Policy and Procedures Manual. Reasonable human resource management decisions made in good faith are protected from action.<sup>11</sup>

## 2.3 Content of a disclosure

A disclosure under PIDA must be submitted in writing. If the disclosure is to the designated officer for the NRCB, disclosure may be submitted on the form provided in Appendix C.<sup>12</sup> If the disclosure is to the Public Interest Commissioner, use the online web-form available at [www.yourvoiceprotected.ca](http://www.yourvoiceprotected.ca). Employees who are unable or do not wish to use the web-form may contact the office of the Public Interest Commissioner at 1-855-641-8659.

A disclosure must describe the wrongdoing, and must contain the following additional information, if known:

- (a) the name of the individual(s) alleged to be involved;
- (b) the date of the wrongdoing; and
- (c) whether the wrongdoing has previously been disclosed under these Procedures, and
- (d) if it has been disclosed, the NRCB’s response to the disclosure.

The employee must provide any additional information that the designated officer or Public Interest Commissioner may reasonably require in order to assess the matters described in the disclosure.

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9. PIDA s. 8. The office of the Public Interest Commissioner can be contacted Monday to Friday 08:15-12:00/13:00-16:30 at toll-free province-wide: 1-855-641-8659 or via email at [info@pic.alberta.ca](mailto:info@pic.alberta.ca).

10 An employee may make a disclosure to the Public Interest Commissioner instead of to the designated officer, at the same time as disclosing to the designated officer, or even after the designated officer has concluded an investigation; PIDA ss. 9 & 15.1.

11 PIDA s. 27.

12. Section 3(1)(a) of the PIDA Regulation authorizes the designated officer and Public Interest Commissioner to provide disclosure forms. This form, and all other notices required by these procedures, may be submitted by mail, facsimile or email (see section 6 of the PIDA Regulation).

## 2.4 Whom to make a disclosure to

Employees may make a disclosure of a wrongdoing to the designated officer at the NRCB, or directly to the Public Interest Commissioner.<sup>13</sup>

In the event the designated officer is in a conflict of interest, the chief officer may refer the disclosure of wrongdoing to an alternate designated officer. See part 2.6 below for how this works.

The alternate persons indicated below are responsible for following the procedures outlined in parts 2.5 to 2.12 of this document.

Wrongdoing alleged to have been committed by:	Submit disclosure of wrongdoing directly to:
Designated officer	Chief officer (or Public Interest Commissioner)
Designated officer and chief officer	Board chair (or Public Interest Commissioner)
Board member other than board chair	Board chair
Board chair	Public Interest Commissioner

## 2.5 Timelines

Upon receipt of a written disclosure, the designated officer must stamp the date of receipt on the disclosure.

Within five business days<sup>14</sup> of receipt of a disclosure, the designated officer (or Public Interest Commissioner) shall provide the disclosing employee with an acknowledgement of receipt in writing.<sup>15</sup>

Within 20 business days of receipt of a disclosure, the designated officer (or Public Interest Commissioner) shall decide whether to investigate and shall notify the disclosing employee of that decision.<sup>16</sup>

Where an investigation is required, the designated officer<sup>17</sup> (or Public Interest Commissioner) shall conclude the investigation within 120 business days from the date of receipt of the written disclosure.<sup>18</sup> Within that same period, the designated officer (or investigation team appointed by the designated officer) shall provide a written investigation report to the chief officer.<sup>19</sup> The report should include recommendations respecting any

13 PIDA ss. 9 & 15.1.

14. "Business day" is not defined in PIDA. The NRCB interprets "business day" to be the same as "working day" in the *Agricultural Operation Practices Act* – see s. 1(j) of AOPA.

15. PIDA Regulation, s. 3(7)(a).

16. PIDA Regulation, s. 3(7)(b).

17. Or, in the case where the designated officer is in a conflict, an alternate person(s) appointed by the chief officer to conduct the investigation. See part 2.6 for conflict procedures.

18. PIDA Regulation, s. 3(7)(c).

19. PIDA, s. 5(2)(i); PIDA Regulation, s. 4(1). If the Public Interest Commissioner has referred a disclosure to the designated officer, then the designated officer provides the report to the Public Interest Commissioner – PIDA Regulation, s. 4(1.1).

corrective measures that should be taken.<sup>20</sup> If it is the Public Interest Commissioner investigating, the Public Interest Commissioner provides an investigation report to the chief officer and the designated officer.<sup>21</sup> See part 2.10 for more information on reports.

