

***THE PUBLIC INTEREST DISCLOSURE***  
***ACT***  
**PROCEDURES TO MANAGE DISCLOSURES**  
**FOR DESIGNATED OFFICERS**

[This document is for use by designated officers. Employees seeking information about the Act should consult the Employee Fact Sheet (<http://www.cs.gov.sk.ca/Default.aspx?DN=3b57aeb4-aecb-4931-ae3f-15a4731abfa9>)]

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Subsection 6(1) of *The Public Interest Disclosure Act* (the Act) requires that “every permanent head of a government institution shall establish procedures to manage disclosures by employees of the government institution for which the permanent head is responsible.” These procedures are provided as a template for consideration in that process. They have been designed to help manage the receipt and handling of inquiries, requests for advice and disclosures within government institutions and are intended for the use by designated officers. Handling of disclosures includes the review of disclosures received as well as the subsequent investigation of a disclosure, if required. Use of these procedures requires a familiarity with and an understanding of the Act and should not be used without referring to the Act as appropriate.

# 1. OVERVIEW

Purpose of the Act	<i>The Public Interest Disclosure Act</i> (the Act) provides a process for employees of government institutions to make disclosures of wrongdoing without fear of reprisal.
Application of the Act	<p>The Act applies to:</p> <p>employees of Executive government, CIC Crowns, Treasury Board Crowns, boards and agencies (in addition to executive government ministries, see list of government institutions in the Appendix of <i>The Freedom of Information and Protection of Privacy Regulations</i>).</p> <p>The Act does not apply to:</p> <ul style="list-style-type: none"> <li>• a person who is not an employee of a government institution at the time of making the disclosure;</li> <li>• a corporation the share capital of which is owned in whole or in part by a person other than the Government of Saskatchewan or an agency of it;</li> <li>• the Legislative Assembly Service or offices of members of the Assembly or members of the Executive Council; or</li> <li>• the Court of Appeal, the Court of Queen’s Bench or the Provincial Court of Saskatchewan.</li> </ul> <p>(section 2)</p>
Wrongdoings	<p>The wrongdoings to which the Act applies are set out in section 3, as follows:</p> <ul style="list-style-type: none"> <li>• a contravention of a federal or provincial Act or regulation;</li> <li>• an act or omission that creates: <ul style="list-style-type: none"> <li>○ a substantial and specific danger to life, health or safety of persons, not including a danger inherent to the employee’s job;</li> <li>○ a substantial and specific danger to the environment;</li> </ul> </li> <li>• gross mismanagement of public funds or a public asset; or</li> <li>• knowingly directing or counseling a person to commit any of the above.</li> </ul> <p>(section 3)</p>
Reprisals	<p>A reprisal means any of the following measures taken against an employee because the employee has, in good faith, sought advice about making a disclosure, made a disclosure, co-operated in an investigation pursuant to the Act or declined to participate in suspected wrongdoing:</p>

	<ul style="list-style-type: none"> <li>• 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;</li> <li>• any measures, other than the ones mentioned above that adversely affect the employee's employment or working conditions;</li> <li>• a threat to take any of the measures mentioned above.</li> </ul> <p>[clause 2(1)(j) and section 36]</p>
Employees may seek advice	<p>An employee who is considering making a disclosure may seek advice from his or her designated officer or the Public Interest Disclosure Commissioner (the Commissioner).</p> <p>(section 9)</p>
Offences and penalties under the Act	<p>It is an offence under the Act:</p> <ul style="list-style-type: none"> <li>• to take a reprisal against an employee or direct that one be taken against an employee because the employee has, in good faith, sought advice about making a disclosure, made a disclosure, co-operated in an investigation under the Act, or declined to participate in a wrongdoing; (section 36)</li> <li>• for any person to knowingly make a false or misleading statement, orally or in writing, to a designated officer, Permanent Head or the Commissioner, or to a person acting on his or her behalf or under his or her direction, in seeking advice, making a disclosure or during an investigation; (section 37)</li> <li>• for any person to willfully obstruct a designated officer, Permanent Head or the Commissioner, or a person acting on his or her behalf or under his or her direction, in the performance of a duty under the Act; (section 38)</li> <li>• for any person to: <ul style="list-style-type: none"> <li>○ destroy, mutilate, or alter the document or thing;</li> <li>○ falsify the document or make a false document;</li> <li>○ conceal the document or thing; or</li> <li>○ direct, counsel or cause the destruction, mutilation, alteration, falsification or concealment of a document or thing;</li> </ul> <p>knowing that the document or thing is likely to be relevant to an investigation under the Act. (section 39)</p> <p>A person who contravenes any of the above provisions is guilty of an offence and is liable on summary conviction to a fine of not more than \$10,000. (section 40)</p> <p>A prosecution under the Act may be commenced not more than two years after the day the alleged offence was committed. (section 41)</p> </li> </ul>

Immunity

No action or proceeding may be brought against a person acting pursuant to the authority of the Act or the regulations, for anything done or not done in the performance of a duty or in the exercise (or intended exercise) of a power under the Act, if the person was acting in good faith.

