

### **Assessing disclosures of wrongdoing**

1. After a complaint is received from an employee, the designated officer must acknowledge receipt of the disclosure within five business days.
2. Within 20 business days, the designated officer must decide whether an investigation is required and notify the employee who made the disclosure of the decision and the reason for the decision.
3. To establish jurisdiction over a complaint of wrongdoing under the Act, the designated officer shall confirm:
  - a.) the disclosure relates to actions by an employee of PWPSD;
  - b.) the disclosure appears to have been made in good faith;
  - c.) the alleged wrongdoing occurred post enactment of the Act and less than two years have passed since the discovery of the wrongdoing;
  - d.) the allegation(s) appear to meet the definition of wrongdoing as defined in section 3 of the Act; and
  - e.) the allegation(s) has a public interest component, and are not based only on perceived wrongs perpetrated against the individual employee who made the disclosure.
4. Where a disclosure of wrongdoing does not meet the jurisdiction of the Act, the designated officer must notify the employee who made the disclosure. The designated officer may refer the employee to a more appropriate process or alternate authority.
5. An investigation is not required if:
  - a.) the subject matter of the disclosure could more appropriately be dealt with, initially or completely, according to a procedure provided for under this or another Act or a regulation;
  - b.) the disclosure relates to a matter that could more appropriately be dealt with according to the procedures under a collective agreement or employment agreement;
  - c.) the disclosure is frivolous or vexatious, has not been made in good faith or does not deal with a wrongdoing;
  - d.) the disclosure relates to a decision, action or matter that results from a balanced and informed decision-making process on a public policy or operational issue;
  - e.) the disclosure does not provide adequate particulars about the wrongdoing as required by section 13 to permit the conduct of a fair and effective investigation;
  - f.) more than two years has passed since the date that the wrongdoing was discovered; or
  - g.) there is another valid reason for not investigating the disclosure (e.g., the subject-matter of the disclosure is under investigation by another authority or is currently before the courts.).

6. Disclosures alleging gross mismanagement of employees are jurisdictional under the Act when all of the following apply:
  - a.) there is a pattern of behavior or conduct of a systemic nature by the alleged wrongdoer(s);
  - b.) the conduct or pattern of behavior indicates a problem within the culture of PWPSD including a business unit within PWPSD;
  - c.) the conduct relates to bullying, harassment or intimidation; and
  - d.) the matter does not relate to an individual dispute between employees or between an employee and their manager.
7. When assessing a disclosure alleging gross-mismanagement of employees, designated officers shall consider whether all applicable mechanisms, including any human resource processes or processes under a collective agreement, to address bullying, harassment or intimidation, within the organization have been used or considered.
  - a.) If all other mechanisms have not been used or considered first, the designated officer may refer the employee to the alternate process. If the matter is referred to an alternate process, the employee remains protected from adverse employment action as a result of the initial disclosure or request for advice. If the matter is not resolved through the alternate process, the employee may return the matter to the designated officer.
  - b.) If no other mechanisms exist, there is a legitimate concern that employees may become the target of a reprisal or based on the nature of the allegation the designated officer believes the matter should be investigated under the Act, the designated officer may investigate the matter.
8. An employee who is dissatisfied with the designated officer’s decision may bring the matter to the Public Interest Commissioner.
9. The designated officer will notify the chief officer prior to initiating an investigation into a disclosure of wrongdoing. The designated officer may consult with the chief officer regarding the management and investigation of the disclosure.

### **Assessing good faith**

1. Employees are required to make disclosures of wrongdoing in good faith.
2. An employee has made a disclosure in good faith if they have an honest belief in the wrongdoing they are alleging, absent of clear malice or intent to seek an unjust advantage, and regardless of subsequent negligence or error.
3. In the absence of clear evidence of malice, the benefit of the doubt must be afforded to the employee in that the information was provided in good faith.
4. A disclosure is not considered to be made in good faith if:
  - a.) the disclosure is seeking to deceive PWPSD;

- b.) the allegations are non-serious (i.e., frivolous); or
  - c.) the allegations are vexatious in nature and seeking to cause emotional or material harm to those accused of wrongdoing.
5. PWPSD is not required under the Act to investigate a disclosure that has not been made in good faith. The designated officer shall decline to investigate allegations that have not been made in good faith.
  6. The Act does not permit PWPSD to penalize with adverse employment measures, an employee who has not made a complaint in good faith. Doing so may contravene the reprisal provisions of the Act.
  7. In serious instances where an employee has knowingly made a false or misleading statement when making a disclosure, the designated officer shall consult with the Public Interest Commissioner to determine whether the conduct constitutes an offence under the Act. (See [Offences under the Act](#)).