Where the disclosure is made directly to the Public Interest Commissioner, the Public Interest Commissioner may investigate, or may refer the disclosure to the designated officer.<sup>22</sup>

The chief officer may extend the timelines provided that the overall time period for completing an investigation and providing a report is not extended by more than thirty (30) business days. However, the chief officer may grant an even longer extension with permission of the Public Interest Commissioner, if the Public Interest Commissioner considers a longer period to be appropriate in the interest of a fair and efficient outcome, consistent with the act's purposes. If a timeline is extended, the designated officer shall promptly notify the disclosing employee as to when they may expect the next procedural step to occur or be completed.<sup>23</sup>

## **2.6 Conflict of interest**

Before deciding whether an investigation is warranted, the designated officer must review the disclosure to determine whether he or she is in a conflict on that matter. If a conflict exists, the designated officer must refer the matter to an alternate person designated by the chief officer.<sup>24</sup>

Similar to the chart in part 2.4, if the chief officer also has a conflict of interest, the chief officer must submit the matter to the board chair for the appointment of an alternate investigator. If the Board chair also has a conflict, the chair must submit the matter to an acting chair or to the Public Interest Commissioner. If the disclosure is transferred to another person as a result of a conflict of interest, the disclosing employee shall be notified of the transfer.

## **2.7 Determining whether to conduct an investigation**

When deciding whether an investigation is warranted, the designated officer shall consider:

- whether the disclosure relates to a wrongdoing committed by or to be committed by an NRCB board member or staff or in relation to NRCB activities
- whether the information provided in the disclosure is valid or credible
- whether the disclosure appears to have been made in good faith, or is trivial, frivolous or vexatious
- the level of seriousness or significance of the disclosure, including the urgency of the matter, whether possible criminal acts are involved, and whether the disclosure relates to a systemic problem
- all other relevant factors

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20. PIDA, s. 5(2)(a).

21. PIDA s. 22(3); PIDA Regulation, s. 4(2).

22. If the disclosure may involve a matter or document subject to parliamentary privilege, only the Speaker of the Legislative Assembly may decide whether it is subject to parliamentary privilege. PIDA s. 4.1(3).

23. PIDA Regulation, s. 5(5). The Public Interest Commissioner may provide permission to extend a timeline before or after the time period in question has expired; PIDA Regulation, s. 5(4).

24. PIDA Regulation, ss. 3(3) and (5).

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## 2.8 Alternatives to an investigation

In a few instances, the designated officer may decide not to investigate a wrongdoing, even when the officer finds that the disclosure is credible and raises significant issues that need to be addressed. These instances occur when the designated officer:

- concludes that immediate corrective action is needed without an investigation. In this instance, the designated officer shall identify options for corrective action and make recommendations to the chief officer.
- is of the opinion that the disclosure would be more appropriately dealt with by another department, public entity or office of the Legislature. In that case, the designated officer may refer the disclosure there.<sup>25</sup>
- or chief officer has reason to believe that an offence has been committed under an act or regulation of Alberta or Canada. In that case, the obligation is to report as soon as reasonably practicable to a law enforcement agency and to the Minister of Justice and Solicitor General.<sup>26</sup>
- or chief officer believes that the matter to which a disclosure relates constitutes an imminent risk of a substantial or specific danger to the life, health or safety of individuals, or to the environment.<sup>27</sup> The designated officer or chief officer must disclose the matter to
  - the Public Interest Commissioner
  - an appropriate law enforcement agency
  - in the case of a health-related matter, to the Chief Medical Officer of Health
  - the department, public entity, office or prescribed service provider responsible for managing, controlling or containing the risk

## 2.9 Conducting an investigation

If the designated officer decides that an investigation is warranted, the officer may personally conduct the investigation and may request the assistance of others. The designated officer may also appoint alternative investigators who are sufficiently qualified to conduct the investigation.

In all cases, all investigation team members must follow the principles of procedural fairness and natural justice. These principles include, in the context of the strict timelines required under the act:

- conducting an impartial and independent investigation,
- providing the individual identified as the wrongdoer with the particulars of the alleged wrongdoing, and an opportunity to provide evidence and make submissions, and
- ensuring that the person preparing the report considers relevant and not irrelevant evidence.

All investigation team members must also follow the confidentiality provisions in part 2.12 below.

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25. PIDA, s. 5(2)(b).

