



Guidelines to Disclosing Wrongdoing

Public Interest Disclosure of Wrongdoing Act

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I. About these guidelines

A. Purposes

1. The purposes of these guidelines are to:
 - a) inform Yukon government employees about how to make a disclosure of wrongdoing within a Yukon government public entity or request advice about making such a disclosure under the *Public Interest Disclosure of Wrongdoing Act* (the Act);
 - b) ensure supervisors and chief executives are aware of their respective roles and responsibilities when receiving a disclosure of wrongdoing or a request for advice about making a disclosure of wrongdoing under the Act;
 - c) inform Yukon government employees about how to make a complaint of reprisal to the Public Interest Disclosure Commissioner (PIDC) if they believe they have been reprisal against because they have sought advice about making a disclosure of wrongdoing, made a disclosure of wrongdoing, cooperated in an investigation under the Act or declined to participate in a wrongdoing; and
 - d) provide Yukon government employees with information about the Act.
2. These guidelines are intended to serve as a living document and will be subject to revision as the Yukon government gains experience with the implementation and application of the Act.
3. Every effort has been made to ensure that the information presented in these guidelines is accurate and reflective of the provisions and intent of the Act. However, if there is any discrepancy between these guidelines and the Act, the Act prevails.

B. Application

1. These guidelines apply to all Yukon government employees hired under the *Public Service Act* or the *Education Act*, including contract employees, and persons hired as casuals. They also apply to a former employee who believes they were fired from their job because they sought advice about making a disclosure of wrongdoing, made a disclosure of wrongdoing, cooperated in an investigation under the Act, or declined to participate in a wrongdoing.

II. Overview of the *Public Interest Disclosure of Wrongdoing Act*

1. The Act supports employees of the Yukon government in coming forward if they reasonably believe that a serious wrongdoing has occurred or is about to occur in the Yukon government and they want the matter looked into.
2. The Act's objectives are to:
 - a) facilitate the disclosure of wrongdoings that an employee believes may be unlawful, dangerous to the public or harmful to the public interest, so that if wrongdoing is occurring or is about to occur,

it can be addressed;

- b) protect the confidentiality of employees who make disclosures of wrongdoing or requests for advice about disclosures of wrongdoing as a means of encouraging them to come forward;
- c) protect those involved in a wrongdoing investigation; and
- d) provide an avenue for redress for reprisals taken against an employee because they have sought advice about making a disclosure of wrongdoing, made a disclosure of wrongdoing, cooperated in an investigation under the Act, or declined to participate in a wrongdoing.

III. Important definitions

For reader convenience, and the purpose of these guidelines, the following definitions are simplified from those contained in the Act.

chief executive: means the responsible deputy head or president of the public entity.

disclosure: means a disclosure of wrongdoing made in good faith by an employee in accordance with the Act.

employee: means an individual employed by, or an individual who has suffered a reprisal and has been terminated by, a public entity, including a contract employee or casual.

public entity: means a department, directorate, secretariat or other similar executive agency of Yukon government. Yukon Housing Corporation, Yukon Liquor Corporation, Yukon Development Corporation, Workers' Compensation Health and Safety Board, and the Legislative Assembly Office are included within this definition.

reprisal: means any of the following measures taken against an employee because the employee, in good faith, sought advice about making a disclosure, made a disclosure, cooperated in an investigation under the Act or declined to participate in a wrongdoing:

- a disciplinary measure;
- a demotion;
- termination of employment; or
- any measure, or threat to take any measure, that adversely affects the employee's employment or working conditions.

supervisor: means an employee's immediate supervisor.

wrongdoing: means

- contravening an Act or a regulation made under an Act, or contravening an Act of Parliament or a regulation made under an Act of Parliament;
- doing something that creates a substantial and specific danger to people or to the environment – or creating that kind of danger by not doing something;
- gross mismanaging of public funds or assets; or

- knowingly directing or counselling someone to do any of these things.

IV. Guidelines for making a disclosure

A. Seeking advice about making a disclosure

1. If you are considering making a disclosure of wrongdoing, you may request advice from the PIDC, your supervisor, or your chief executive. You may wish to advise your supervisor or chief executive that your request for advice is being made under the Act.
2. You may be asked to put your request in writing.
3. You should document the date your request was made, to whom it was made, and information about your request.
4. You should consider seeking advice directly from the PIDC if the wrongdoing matter relates to your supervisor or chief executive.

