

The Public Interest Disclosure Act (PIDA)

Employee Fact Sheet

What Employees of the Public Service need to know about making a Disclosure of Wrongdoing or Complaint of Reprisal

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Preamble

The Saskatchewan government is committed to maintaining high standards of professional values and ethics in responding to the needs of Saskatchewan citizens. Elected officials, senior management and employees share a common interest in ensuring the public sector operates within an environment of integrity, accountability and trust.

To build on protections already in place under other Saskatchewan laws, as well as existing provincial practices and processes, *The Public Interest Disclosure Act* (PIDA) has been passed into law (effective September 1, 2011). This new law gives employees of government institutions a clear process for disclosing concerns about wrongdoing in the Saskatchewan public service, and provides protection from reprisal.

This fact sheet provides information for employees in the Saskatchewan public service who wish to disclose a wrongdoing. It provides guidance on how to do so in a way that meets the requirements of the law, while providing the employee protection from reprisal.

The new law is not intended to deal with routine operational or human resource matters. Employees who have concerns about such matters should follow existing procedures to deal with these issues.

1. Who does PIDA apply to?

PIDA applies to executive government and other government institutions, as set out in *The Freedom of Information and Protection of Privacy Regulations*.

2. What is a “wrongdoing” under PIDA?

The following are wrongdoings under PIDA:

- an act or omission that creates a substantial and specific danger to the life, health or safety of persons or the environment, but does not include dangers inherent to the employee’s job;
- an act or omission that contravenes a federal or provincial Act or Regulation;
- gross mismanagement, including mismanaging public funds or a public asset; and
- knowingly directing or counseling someone to commit any wrongdoing described above.

An employee who commits a wrongdoing may be disciplined up to and including dismissal, in addition to and separate from any penalty provided for by law.

3. What is a “disclosure” under PIDA

A disclosure under PIDA is proactive reporting of a wrongdoing conducted within any of the government institutions covered by PIDA.

4. What is a “reprisal” under PIDA?

PIDA provides protection for employees from “reprisal”, that is, from measures being taken against them because they, in good faith, asked for advice about making a disclosure, made a disclosure, co-operated in an investigation or declined to participate in suspected wrongdoing.

Examples of a reprisal include a dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of a job location, reduction in wages, change in hours of work or reprimand or any measure that adversely affects the public servant’s employment or working conditions.

5. What is the process for making a disclosure of wrongdoing?

Every government institution under PIDA has a designated officer (senior official) to deal with disclosures. In addition, the government will appoint a Public Interest Disclosure Commissioner (the Commissioner), an independent body of the legislature, to deal with disclosures. An employee may make a disclosure of wrongdoing to the designated officer or to the Commissioner.

When filing a disclosure of wrongdoing, the employee must demonstrate that he or she has a reasonable belief that a wrongdoing has been committed or is about to be committed. In addition, the disclosure:

- must be made in good faith;
- must be made in writing;
- must be on the prescribed form (ADD LINK to Form); and
- must follow the requirements of PIDA.

Written disclosures of wrongdoing include the following information, if known:

- o date of the wrongdoing/reprisal;
- o name of the person(s) alleged to have committed or be about to commit the wrongdoing; and
- o detailed description of the wrongdoing/reprisal.

Employees who make public disclosures, anonymous disclosures, or disclosures that otherwise do not meet the requirements of PIDA, will not be protected under PIDA.

6. Am I protected against reprisals if I make a disclosure and no wrongdoing is found?

Yes, an employee still is protected under PIDA.

7. What is the process for making a complaint of reprisal?

The government will appoint a Public Interest Disclosure Commissioner (the Commissioner), an independent body of the legislature, to deal with reprisals. An employee (or former employee) may make a complaint of reprisal to the Commissioner.

When filing a complaint of reprisal, the employee must demonstrate that he or she has a reasonable belief that a reprisal has been committed or is about to be committed. In addition, the complaint of reprisal:

- o must be made in good faith;
- o must be made in writing;
- o must be on the prescribed form (ADD LINK to Form); and
- o must follow the requirements of PIDA.

Written complaints of reprisal include the following information, if known:

- o date of the reprisal;
- o name of the person(s) alleged to have committed or be about to commit the reprisal; and
- o detailed description of the reprisal.

8. How do I know if it's a wrongdoing under PIDA?

An employee who is considering making a disclosure may seek advice, in confidence, from the designated officer or the Commissioner.

The designated officer or Commissioner may require the request for advice to be in writing.

9. What are my obligations and responsibilities?

Disclosing employees have a number of responsibilities, including acting in good faith, maintaining confidentiality and co-operating with the designated officer in any investigations.