### **Investigating disclosures of wrongdoing**

1. The designated officer will notify the chief officer prior to initiating an investigation into a disclosure of wrongdoing. The designated officer may consult with the chief officer regarding the management and investigation of the disclosure.
2. The designated officer may request advice and support from the Commissioner during the management and investigation of a disclosure.
3. Prior to initiating an investigation, the designated officer shall prepare terms of reference including:
  - a.) the scope of the investigation;
  - b.) the human resources required to complete the investigation including external consultants and subject-matter experts;
  - c.) a preliminary list of witnesses to be interviewed;
  - d.) a preliminary list of records required for the purpose of the investigation; and
  - e.) a timeline for completion of the investigation.
4. The designated officer may collect, use and disclose personal information, individually identifying health information, and any other information that is considered necessary to manage and investigate the disclosure of wrongdoing.
5. The designated officer may require any employee of PWPSD to provide any information or record and give written or oral replies to questions, for the purpose of investigating the disclosure.

6. The designated officer may request assistance from any individual while investigating the disclosure of wrongdoing, including retaining the services of a third party where appropriate.
7. If, during an investigation, the designated officer has reason to believe that another wrongdoing has been committed or may be committed, the designated officer may investigate the wrongdoing and notify the chief officer.
8. If the designated officer receives more than one disclosure of wrongdoing with respect to the same matter, a single investigation may be conducted rather than a separate investigation.
9. The designated officer must conclude an investigation not more than **120 business days** from the date the disclosure of wrongdoing was received. The chief officer, with the Commissioner's permission, may extend the time period to complete the investigation that the Commissioner considers to be appropriate in the interest of a fair and efficient outcome.
10. If the time period has been extended, the employee who submitted the disclosure must be promptly advised of when he or she may expect the next procedural step to occur or be completed.
11. At the conclusion of an investigation, the designated officer must prepare a report for the chief officer outlining the allegations investigated, whether the investigation found wrongdoing occurred, and recommendations for corrective measures.
12. The chief officer shall consider the recommendations, implement corrective measures to remedy the wrongdoing, and take appropriate disciplinary action as required, which may include termination of employment.
13. An employee who is dissatisfied with the outcome of the investigation by the designated officer or believes the matter has not been resolved may bring the matter to the Public Interest Commissioner.

### **Ensuring procedural fairness**

1. Disclosures of wrongdoing shall be investigated in accordance with the principles of procedural fairness and natural justice. This includes the right of an alleged wrongdoer(s) to be heard, and the right to have the matter investigated in an impartial manner.
2. Where a disclosure of wrongdoing is determined to have merit, the alleged wrongdoer(s) has the right to know the nature of the allegations made against them.
3. Where a disclosure of wrongdoing is determined to have merit, the designated officer must afford the alleged wrongdoer(s) the opportunity to respond to the allegations and the

relevant information used to support the allegation. The designated officer may receive a response verbally or in writing, and in any manner the designated officer determines to be fair and appropriate.

4. The designated officer must recuse him/herself from an investigation where they believe they are in a conflict of interest, or when they believe a personal bias exists. The chief officer may appoint an alternate individual to function as the designated officer, or may refer the matter to the Public Interest Commissioner.

### **Protecting confidentiality**

1. Designated officers must protect the identity of employees who make disclosures of wrongdoing, individuals alleged to have committed wrongdoing, and witnesses who participate in investigations.
2. Any persons engaged by the designated officer or chief officer to assist with managing or conducting an investigation into a disclosure of wrongdoing, must protect the identity of the individuals involved in the disclosure process, including the employee making the disclosure, individuals alleged to have committed the wrongdoings, and witnesses.
3. The identity of employees who make disclosures of wrongdoing, individuals alleged to have committed wrongdoing, and witnesses who participate in investigations, may only be revealed:
  - a.) to persons appointed as the designated officer;
  - b.) to the chief officer;
  - c.) to the Public Interest Commissioner;
  - d.) to persons engaged by the designated officer or chief officer to assist with managing or conducting an investigation into a disclosure of wrongdoing;
  - e.) to other persons when required by law;
  - f.) when disclosing the identity of the whistleblower is absolutely necessary to ensure the right to procedural fairness and natural justice is respected.
4. The designated officer shall inform the employee who made the disclosure of wrongdoing, individual alleged to have committed wrongdoing, or witnesses who participated in the investigation of the intent to reveal their identity prior to doing so. In the event of a dispute regarding the release of the identity of a party, the designated officer shall seek advice from the Public Interest Commissioner.
5. Where a wrongdoing has been found, the chief officer, or the board of trustees when the wrongdoing relates to the chief officer, may identify the wrongdoer(s) to others within the organization or to external authorities for the purpose of taking appropriate corrective action.