B. Disclosing wrongdoings

To whom

1. You can make a disclosure of wrongdoing to any one of the following individuals or to all of them simultaneously:
 - a) the PIDC;
 - b) your supervisor; or
 - c) your chief executive.
2. When making a disclosure of wrongdoing, consider making it to:
 - a) the PIDC if the wrongdoing relates to:
 - your Minister; or
 - your chief executive.
 - b) the PIDC, or your chief executive, if the wrongdoing relates to:
 - your supervisor; or
 - another public entity (including an employee of that entity) covered by the Act.
 - c) the PIDC, your supervisor, or your chief executive, if the wrongdoing relates to any other employee of a public entity.

What information may be disclosed?

3. Generally, an employee can make a disclosure of wrongdoing in the manner set out in the Act, even if a provision in another act or a regulation prohibits or restricts disclosure of the information. However, the Act does not permit disclosure of:
 - a) Cabinet confidences, except as permitted by subsection 15(2) of the [Access to Information and](#)

[Protection of Privacy Act:](#)

- b) information that is protected by solicitor-client privilege; or
- c) in the case of a disclosure to the public, which is permitted in certain urgent circumstances described below, information that is subject to any restriction created by Yukon or federal law.

How to make a disclosure

- 4. Your disclosure of wrongdoing, whether to the PIDC, your supervisor or chief executive, must be made in writing, and include the following information, if known:
 - a) a description of the wrongdoing;
 - b) the name of the individual(s) alleged to have committed the wrongdoing, or about to commit the wrongdoing;
 - c) the date of the wrongdoing; and
 - d) whether you have disclosed the wrongdoing to someone else (the PIDC, your supervisor, or your chief executive) and whether a response has been received.
- 5. You may provide any additional information you feel is relevant or appropriate to your disclosure unless it involves personal and confidential information, in which case you must take reasonable precautions to ensure that no more information is disclosed than is necessary to make the disclosure. The individual reviewing the disclosure may also ask for any additional information they reasonably believe is needed to investigate the disclosure.
- 6. If your public entity fails to recognize your disclosure as a disclosure under the Act, you may make the disclosure to the PIDC.

Disclosure to the PIDC

- 7. If you make your disclosure of wrongdoing to the PIDC, the PIDC will notify your chief executive that a disclosure has been received, but will not divulge your identity as the discloser. If your chief executive is implicated in the alleged wrongdoing, then the applicable Minister, and if your public entity is a corporation, your board chair, will also be notified.
- 8. The PIDC will review your disclosure to determine whether the matter falls within the scope of the Act, and if so, whether an investigation is warranted. If the PIDC decides not to proceed with an investigation of the matter, you will be notified and given reasons why. Upon completion of an investigation, the PIDC will prepare a report of their findings, the reasons for the findings and any recommendations about the disclosure and the wrongdoing. You will be notified of the report and provided with any information respecting the report that the PIDC considers appropriate in the circumstances.
- 9. If you made a disclosure initially within your public entity, you may also choose to later make a disclosure to the PIDC.

Disclosure to a public entity

10. If you make a disclosure to your supervisor or directly to your chief executive, your chief executive will review the matter and will provide you with information respecting their review and/or investigation of the matter disclosed, and any decisions made about your disclosure, as they consider appropriate in the circumstances. In providing you with information, your chief executive must respect the right to privacy and confidentiality of all those involved in the disclosure process, and their responsibility not to disclose confidential information arising from the investigation of the disclosure.
11. Recorded information about a disclosure of wrongdoing made by you will not be placed on your official personal file in the Public Service Commission or in a personal working file of a public entity, but will be securely retained in the office of the chief executive of the public entity that received it or to whom it was referred.

Confidentiality

12. Your identity will be protected by the PIDC, your chief executive and supervisor to the fullest extent possible.

Making an urgent public disclosure of wrongdoing

13. If you reasonably believe that time is of the essence to prevent or mitigate an imminent risk and specific danger to the life, health, or safety of persons or to the environment, and there is insufficient time to make the disclosure under one of the regular channels, you may disclose the wrongdoing to the public as long as you comply with the additional following requirements:
 - Before going 'public', you must make the disclosure to an appropriate law enforcement agency. Disclosure to the public is subject to any direction the law enforcement agency considers necessary in the public interest.
 - A disclosure made to the public, such as the media, will only be protected from reprisal if the situation is urgent and your disclosure of the wrongdoing was made in 'good faith' (i.e., honestly, sincerely, and without malice).
 - Immediately after making a 'public' disclosure you must disclose the wrongdoing to your supervisor or chief executive.