26. PIDA, s. 5(2)(f) and s. 30(1).

27. PIDA, s. 5(2)(c) and s. 30(2).

Once the designated officer decides to conduct an investigation (or to appoint others to conduct the investigation), the officer should state in writing the scope and purpose of the investigation, the members of the investigation team (if any, other than the designated officer), and the investigation procedures expected to be used.

The designated officer may conduct a single investigation that relates to multiple disclosures relating to the same matter.<sup>28</sup>

The designated officer may consult with the chief officer and/or the Public Interest Commissioner regarding the conduct of an investigation.

If, during an investigation of one wrongdoing, the investigation team discovers evidence of another wrongdoing, the team may expand the scope of the investigation accordingly or refer the matter to the designated officer and the chief officer to determine how to address the other wrongdoing.<sup>29</sup>

#### **2.10 Investigation report and file**

Upon completing an investigation, the designated officer (or investigation team leader, if the designated officer is not part of the team) shall prepare a report to the chief officer that includes:

- the investigator's (or entire team's) findings and reasons for those findings.
- any recommendations that the investigator (or entire team) considers appropriate to correct or otherwise address any wrongdoings.

Records obtained through the investigation, including interview notes, tapes or transcripts, shall be included in the investigation file.<sup>30</sup>

#### **2.11 Follow up actions**

Upon receipt of an investigation report, the chief officer must decide which, if any, of the report's recommended corrective actions (or alternative actions) should be taken, and identify the steps and personnel needed to complete the actions.

The designated officer should notify the employee who made the disclosure, and the person(s) alleged to have committed any wrongdoings, that the investigation has been completed and what, if any, corrective actions have or will be taken as a result.

The designated officer should track the implementation of the corrective actions and periodically report to the chief officer on the status of these actions.

#### **2.12 Confidentiality**

Confidentiality is very important to the whistleblower process. A designated officer or chief officer may directly or indirectly collect, use and disclose personal information that is

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28. Regulation, s. 3(6).

29. PIDA, s. 5(2)(e).

30. Except for records under solicitor-client privilege or litigation privilege.

considered necessary to manage and investigate disclosures under the act.<sup>31</sup> However, there are restrictions on who may access that information, and to what purpose.

The employee making a disclosure must take reasonable precautions to ensure that no more information is disclosed than is necessary to make the disclosure.<sup>32</sup> At no time must an employee disclose information that would disclose deliberations of Executive Council (or a committee of Executive Council), information protected by solicitor-client privilege or litigation privilege, and quality assurance records.<sup>33</sup>

Any employee may not share information about the disclosure or investigation with a fellow employee, unless they are an authorized person. Disclosures and related information should only be shared among authorized persons (the chief officer, the designated officer, and other members of an investigation team), but only on a “need to know” basis. Authorized persons also include employees involved in an investigation. The sharing should be only to the extent necessary to conduct the investigation.

The designated officer and other authorized persons shall protect the identities of all persons involved in a disclosure process, including the employee making the disclosure (or requesting advice about a possible future disclosure), witnesses, and persons alleged to be responsible for the wrongdoing that is the subject of the disclosure.

All evidence and other records collected in relation to a disclosure shall be treated as confidential by, among other things:

- restricting access to the investigation team
- using password-protected folders for electronic records
- keeping all copies of hard copy documents in a single folder kept by the investigation team leader and clearly marking the folder as confidential

The investigation team leader is responsible for ensuring the confidentiality of investigation records.

In the case of an imminent risk of a substantial and specific danger to the life, health, or safety of individuals or the environment, the confidentiality protections noted above do not apply, to the extent needed to address the risk.<sup>34</sup>

The confidentiality protections are also subject to any other acts or regulations and to the principles of procedural fairness and natural justice.<sup>35</sup>

In making an annual report under the act, the chief officer must not publicly identify an employee who requested advice about making a disclosure or made a disclosure, or an

employee who has made disclosure anonymously to the Public Interest Commissioner if the

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31. PIDA, s. 29(1).