### **Information Security**

1. The designated officer will ensure all information obtained through the course of an investigation is secured, remains confidential, and is only disclosed when necessary to manage and investigate disclosures of wrongdoing.
2. Designated officers must maintain all records and information relating to investigations electronically on a secure network drive with access privileges restricted to the designated officer and chief officer. Where additional persons are required to assist with an investigation, all records must be maintained electronically on the secure network drive with file permissions established for each specific case.
3. Case related information must not be stored on the hard drive (i.e. desktop) of a computer. Use of portable media (i.e. USB flash drives) to transfer case related information is prohibited unless the portable media device is encrypted using 256-bit Advanced Encryption Standard.
4. Paper evidence or evidence that cannot be converted electronically, must be stored in a secure location accessible only to the designated officer. If securing evidence is not possible, the designated officer may contact the Public Interest Commissioner for advice.

### **Referring disclosures of wrongdoing**

1. The designated officer may refer a disclosure of wrongdoing to an alternate authority, including to the Public Interest Commissioner. Factors in considering whether to refer a disclosure of wrongdoing include:
  - a.) whether the subject-matter of the disclosure would more appropriately be dealt with by another authority;
  - b.) the complexity of the subject-matter of the disclosure;
  - c.) whether a real or perceived conflict of interest may exist;
  - d.) the resources and expertise required to conduct a fair and effective investigation; and
  - e.) whether the subject-matter pertains to an individual whose position in the organization is superior to that of the designated officer.
2. When a disclosure of wrongdoing is referred to an alternate authority, the employee who made the disclosure must be informed of the decision.

### **Matters constituting an imminent risk**

1. Notwithstanding any other provision in this procedure, where the subject-matter constitutes an imminent risk of a substantial or specific danger to the life, health or safety of individuals, or to the environment, the designated officer is authorized to notify, without the consent of the disclosing employee, any individual within PWPSD and any appropriate authority required to respond to the danger, including calling 911.

2. The designated officer must also notify:
  - a.) the appropriate law enforcement agency;
  - b.) in the case of a health-related matter, the chief medical officer of health; and
  - c.) the department, public entity, or other entity responsible for managing, controlling or containing the risk, if any exists.
3. The designated officer must suspend any investigation into the matter, and may only resume 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.

### **Matters involving a possible offence**

1. If during an investigation the designated officer has reason to believe that an offence has been committed under a provincial or federal Act or regulation, the matter must be reported to a law enforcement agency and to the Minister of Justice and Solicitor General as soon as reasonably practicable.
2. The designated officer must suspend any investigation into the matter, and may only resume 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.

### **Offences under the Act**

1. It is an offence to willfully obstruct, or counsel or direct a person to willfully obstruct a designated officer in the performance of their duties.
2. It is an offence to knowingly withhold material information or make a false or misleading statement, orally or in writing, to a designated officer.
3. It is an offence to destroy, mutilate, alter a document or thing, falsify a document or make a false document, conceal a document or thing, or direct or counsel to do any of the foregoing, knowing that the document or thing is likely to be relevant to an investigation by the designated officer.
4. The designated officer may seek advice from the Public Interest Commissioner where it is believed an offence may have been committed under the Act.

### **Access to information requests**

1. An applicant does not have a right of access under the *Freedom of Information and Protection of Privacy Act* to information that would reveal the identity of a person who has requested advice about making a disclosure, made a disclosure or whose complaint has been referred to the Labour Relations Board pursuant to the Act. However, if that information can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.<sup>1</sup>

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<sup>1</sup> Sec. 6(9) *Freedom of Information and Protection of Privacy Act*, RSA 2000, cF-25