

FAQS

PUBLIC INTEREST DISCLOSURE ACT: DISCLOSURES AND REPRISAL COMPLAINTS TO THE OMBUDSPERSON

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FREQUENTLY ASKED QUESTIONS

These Frequently Asked Questions (FAQs) refer to the procedures that apply to disclosures to the Ombudsperson. Check with your government body about their internal PIDA procedures.

These FAQs also refer to procedures that apply to allegations of reprisal.

ABOUT PIDA

WHAT IS THE PUBLIC INTEREST DISCLOSURE ACT?

The *Public Interest Disclosure Act* (PIDA) is BC's whistleblower protection legislation for current and former employees of ministries and offices of the legislature. PIDA provides mechanisms for investigating allegations of wrongdoing and where wrongdoing is found, the means to address it. PIDA also provides protection for public sector employees who speak up about serious or systemic wrongdoing within a public body.

WHAT IS THE ROLE OF THE OFFICE OF THE OMBUDSPERSON UNDER PIDA?

The Office of the Ombudsperson is an independent office of the legislature mandated under the *Public Interest Disclosure Act* to investigate allegations of wrongdoing from public sector employees.

The Ombudsperson also investigates complaints from employees who believe they have been retaliated against for reporting wrongdoing, seeking advice about doing so, or cooperating with an investigation under PIDA.

The Ombudsperson conducts fair and impartial investigations and makes effective recommendations for corrective measures when wrongdoing or reprisal is found.

The Office of the Ombudsperson can also provide advice about PIDA to employees and public bodies.

PIDA PROTECTIONS

WHAT PROTECTIONS DOES PIDA PROVIDE FOR EMPLOYEES?

PIDA prohibits reprisal against employees who report wrongdoing, ask for advice about reporting wrongdoing, or cooperate with an investigation. Reprisal can include demotion, disciplinary measures, termination of employment or any measure that adversely affects an employee's employment or working conditions.

PIDA requires that every person involved in receiving, reviewing and investigating disclosures must carry out those functions in an expeditious, fair and proportionate manner as appropriate in the circumstances.

Employees can make a complaint to the Ombudsperson if they experience reprisal.

WHAT PRIVACY AND CONFIDENTIALITY PROTECTIONS DOES PIDA PROVIDE?

If an employee reports wrongdoing, the Act requires that their personal information and identity will be kept confidential to the extent possible. The Ombudsperson conducts investigations in private and the identity of the person who made the report will not be included in the Ombudsperson's report.

The *Freedom of Information and Protection of Privacy Act* provides that investigative records of the Ombudsperson are exempt from disclosure. This means that members of the public cannot access the office's records that relate to a report of wrongdoing or reprisal complaint through a freedom of information request.

REPORTING WRONGDOING

WHAT IS "WRONGDOING"?

Wrongdoing is conduct that occurs in or relating to a ministry, government body or office of the legislature that is:

- a serious act or failure to act that, if proven, would be an offence under the laws of BC or Canada;
- an act or failure to act that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of an employee's duties or functions;
- a serious misuse of public funds or public assets;
- gross or systemic mismanagement; or
- knowingly directing or counselling a person to commit wrongdoing described above.

Not all misconduct is wrongdoing under PIDA. For example, minor or isolated transgressions may not meet the seriousness threshold in the definition of wrongdoing. Furthermore, disagreements about policy or human resource disputes involving purely personal interests are unlikely to qualify as wrongdoing.

If you want to discuss your concerns or learn more about the investigation process, contact our office to speak with an investigator.

CAN I GET ADVICE BEFORE I DECIDE TO REPORT WRONGDOING?

Yes. You can get advice from your supervisor, your designated officer, a lawyer, your union representative, employee association or the Ombudsperson. Under PIDA, you are protected from reprisal when asking for advice from these parties.

WHO CAN REPORT WRONGDOING UNDER PIDA?

An employee or former employee of a ministry or office of the legislature can report wrongdoing. Employees can report wrongdoing that has happened in the past, is currently taking place or that they believe is about to happen. An employee can report wrongdoing regardless of whether they are a permanent, temporary, casual, part-time or full-time employee.

Former employees can only report wrongdoing that they discovered, or that occurred, while they were employed.

We may ask you to substantiate that you are an employee or former employee in order to determine that you are eligible to report wrongdoing under the Act.

I AM A CONTRACTOR. AM I PROTECTED UNDER PIDA?