32. PIDA, s. 28.1(2).

33. PIDA, s. 28.1(1); PIDA Regulation, s. 7.

34. PIDA, s. 5(2)(g).

35. PIDA, ss. 5(2)(h).

matter is forwarded to the NRCB for investigation.<sup>36</sup>

The right of access to records in the *Freedom of Information and Protection of Privacy Act* does not apply to a record that would reveal the identity of a person who has requested advice about making a disclosure, made a disclosure or submitted a complaint of a reprisal, unless that information can reasonably be severed from the responsive record.<sup>37</sup>

### 3. Protection from reprisal

A “reprisal” is action taken,<sup>38</sup> or a threat to take an action, for the reason that the employee, in good faith:

- requested advice about making a disclosure
- made a disclosure under the act
- cooperated in an investigation under the act
- declined to participate in a wrongdoing, or
- did anything in accordance with the act<sup>39</sup>

Section 24 of the act prohibits reprisals, and any direction or counselling to make a reprisal. Any person who contravenes section 24 is guilty of an offence and liable to a fine up to \$25,000 for a first offence, and a fine up to \$100,000 for subsequent offences.<sup>40</sup>

In general terms, the protections provided to an employee making a disclosure of an alleged wrongdoing also apply to employees who make complaints of reprisals.

To limit the risk and impact of reprisals, PIDA provides for an employee to make a written complaint of a reprisal only to the Public Interest Commissioner. Written reprisal complaints must be made on the form prescribed in Schedule 3 of the PIDA Regulation.<sup>41</sup> The form and further information about making a reprisal complaint are available on the Public Interest Commissioner website, at [www.yourvoiceprotected.ca](http://www.yourvoiceprotected.ca).

### 4. Annual reporting

The chief officer will include in the NRCB’s publicly available annual report a statement of all disclosures that have been made or referred to the designated officer under PIDA. The statement will indicate the numbers of disclosures received or referred, how many of these disclosures were acted on and not acted on, and the number of investigations commenced as a result of disclosures. For any investigations that resulted in a finding of wrongdoing, the annual report will also describe the wrongdoing and any recommendations made or corrective measures taken, or the reasons why no corrective measures were taken.<sup>42</sup>

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36. PIDA, s. 29(2) and s. 21. Note: the Public Interest Commissioner may disclose personal information if, in his or her opinion, the public interest in making the disclosure clearly outweighs the potential harm. This does not apply to the NRCB. PIDA, s. 29(3).

37. *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25, ss. 6(9) and (10).

38. In particular, dismissal, layoff, suspension, demotion, transfer, discontinuation or elimination of a job, change of job location, reduction in wages, change in hours of work, a reprimand, or any other measure that adversely affects the employee’s employment or working conditions; PIDA, s. 24(2).

39. PIDA, s. 24(1).

40. PIDA, s. 49.

41. PIDA, s. 25.

42. PIDA, s. 32.

As set out above, the chief officer must not publicly identify in the annual report an employee who requested advice about making a disclosure or made a disclosure, or an employee who has made disclosure anonymously to the Public Interest Commissioner, if the matter is forwarded to the NRCB for investigation.<sup>43</sup>

## **5. Communicating whistleblower procedures to NRCB employees**

Under section 6 of PIDA, the chief officer must ensure that information about the act and these procedures are widely distributed among NRCB employees. Toward that end, copies of these procedures were provided to all staff, and discussed with staff in a training session, in September 2018. The procedures will also be provided to each new employee when they start work and are posted on the NRCB's intranet site.

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43. PIDA, s. 29(2) and s. 21. Note: the Public Interest Commissioner may disclose personal information if, in his or her opinion, the public interest in making the disclosure clearly outweighs the potential harm. This does not apply to the NRCB. PIDA, s. 29(3).

**APPENDIX A: Summary of Offences under PIDA**

It is an offence under PIDA<sup>44</sup> for any person:

- To commit a reprisal against an employee because the employee has, in good faith, sought advice about making a disclosure, made a disclosure, co-operated in an investigation under PIDA, declined to participate in a wrongdoing, or done anything in accordance with PIDA.
- In seeking advice about making a disclosure or making a disclosure, or during an investigation, to knowingly withhold material information or make a false or misleading statement, orally or in writing, to the designated officer, the chief officer, the Public Interest Commissioner, or the Labour Relations Board<sup>45</sup> (or any person acting on any of their behalf or under their direction).
- To counsel or direct another person to willfully make a false or misleading statement, orally or in writing, in the context described in the previous item.
- To willfully obstruct, or counsel or direct a person to willfully obstruct, the designated officer, chief officer, the Public Interest Commissioner, or the Labour Relations Board (or any person acting on any of their behalf or under their direction), in the performance of a duty or function under PIDA.
- Knowing that a document or thing is likely to be relevant to an investigation under PIDA, to:
  - i. destroy, mutilate, or alter the document or thing
  - ii. falsify the document or make a false document or thing
  - iii. conceal the document or thing
  - iv. direct, counsel or in any manner cause a person to do anything mentioned in clauses (i) to (iii).