(section 42)

## 2. DISCLOSURE MANAGEMENT PRACTICES

Procedural fairness	<p>If an investigation of a disclosure is required, the investigation must be conducted in accordance with the principles of procedural fairness and natural justice. For example, the alleged wrongdoer has a right to know the nature of the disclosure, to receive relevant information as required, and to be given an opportunity to respond to the disclosure.</p> <p>[clause 6(2)(c)]</p>
Confidentiality	<p>The identity of the persons involved in the disclosure process, including employees who make a disclosure or seek advice, witnesses and persons who are alleged to be responsible for a wrongdoing, must be protected.</p> <p>Information that comes to an employee's attention or knowledge through the performance of his or her duties under the Act must be protected and must not be disclosed except as required under this or another Act.</p> <p>[subsection 6(2); other legislation/policy]</p>
Good faith	<p>A designated officer has an obligation to act in good faith. Good faith means to act objectively and in a manner that is not biased, arbitrary or discriminatory in handling disclosures in accordance with the Act and procedures.</p> <p>[clause 6(2)(c); an unbiased and objective decision-maker is a requirement of procedural fairness and natural justice]</p>
Objectivity	<p>The designated officer must remove him/herself from the process if a conflict of interest exists.</p> <p>[clause 6(2)(c) with the same rationale as immediately above]</p>
Safeguarding disclosure information and disclosure files	<ul style="list-style-type: none"><li>• Each disclosure must be maintained in a separate, secured file, must be treated as strictly confidential, and must be protected from unauthorized access.</li><li>• All written information obtained as a result of the receipt of the disclosure, review of the disclosure, or the investigation of the alleged wrongdoing must be included in the disclosure file. All pertinent information obtained verbally must be documented in writing, dated, and placed in the disclosure file.</li></ul> <p>[subsection 6(2); other legislation/policy]</p>

Disclosure/advice tracking system	<p>When the designated officer creates an electronic or paper record (e.g. a log) to track disclosures and/or requests for advice under the Act, care must be taken to handle the record with due regard to confidentiality requirements and protection of identity under the Act. The record must be treated as strictly confidential, maintained in a secure manner and location, and protected from unauthorized access.</p> <p>[subsection 6(2); other legislation/policy]</p>
Records Management	<p>Records collected and created by government institutions in relation to the administration of the Act will be subject to the records retention and classification requirements developed and approved in accordance with <i>The Archives Act, 2004</i>.</p> <p>(<i>The Archives Act, 2004</i>)</p>
Withdrawal of disclosure	<p>Once a disclosure is filed with the designated officer, it cannot be withdrawn.</p> <p>[relates to subsection 5(2)]</p>
Continuation of responsibilities where disclosure is not a wrongdoing under the Act	<p>As a result of an employee seeking advice or the receipt, review or investigation of a disclosure, the designated officer may become aware of a situation that is not a wrongdoing under the Act, but requires attention by the government institution.</p> <p>In such situations, designated officers must recognize they have a responsibility to take appropriate action to see that matters that come to their attention get addressed. This responsibility may arise under another Act, regulation or policy, or may be the result of general management or public service responsibility.</p> <p>(other legislation/policy/duties)</p>
Cooperation with Commissioner	<p>Where, under section 10 of the Act, an employee of a government institution makes a disclosure of alleged wrongdoing to the Commissioner, the handling of the disclosure will be guided by Part IV of the Act. (sections 15-22)</p> <p>Under section 15, the Commissioner may take steps to help resolve the matter within the government institution (such as mediation), rather than investigating the disclosure. (section 15)</p> <p>All employees and designated officers of a government institution must cooperate fully with the Commissioner in the handling of a disclosure or information under the Act. (sections 36-39, and via section 18, sections 22 and 23 of <i>The Ombudsman and Children's Advocate Act</i>)</p>

Resources for designated officers

The designated officer may:

- seek advice from the Public Service Commission (and the Public Service Commission's legal counsel), his or her permanent head, Human Resources, or the Commissioner depending on the nature of the advice required;
- seek legal advice on the handling of a disclosure from his or her government institution's legal counsel;
- utilize specialized assistance (e.g. Internal Audit; Labour Relations) depending on the nature of the assistance required or referral to an appropriate agency (e.g. law enforcement) to conduct an investigation.