Contractors are protected from reprisal under the Act. PIDA prohibits persons from cancelling contracts, withholding payment, or refusing to enter into future contracts because a contractor or their employees cooperated with a PIDA investigation.

The Ombudsperson can NOT investigate complaints of reprisal from contractors. Contractors who believe that they have experienced reprisal may wish to seek legal advice.

CAN I REPORT WRONGDOING THAT HAPPENED A LONG TIME AGO?

Yes. PIDA does not have any time restrictions. However, it may not be possible to investigate wrongdoing that happened a very long time ago if evidence or witnesses are no longer available or there would be no useful purpose in an investigation.

HOW CAN I REPORT WRONGDOING?

Employees can report wrongdoing:

1. to your supervisor or the Designated Officer in your workplace; OR
2. to the Office of the Ombudsperson.

Employees can choose where to report wrongdoing. Employees do not have to exhaust other options before coming to the Office of the Ombudsperson.

If you want to discuss your concerns or learn more about the Ombudsperson's investigation process, contact our office to speak with an Ombudsperson Officer.

If you want to learn more about your ministry's or office's investigation process, contact the Designated Officer in your workplace.

CAN I REPORT WRONGDOING TO THE MEDIA?

In most circumstances, PIDA does not cover reports of wrongdoing to the media. However, if an employee believes that there is an imminent, substantial and specific danger to people or the environment, and the employee has consulted with and obtained the consent of the appropriate protection official, an employee can make a public disclosure.

Protection officials are

- the provincial health officer (for a health-related matter);
- Emergency Management BC (for an environmental matter); or
- the police, for any other matter.

PIDA does not authorize employees to report wrongdoings publicly without FIRST obtaining the consent of the appropriate protection official.

DO I HAVE TO TALK TO MY SUPERVISOR BEFORE REPORTING WRONGDOING?

No. Employees can report wrongdoing without first raising their concerns with their supervisor or employer.

I TOOK AN OATH WHEN I STARTED WITH THE PUBLIC SERVICE. WHAT HAPPENS IF I BREAK THAT OATH?

PIDA allows employees to share otherwise confidential information for the purpose of reporting wrongdoing, except information that is protected by solicitor-client privilege or another rule of privilege. Reporting wrongdoing under the Act in good faith is consistent with the employee's oath of employment.

CAN I REPORT WRONGDOING ANONYMOUSLY?

Yes, employees can report wrongdoing anonymously. We may investigate anonymous reports if there is enough information for the allegations of wrongdoing to be properly assessed.

However, we are required to determine if an anonymous report is made by an employee or former employee so we may ask the anonymous reporter to provide certain information so we can determine this.

We encourage employees who fear identifying themselves to contact our office to discuss our investigation process and the protections that the Act provides. That contact may be anonymous if you prefer.

INVESTIGATIONS INTO WRONGDOING

WHAT HAPPENS AFTER I REPORT WRONGDOING?

An Ombudsperson Officer will contact you to get more information about your report. Your report will be assessed to determine whether it is eligible for investigation under the Act, and if it is, whether or not an investigation should proceed.

Each issue brought forward to our office will be assessed on its merits to determine if an investigation will be conducted.

You will be notified if we decide to investigate your report. If we decide not to investigate your report, we will provide you with reasons for our decision.

WHAT HAPPENS AT THE END OF AN INVESTIGATION?

At the end of an investigation, the Ombudsperson will provide a report to the chief executive of the public body. The report will set out the Ombudsperson's findings, including any recommendations for corrective measures. The Ombudsperson will monitor the implementation of any recommendations made.

If the Ombudsperson does not find that wrongdoing took place, the employee who made the report is still protected from reprisal.

The employee who made the report will receive a summary of the outcome of the investigation.

I AM A WITNESS IN A PIDA CASE. WILL WHAT I SAY AFFECT MY EMPLOYMENT?

PIDA prohibits reprisal against employees who co-operate with a PIDA investigation. If an employee experiences reprisal because they cooperated with an investigation under PIDA, they can make a reprisal complaint to our office.

We conduct our investigations in private, and we will only share information about your identity as necessary to further the investigation.

CONTACTING THE OMBUDSPERSON

HOW DO I CONTACT THE OMBUDSPERSON?

As an employee, if you have questions about the Act, the role of our office, or if you need more information about how to make a disclosure you can speak to an Ombudsperson Officer directly by calling our office at 1-800-567-3247, or contacting us via email at report@bcombudsperson.ca.

SPEAK UP. YOU CAN MAKE A DIFFERENCE.