Any person who is guilty of any of the above offences is liable:

- i. for a first offence, to a fine of not more than \$25,000
- ii. for a second or subsequent offence, to a fine of not more than \$100,000.

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44. PIDA, ss. 45 to 49.

45. The Labour Relations Board receives referrals from the Public Interest Commissioner in the event a reprisal has been taken, directed or counselled contrary to section 24; PIDA, ss. 27.1-27.4.

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**APPENDIX B: Wrongdoing Disclosure and Reprisal Complaint Requirements**

PIDA establishes the following requirements:

- **Request for advice**

**8(1)** An employee who is considering making a disclosure may request information or advice from the employee's supervisor, designated officer or chief officer, or from the Commissioner.

**(2)** The supervisor, the designated officer, the chief officer or the Commissioner may require a request under subsection (1) to be in writing.

- **Disclosure concerning a department, public entity or office**

**9** If an employee of a department, public entity or office reasonably believes that the employee has information that could show that a wrongdoing has been committed or is about to be committed, or that could show that the employee has been asked to commit a wrongdoing, the employee may make a disclosure

- (a) to the employee's designated officer in accordance with the procedures established under section 5, and
- (b) subject to section 12, to the Commissioner in accordance with section 15.1.

- **Contents of disclosure**

**13** A disclosure must be in writing and must include the following information, if known:

- (a) a description of the wrongdoing;
- (b) the name of the individual or individuals alleged
  - (i) to have committed the wrongdoing, or
  - (ii) to be about to commit the wrongdoing;
- (c) the date of the wrongdoing;
- (d) whether a disclosure in respect of a wrongdoing has been made pursuant to the procedures established under section 5 by the department, public entity or office and whether a response has been received, and if so, a copy of the response;
- (e) any additional information that the designated officer or Commissioner may reasonably require in order to investigate the matters set out in the disclosure;
- (f) any other information prescribed in the regulations.

- **Disclosure to the Commissioner**

**15.1(1)** An employee referred to in section 9 may make a disclosure directly to the Commissioner despite Part 2 and any provision in the procedures established under section 5 that states

- (a) that the decision of the department, public entity or office is final,
- (b) that no appeal lies in respect of the decision of the department, public entity or office, or
- (c) that the decision of the department, public entity or office may not be challenged, reviewed, quashed or called into question.

(2) If an employee referred to in section 9 has made a disclosure to the designated officer, the employee may also make a disclosure directly to the Commissioner even if the designated officer has made recommendations or concluded the investigation.

(3) Subject to the regulations, an employee of a prescribed service provider may make a disclosure to the Commissioner if the employee reasonably believes that the employee has information that could show that a wrongdoing has been committed or is about to be committed, or that could show that the employee has been asked to commit a wrongdoing.

(4) Subject to the regulations, a disclosure must be in writing and must include the information required under section 13.

(5) Subject to sections 4.1(3) and 30 and the regulations, the Commissioner may, as the Commissioner considers appropriate, proceed under this Part and Part 3 or refer a disclosure relating to a department, public entity or office to a designated officer to be dealt with in accordance with Part 2.

- **Complaints of reprisals**

**25(1)** Subject to subsection (3), an employee may make a written complaint to the Commissioner if the employee alleges that a reprisal has been taken, directed or counselled against the employee contrary to section 24.

(2) A prescribed service provider may make a written complaint to the Commissioner if the prescribed service provider alleges that a reprisal has been taken, directed or counselled against the prescribed service provider contrary to section 24.

(3) An employee of the office of the Public Interest Commissioner, and if the Legislative Assembly appoints the Ombudsman as the Commissioner pursuant to section 38(2), an employee of the Office of the Ombudsman, may make a written complaint to the Auditor General if the employee alleges that a reprisal has been taken, directed or counselled against the employee.

(4) The Auditor General has, in relation to a complaint referred to in subsection (3), all the responsibilities of the Commissioner under this act and all of the powers and functions of the Commissioner.

(5) A complaint under this section must be in the prescribed form.

