

DISCLOSURE OF WRONGDOING ASSESSMENT GUIDE – DESIGNATED OFFICERS (for use with the Act, the Procedures, and the attached Checklist)

Purpose:

This guide is intended as a tool to assist Designated Officers when handling a disclosure of wrongdoing made pursuant to *The Public Interest Disclosure (Whistleblower Protection) Act*.

The guide is to be used in conjunction with the Act, the “Procedures to Manage Disclosures”, and the attached “Checklist – Designated Officers”. Use of the guide requires a familiarity with and an understanding of the Act, and the guide should not be used without referring to the Act as appropriate.

Responsibilities of a Designated Officer Receiving a Disclosure of Wrongdoing:

(See “Procedures to Manage Disclosures” for additional information.)

- **Good Faith:** To act in good faith in responding to disclosures per the Act.
- **Confidentiality:** To protect the identity of the person(s) involved in the disclosure process.
- **Objectivity:** To remove him/herself from disclosures if a conflict of interest exists.
- **Timeliness:** To follow the time period requirements (as outlined in the Procedures) for responses to disclosures and the completion of disclosure reviews/investigations.
- **Review and Investigation:** To manage the review of disclosures, as well as the investigation of disclosures as required, and to ensure that investigations of disclosures are in accordance with the principles of procedural fairness and natural justice.
- **Taking Action on the Subject Matter of a Disclosure:** To identify and address matters requiring action by the department, regardless of resolution of the disclosure.
- **Cooperation with the Ombudsman:** Where the Ombudsman has received a disclosure, to cooperate fully with the Ombudsman in the handling of the disclosure or information under the Act.

Resources:

The Designated Officer may:

1. Seek advice, on the handling of a disclosure, from Civil Legal Services or the Civil Service Commission.
2. Arrange, through Civil Legal Services, for legal advice to be provided to employees and others involved in any process or proceeding under the Act. (See “Arranging for Legal Advice” for additional information.)
3. Seek advice, regarding other actions that may be required to address matters that come to their attention, from the Deputy Minister, Human Resources, Labour Relations, the Civil Service Commission or Civil Legal Services.
4. Utilize specialized assistance (e.g. Internal Audit; Labour Relations) or referral to an appropriate agency (e.g. law enforcement) to conduct an investigation.

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DESIGNATED OFFICERS (continued) *(for use with the Act, the Procedures,
and the attached Checklist)***

**Receipt of a Disclosure of Wrongdoing *(See Procedures and Checklist
for additional information.)***

1. Is the disclosure in accordance with Section 12 of the Act?

Under Section 12 of the Act, disclosures of wrongdoings must be received in writing, and must include the following information, if known:

- A description of the wrongdoing;
- The name of the person(s) alleged to have committed the wrongdoing or to be about to commit the wrongdoing;
- The date of the wrongdoing;
- Whether the wrongdoing has already been disclosed and a response received.

2. Am I the appropriate person to handle this disclosure of wrongdoing?

If a disclosure pertains to a matter outside the department, the Designated Officer must:

- Provide notice to the disclosing employee that the disclosure will be referred to the appropriate department, office or government body unless the employee withdraws the disclosure within 10 working days.
- Advise the employee that he/she may make a disclosure to the Ombudsman.
- If the disclosure is not withdrawn, refer the disclosure to the Designated Officer of the appropriate department, office or government body.

If the disclosure represents a conflict for the department or the Designated Officer, the Designated Officer must:

- Provide notice to the disclosing employee that the disclosure will be referred to the Ombudsman unless the employee withdraws the disclosure within 10 working days.
- If the disclosure is not withdrawn, refer the disclosure to the Ombudsman.

**Review of a Disclosure of Wrongdoing, and Decision regarding Action
*(See Procedures and Checklist for additional information.)***

1. Does the disclosure allege a wrongdoing in accordance with the Act?

The Designated Officer must determine if the disclosure was made in good faith (Section 2); falls within the categories of wrongdoing covered by the Act (Section 3), keeping in mind the purpose of the Act (Section 1); and, if the employee had a reasonable belief that the information could show that a wrongdoing has been committed or is about to be committed.

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and the attached Checklist)**

Review of a Disclosure of Wrongdoing, and Decision regarding Action (continued)
(See Procedures and Checklist for additional information.)

The Act (Section 1) facilitates the disclosure of significant and serious matters, or “wrongdoings”. Section 3 of the Act defines wrongdoings as follows:

- an act or omission that is an offence under an Act or regulation;
- 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;
- gross mismanagement, including of public funds or a public asset;
- knowingly directing or counseling a person to commit any of the above.

If the disclosure does not meet the above criteria, it **does not require further action under the Act**. The file is to be closed, and the disclosing employee and Deputy Minister notified. *However, the Designated Officer must determine whether any other action regarding the subject matter of the disclosure may need to be taken.*

If a disclosure meets the criteria, **further action is required**:

- Determine if immediate action is required.
- Determine if an investigation is required.

Every effort should be made to complete the review within 30 working days of the initial receipt of the disclosure.

Investigation of the Disclosure (See Procedures and Checklist for additional information.)

Investigations must be managed by the Designated Officer, with appropriate assistance, depending on the nature of the disclosure. This responsibility cannot be delegated.

Managing the investigation may involve specialized assistance (e.g. Internal Audit; Labour Relations) or referral to an appropriate agency (e.g. law enforcement) to conduct the investigation.

Investigations must be conducted promptly and in a confidential manner. If outside specialized expertise is retained by the Designated Officer, care must be taken to handle all correspondence with due regard to confidentiality requirements and protection of identity under the Act.

Investigations must be conducted in accordance with the principles of procedural fairness and natural justice.

Public Disclosures *(See Procedures and Checklist for additional information.)*

1. Has the disclosure been made in accordance with the Act?

Under Subsection 14(1) of the Act, an employee may make a disclosure to the public if he/she believes that the matter constitutes an imminent risk and specific danger to the life, health, or safety of persons or to the environment, such that there is insufficient time to make the disclosure under Section 10.

The employee must first make the disclosure to an appropriate law enforcement agency, or to the chief medical officer of health, and the disclosure must be subject to any direction the agency or officer considers necessary in the public interest.

Immediately after making a disclosure to the public, the disclosing employee must also make a disclosure about the matter to his/her supervisor or the Designated Officer.

If the disclosure has been made in accordance with the Act, many of the procedures for a disclosure made under Section 10 apply.