(section 6)

### 3. PROCEDURES FOR RECEIVING DISCLOSURES

Receiving disclosures	<p>Under section 11 of the Act disclosures must be made on the prescribed form and must include the following information:</p> <ul style="list-style-type: none"><li>• a description of the wrongdoing;</li><li>• the name of the person(s) alleged to have committed the wrongdoing or be about to commit the wrongdoing;</li><li>• the date of the alleged wrongdoing;</li></ul> <p>Upon receipt each disclosure must be date stamped.</p> <p>(sections 6 and 11)</p>
Discussions with disclosing employee	<p>If the disclosure has been made directly to the designated officer, he or she must arrange to privately discuss the disclosure with the disclosing employee within 20 days of receiving the disclosure.</p> <p>The designated officer must determine how the disclosing employee wishes to receive communication about the disclosure and respect the wishes of the employee. All pertinent verbal communication must be documented in writing, dated and kept in the disclosure file. All received communication shall be date stamped.</p> <p>The designated officer should ask the disclosing employee about other avenues for complaint that they have used.</p> <p>The designated officer must advise the disclosing employee that information related to the disclosure, including his or her identity, will be protected and kept confidential to the fullest extent possible subject to any other Act (e.g., The Freedom of Information and Protection of Privacy Act) and principles of procedural fairness and natural justice. For example, the employee's name will not be disclosed unless it is a necessary fact in resolving the disclosure. Nonetheless, it is possible the identity of the employee who disclosed may become known by virtue of the facts of the disclosure he or she made.</p> <p>The designated officer must advise the disclosing employee that he or she also has a responsibility to protect information related to the disclosure, including protecting the identity of persons involved in the disclosure process.</p> <p>This meeting should also include a discussion about the disclosure to ensure the designated officer understands the full extent of the complaint. This meeting is also an opportunity for the designated officer to ask questions and gain clarity on any issues, as needed.</p> <p>(section 6)</p>



## 4. REVIEWING DISCLOSURES

The designated officer shall review the disclosure to determine if the matter if proven to be true would be a wrongdoing as defined in the Act and to determine the appropriate action to be taken, if any. Every effort should be made to complete this review within 40 days from the initial receipt of the disclosure.

The disclosure must be reviewed against the following criteria:

<p>Appropriate government institution?</p>	<p>Determine if the disclosure pertains to a matter within the employee's government institution. <b>[subsection 5(2)]</b></p> <p>If the disclosure pertains to a matter in a different government institution or would more appropriately be dealt with by another government institution, the designated officer has the authority to refer the disclosure to the designated officer of that government institution for review and handling. <b>[subsection 5(2) and section 6]</b></p> <p>When making the referral, the designated officer must advise the disclosing employee. <b>(section 6)</b></p> <p>(See sample templates for the Notice and Referral of Disclosure to another Designated Officer)</p>
<p>Conflict of interest?</p>	<p>The designated officer must review the disclosure to ensure it does not represent a conflict for the designated officer or Permanent Head. <b>[clause 6(2)(c); unbiased decision-maker is a requirement of procedural fairness and natural justice]</b></p> <p>(For example, if the disclosure refers to a matter that involves the designated officer or Permanent Head).</p> <p>The designated officer must remove him/herself from disclosures if a conflict of interest exists, either because of the nature of the wrongdoing or because of the persons involved in the disclosure. In such cases, the matter may be referred to the Commissioner. <b>(section 6)</b></p> <p>(See Sample Templates for the Notice and Referral of Disclosure to the Office of the Public Interest Disclosure Commissioner)</p>
<p>Wrongdoing under the Act?</p>	<p>The designated officer must determine if the disclosure falls within the categories of wrongdoing covered by the Act:</p> <ul style="list-style-type: none"> <li>• an act or omission that is a contravention of an Act or regulation;</li> <li>• an act or omission that creates substantial and specific danger to life, health or safety of persons or the environment, but does not include dangers inherent to the employee's job;</li> <li>• gross mismanagement of public funds or a public asset;</li> <li>• knowingly directing or counseling a person to commit any of the above.</li> </ul> <p><b>(section 3)</b></p>

Timeliness	To be considered under the provisions of the Act, the disclosure must have made on or after September 1, 2011.
Disclosure made in good faith?	The designated officer must determine if the disclosure was made in good faith. <i>(section 2)</i>