- **Disclosure despite other Acts**

**28** Subject to this Part, a disclosure or a complaint of a reprisal may be made under this Act despite a provision in another Act or regulation that prohibits or restricts disclosure of the information necessary to make the disclosure or complaint of a reprisal.

- **Where disclosure restrictions continue to apply**

**28.1(1)** Despite section 28, nothing in this act authorizes the disclosure of

- (a) information or documents that would disclose the deliberations of the Executive Council or a committee of the Executive Council or the proceedings of any of them,
- (b) information or documents that are protected by solicitor-client privilege or litigation privilege, or
- (c) any information, document or matter or any class of information, documents or matters prescribed in the regulations as information, documents or matters that must not be disclosed.



**(2)** Where a disclosure or a complaint of a reprisal involves personal information, individually identifying health information or confidential information, the employee who makes the disclosure or submits the complaint of a reprisal must take reasonable precautions to ensure that no more information is disclosed than is necessary to make the disclosure or complaint of a reprisal.

- **Other obligations to report not affected**

**28.2** Nothing in this Act relating to the making of a disclosure or a complaint of a reprisal is to be construed as affecting an obligation of an employee or a person who makes the disclosure or submits the complaint of a reprisal to disclose, report or otherwise give notice of a matter under another Act or regulation.

- **Disclosures involving a possible offence or an imminent risk**

**30(1)** If a chief officer, a designated officer or, during an investigation, the Commissioner has reason to believe that an offence has been committed under an Act or regulation or under an Act or regulation of the Parliament of Canada, that person must, as soon as reasonably practicable, report the alleged offence to a law enforcement agency and to the Minister of Justice and Solicitor General.

**(2)** With respect to a disclosure made under the procedures described in section 5(2)(c) or a disclosure with respect to a matter that the chief officer, the designated officer or the Commissioner reasonably believes could constitute an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment, that person must disclose the matter

- (a) to an appropriate law enforcement agency,
- (b) in the case of a health-related matter, to the Chief Medical Officer of Health appointed under section 13 of the *Public Health Act*,
- (c) to the department, public entity, office or prescribed service provider responsible for managing, controlling or containing the risk, if any, and
- (d) to a person identified in the procedures described in section 5(2)(c) or a person prescribed in the regulations for the purposes of this clause.

**(3)** The chief officer, designated officer or Commissioner, as the case may be,

- (a) must suspend the investigation of a disclosure or complaint of a reprisal reported under subsection (1) or disclosed under subsection (2)(a),
- (b) may suspend the investigation of any other disclosure or complaint referred to in this section, and
- (c) may resume a suspended investigation only after any charge relating to an alleged offence, or any investigation by a law enforcement agency or the Minister of Justice and Solicitor General, has been finally disposed of.

**APPENDIX C: NRCB Disclosure of Wrongdoing Form**

The Disclosure of Wrongdoing Form is posted for employee use on the NRCB's intranet site, under Corporate Forms & Templates.

**NRCB Disclosure of Wrongdoing Form *Public Interest (Whistleblower Protection) Act***  
(PIDA)

**Date(s) of wrongdoing:** \_\_\_\_\_

**Name(s) of individual(s) alleged to have committed, or who will commit, the wrongdoing:**

**The wrongdoing involves or will involve** (check one or more of the following):

- A contravention of any law (act or regulation) of Canada or Alberta: \_\_\_\_\_
- An act or omission that creates substantial and specific danger to the life, health, or safety of people or the environment
- Gross mismanagement, showing disregard for
- Management of public funds or public assets;
  - Management of delivery of public service; or
  - Management of employees by a pattern that indicates a problem in the culture of the organization relating to bullying, harassment or intimidation;
- A wrongdoing prescribed in the regulations: \_\_\_\_\_
- Knowingly directing another person to commit any of the above

**Description of the wrongdoing** (use additional sheets if needed):

**Has a disclosure of this wrongdoing previously been made?** YES  NO

**If yes, was the disclosure made to the NRCB's designated officer and/or the Public Interest Commissioner?** (check one or both):

- NRCB designated officer (legal counsel)
- Public Interest Commissioner

**Date(s) of the disclosure:**

**Additional information that could assist an investigation** (use additional sheets if needed):

**Declaration**

I believe that all the information provided above is true to the best of my knowledge.

I understand that knowingly making a false or misleading statement is an offence under PIDA and may result in a fine of up to \$25,000 for a first offence or up to \$100,000 for a second or subsequent offence.

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Print name:** \_\_\_\_\_