10. Are there offences under PIDA?

There are general offences under PIDA, punishable by a fine of up to \$10,000, as follows:

- It is an offence for any person to knowingly make a false or misleading statement, orally or in writing to a designated officer, chief executive (e.g. a Deputy Minister) or the Commissioner, or to a person acting on their behalf or under their direction, in seeking advice about making a disclosure, in making a disclosure, or during an investigation.
- It is an offence for any person to willfully obstruct a designated officer, chief executive (e.g. a Deputy Minister) or the Commissioner, or a person acting on their behalf or under their direction, in the performance of a duty under PIDA.
- It is also an offence for any person to destroy, mutilate, alter, falsify the document or make a false document or conceal a document or thing, or to direct, counsel or cause such destruction, falsification or concealment, knowing that the document or thing is likely to be relevant to an investigation under PIDA.

11. Can my disclosure contain confidential information?

There are a few situations in which an employee may not make a disclosure under PIDA because another law or regulation prohibits disclosure of the information.

For example, this law does not authorize an employee to disclose:

- information described in Subsection 16(1) of *The Freedom of Information and Protection of Privacy Act* (Cabinet documents, except with consent of Cabinet or where the records are greater than 25 years old).
- information that is protected by solicitor-client privilege. (In very general terms, this information includes all communications, verbal or written, of a confidential character between a lawyer and a client related to seeking, formulating or giving legal advice or assistance.)

If the disclosure involves personal or confidential information, the employee must take all reasonable precautions to ensure no more information is disclosed than is necessary to make the disclosure.

12. What happens after I make the disclosure to a designated officer?

Every government institution identified under PIDA must have procedures in place to receive and manage disclosures. These procedures outline what takes place once a disclosure is received by a designated officer.

The information that follows reflects the procedures that have been established for government institutions.

If a disclosure is made to a designated officer, the following apply:

- The designated officer determines how the disclosing employee wishes to receive future communication about the disclosure (e.g., written or verbal).
- The designated officer reviews the disclosure to determine whether the disclosure pertains to a matter within their government institution and if so, will review and handle as appropriate, including conducting an investigation.

- If the disclosure pertains to a matter in a different government institution, the designated officer will refer the disclosure to the designated officer of that institution for review and handling.
- If it would be inappropriate for the designated officer to review the disclosure, either because of the nature of the alleged wrongdoing or because of the persons involved in the disclosure, the designated officer may refer the disclosure to the Office of the Public Interest Disclosure Commissioner for review and handling.
- The disclosing employee will be advised of the outcome of the review or investigation of the disclosure.

13. What happens after I make a disclosure to the Commissioner?

An employee may make a disclosure directly to the Commissioner. In such cases, as well as in cases where the government institution has referred the disclosure to the Commissioner, the Commissioner will review the disclosure and:

- take steps he or she considers appropriate to resolve the matter;
- refer the matter to the government institution to deal with; or
- conduct an investigation.

The purpose of an investigation by the Commissioner is to determine the facts, assess the facts, determine if a wrongdoing occurred, bring the wrongdoing to the attention of the appropriate government institution, and make recommendation for corrective measures.

14. Can a disclosure be withdrawn?

No, a disclosure cannot be withdrawn once it has been made to a designated officer. Conversely, the Commissioner may consider a withdrawal under certain circumstances.

15. How long do I have to make a disclosure?

A disclosure may be made up to two years from the day on which the alleged contravention was committed. (section 41 of PIDA)

16. May I bring someone with me when I make my disclosure or when I meet with the designated officer or an investigator?

Yes, an employee is able to bring someone with them for support (for example, an in-scope employee may bring a union representative); however that individual is there for support only and is not there to speak for the employee.

17. What if the designated officer is away on vacation when I wish to make a disclosure?

An employee may choose to wait until the designated officer returns from vacation or may make the disclosure to the Commissioner.

18. Will my identity be protected?

The identity of a disclosing employee and others involved in the disclosure process, as well as the confidentiality of any information collected, will be protected to the fullest extent possible. Any investigation of a disclosure of wrongdoing under PIDA must also ensure that the principles of procedural fairness and natural justice are observed. For example, the alleged wrongdoer has the right to know the nature of the disclosure, receive relevant information as required and be given an opportunity to reply to the disclosure.

All designated officers and employees, including disclosing employees and those participating in the investigation, are responsible for maintaining confidentiality.

19. How can I ensure I am protected under the Act?

Disclosures must be made to the designated officer of the government institution for which the disclosing employee is employed or to the Commissioner. Protections under the Act do not apply to disclosures made to any other source.

20. How are disclosures of wrongdoing reported to the general public?

The Public Service Commission, on behalf of all government institutions covered under PIDA will report on an annual basis:

- The number of disclosures received (and the number acted on and not acted on)
- The number of investigations conducted and the number that resulted in a finding of wrongdoing. Of those, a description of the wrongdoing, the recommendations made, and the actions taken (or the reason no actions were taken).

In addition, the Commissioner will report on an annual basis:

- The number of disclosures received (and the number acted on and not acted on)
- The number of investigations conducted and the number that resulted in a finding of wrongdoing. Of those, a description of the wrongdoing, the recommendations made, and the actions taken (or the reason no actions were taken).

The Commissioner may also prepare a special report regarding any matter where the Commissioner believes it is in the public interest to do so.