## 5. PROCESSING DISCLOSURES

<p>Where the criteria have not been met (see Reviewing Disclosures)</p>	<p>Where the criteria have not been met, no further action is required under the Act. The file is to be closed and the disclosing employee and Permanent Head notified. However, the designated officer must determine whether any other action regarding the subject matter of the disclosure may need to be taken.</p> <p>[subsection 5(2), sections 6 and 45]</p>
<p>Where the criteria have been met (see Reviewing Disclosures)?</p>	<p>Where the criteria have been met, determine if an investigation is required or if there is enough information to take immediate action.</p> <p>[subsection 5(2), sections 6 and 45]</p>
<p>Notification to Permanent Head</p>	<p>Unless the disclosure involves the Permanent Head, the designated officer must notify the Permanent Head a disclosure has been received, and provide information to the Permanent Head regarding the nature of the alleged wrongdoing and whether action is to be taken or an investigation conducted. The designated officer must ensure that only as much information is provided as is necessary to convey the nature of the allegation, recognizing the Permanent Head's responsibility for the administration of the government institution.</p> <p>(sections 6 and 45)</p>
<p>Notification to the employee making the disclosure</p>	<p>The disclosing employee is to be informed of the outcome of the review and the action to be taken, for example, whether the matter will be investigated or not.</p> <p>(sections 6 and 45)</p>
<p>Immediate action</p>	<p>If the situation requires immediate action to be taken:</p> <ul style="list-style-type: none"> <li>• identify options as to what corrective action needs to be taken and makes recommendation to the Permanent Head;</li> <li>• Permanent Head determines appropriate action, advises the designated officer what action will be taken;</li> <li>• designated officer advises disclosing employee and alleged wrongdoer (if appropriate).</li> </ul>
<p>Investigation</p>	<p>If an investigation is required:</p> <ul style="list-style-type: none"> <li>• see part 6, Investigating Disclosures</li> </ul> <p>[subsection 5(2) and sections 6 and 45]</p>

## 6. INVESTIGATING DISCLOSURES

Responsibility	<p>Investigations must be managed by the designated officer, with appropriate assistance (expertise), depending on the nature of the disclosure. This responsibility cannot be delegated.</p> <p>[subsection 5(2), section 6 and these procedures]</p>
Procedural fairness	<p>Investigations must be conducted in accordance with the principles of procedural fairness and natural justice. For example, the alleged wrongdoer has the right to know the nature of the disclosure, receive relevant information as required, and to be given an opportunity to reply to the disclosure. Conversely, the alleged wrongdoer may not need to know about the disclosure if it has been determined no wrongdoing has occurred under the Act.</p> <p>[subsection 6(2); general natural justice requirements]</p>
Notification to interviewees to bring representation/support	<p>When inviting employees to participate in an investigation, the designated officer should inform them that they may bring a person with them to provide support (e.g., union representative for in-scope employees). It should be made clear that this person is not there to speak on behalf of the employee being interviewed.</p>
Assistance	<p>Managing the investigation may involve engaging specialized assistance (e.g., Internal Audit), to conduct the investigation on the designated officer's behalf.</p> <p>The matter can be referred to the police at any point during or after the investigation. The designated officer determines whether the investigation under the Act will be put in abeyance until the police investigation is complete or continue with their investigation simultaneously.</p> <p>(sections 6 and 45)</p>
Confidentiality	<p>Subject to the principle of procedural fairness, the designated officer must ensure the confidentiality of the information collected and must protect the identity of the persons involved in the disclosure process, including the disclosing employee, any witnesses and the alleged wrongdoer, to the fullest extent possible. [subsection 6(2); other legislation/policy]</p> <p>Identifying information of anyone involved shall not be disclosed unless it is necessary to conduct the investigation. [sections 6 and 45; other legislation/policy]</p> <p>If outside specialized expertise is retained by the designated officer to assist in the investigation (e.g., specialized investigators or forensic auditors), care must be taken to handle all correspondence to or from any expert, including billings for these services, with due regard to confidentiality requirements and protection of identity under the Act. (section 6; other legislation/policy)</p> <p>(Contractor confidentiality template – to be developed). (section 6; other legislation/policy)</p>

Time limits	<p>The period of time in which to conduct and complete an investigation is determined by the Permanent Head and designated officer. In all cases, investigations should be completed in a reasonable amount of time.</p> <p>(sections 6 and 45)</p>
Documentation	<p>All documentation related to the investigation, including interview notes, must be included in the disclosure file.</p> <p>(sections 6 and 45)</p>
Notification to the alleged wrongdoer	<p>The designated officer can notify the alleged wrongdoer at a time appropriate to the situation, if at all. The alleged wrongdoer may be informed of the nature of the disclosure and provided relevant information, as required. The designated officer should exercise due diligence and discretion when providing such information.</p> <p>(sections 6 and 45; general natural justice)</p>
Ending the investigation	<p>The designated officer may cease to investigate at any time on or after the point where he or she is able to make a determination that a wrongdoing has or has not occurred.</p>
Investigation report	<p>Investigation reports should contain the following:</p> <ul style="list-style-type: none"> <li>• a summary of the disclosure;</li> <li>• background of the incident, including a chronology of events;</li> <li>• a description of the investigative process;</li> <li>• a summary of the interviews held (employee who disclosed, alleged wrongdoer, witnesses);</li> <li>• relevant documents;</li> <li>• findings of the investigation;</li> <li>• conclusion;</li> <li>• recommended course of action.</li> </ul> <p>[subsection 5(2), sections 6, 21 and 45]</p>
Conclusions and recommendations	<p>Within 30 days of the completion of the investigation, the designated officer will prepare and deliver a report to the permanent head of the government institution that sets out:</p> <ul style="list-style-type: none"> <li>• the designated officer's opinion and reasons for that opinion; and</li> <li>• any recommendations the designated officer considers appropriate respecting the disclosure and the wrongdoing.</li> </ul>

	<p>(Note: If the investigation results in a finding of wrongdoing, the disclosure file must include recommendations for corrective actions to be taken in relation to the wrongdoing).</p> <p>[subsection 5(2); sections 6 and 45; seems to relate to section 21]</p>
<p>Communication of outcome</p>	<p>The designated officer will notify the employee who made the disclosure that a report has been made and provide the employee with any information respecting the report that the designated officer considers appropriate in the circumstances.</p> <p>Depending on the outcome of the investigation, the designated officer may or may not notify the alleged wrongdoer of the investigation and/or outcome of the investigation. Should the designated officer determine that notification is appropriate, he or she will provide the alleged wrongdoer with any information respecting the report that the designated officer considers appropriate in the circumstances.</p> <p>If the subject-matter of a disclosure that was being investigated involved the permanent head, the designated officer will also give a copy of the report to the Deputy Minister to the Premier.</p> <p>If the subject-matter of the disclosure that was being investigated involves the permanent head of a subsidiary Crown corporation as defined in The Crown Corporations Act, 1993, the designated officer will also give a copy of the report to the chairperson of the subsidiary Crown corporation's board of directors.</p> <p>If the subject-matter of the disclosure that was being investigated involves the Deputy Minister to the Premier, the designated officer will also give a copy of the report to the Premier.</p> <p>(sections 6 and 45; seems to relate to sections 21 and 22)</p>
<p>Follow-up of recommendations</p>	<p>Clause 6(1)(g) says that the permanent head must establish procedures . . . for the enforcement and follow up of any disciplinary action or corrective action taken or directed pursuant to this Act.</p> <p>If the designated officer makes a recommendation, the designated officer may request the permanent head to notify the designated officer of the steps the government institution has taken or proposes to take to give effect to the recommendations.</p> <p>(sections 6 and 45)</p>

## 7. ANNUAL REPORTING OF DISCLOSURES – DESIGNATED OFFICER

Procedure	<p>The designated officer must ensure there is a mechanism in place to track disclosures of alleged wrongdoing that have been made, for annual reporting purposes.</p> <p>(sections 6, 26 and 45)</p>
The PSC prepares and tables the report	<p>Under subsection 26(3) of the Act, the Annual Report must include the following information:</p> <ul style="list-style-type: none"><li>• the number of disclosures received<ul style="list-style-type: none"><li>o all disclosures made to the designated officer under subsection 10(1)(a), in accordance with the requirements under subsection 11(1), must be counted as a disclosure received;</li></ul></li><li>• the number of disclosures acted on and not acted on<ul style="list-style-type: none"><li>o the designated officer must determine if the disclosure was made in good faith (section 2(c)); falls within the categories of wrongdoing covered by the Act (section 3), keeping in mind if the employee had a reasonable belief that the information could show that a wrongdoing has been committed, or is about to be committed (section 10(1)). Based on this determination, the designated officer must categorize the disclosures as those acted upon and not acted upon. Disclosures not acted on will include those disclosures that do not meet the foregoing considerations;</li></ul></li><li>• the number of investigations commenced as a result of a disclosure;</li><li>• if an investigation results in a finding of wrongdoing, a description of the wrongdoing and any recommendations or corrective actions taken, or the reasons why no corrective action was taken.</li></ul> <p>The PSC will also collect various statistics such as number of inquiries that may or may not be reported in the Annual Report.</p> <p>(section 26)</p>