V. Guidelines for supervisors

A. General

1. The identity of all persons involved in a wrongdoing disclosure process must be protected to the fullest extent possible. This means that all disclosure-related information, including the identity of an employee who sought advice about making a disclosure or who made a disclosure, or the identity of a person alleged to have committed a wrongdoing, is shared only with those who require the information in order to fulfil their responsibilities under the Act or to facilitate achievement of the Act's purposes.

2. It is important that a request for advice about making a disclosure of an alleged wrongdoing, or disclosure of an alleged wrongdoing, be dealt with in a timely and expeditious manner.
3. If you are asked for advice about making a disclosure, you can ask the employee to put their request for advice in writing.
4. A disclosure of wrongdoing must be in writing.
5. The Act is intended to deal with significant, serious wrongdoings. Where an employee presents an issue that may be a request for advice about a wrongdoing that may qualify as significant and serious or may be a disclosure of such a wrongdoing, it should be treated as such to ensure the employee's protection until it is confirmed that the issue would not qualify as a wrongdoing. If the issue clearly falls outside the parameters of a wrongdoing under the Act, the employee should be directed to the appropriate process for managing the issue.
6. In the interests of maintaining the highest level of confidentiality possible, and in keeping with best practices, consider converting any electronic communications to paper copy. All electronic records should be deleted once a paper copy has been made.
7. If you suspect or know that you have a real or perceived conflict of interest with the employee who made a request for advice or disclosure, you must immediately stop the process and advise both the employee and your chief executive to that effect and exclude yourself from any further involvement.

B. Receiving a request for advice or disclosure

1. If you receive a request for advice about making a disclosure, notify the requesting employee that you will be documenting your advice to them and providing it, along with their request, in a secure and confidential manner, to your chief executive for information and record-retention purposes. You should also provide a written copy of your advice to the employee and advise them of their right to seek advice from their chief executive or the PIDC if they are not satisfied with the advice you provided to them.
2. If you receive a disclosure of an alleged wrongdoing, advise the employee that you will be forwarding their disclosure, in a secure and confidential manner, to your chief executive for review and further action, as the chief executive considers appropriate.
3. Convey paper copies of advice or disclosure documentation to your chief executive in a sealed envelope, marked 'personal and confidential – to be opened by the chief executive only'.
4. Do not retain any records associated with a request for advice or a disclosure.

VI. Guidelines for chief executives

A. General

1. The identity of all persons involved in a wrongdoing disclosure process must be protected to the fullest extent possible. This means that all disclosure-related information, including the identity of an employee who sought advice about making a disclosure or who made a disclosure, or the identity of a person alleged to have committed a wrongdoing, is shared only with those who require the information in order to fulfil their responsibilities under the Act or to facilitate achievement of the Act's purposes.
2. It is important that a request for advice about making a disclosure of an alleged wrongdoing, or disclosure of an alleged wrongdoing, be dealt with in a timely and expeditious manner.
3. If you are asked for advice about making a disclosure of wrongdoing, you can ask the employee to put their request for advice in writing.
4. A disclosure of wrongdoing must be in writing.
5. The Act is intended to deal with significant, serious wrongdoings. Where an employee presents an issue that may be a request for advice about a wrongdoing that may qualify as significant and serious or may be a disclosure of such a wrongdoing, it should be treated as such to ensure the employee's protection until it is confirmed that the issue would not qualify as a wrongdoing. If the issue clearly falls outside the parameters of a wrongdoing under the Act, the employee should be directed to the appropriate process for managing the issue.
6. In the interests of maintaining the highest level of confidentiality possible, and in keeping with best practices, consider converting any electronic communications to paper copy. All electronic records should be deleted once a paper copy is made.

B. Receiving a request for advice

1. If a request for advice has been forwarded to you by a supervisor, for information and record-retention, ensure that it is securely retained by your office in a sealed envelope that is marked 'personal and confidential – to be opened by the chief executive only'.
2. If you receive a request for advice about making a disclosure directly from an employee, notify the requesting employee in writing, that their request to you, and any advice you provide to them will be securely retained, in confidence, by your office. You should also provide a written copy of your advice to the employee and advise them of their right to seek advice from the PIDC if they are not satisfied with the advice you provided to them.

C. Receiving a disclosure of wrongdoing

1. If you receive a disclosure of alleged wrongdoing directly from an employee, or one has been forwarded to you by a supervisor, advise the employee who made the disclosure, in writing, that you

will review their disclosure and take further action as you consider appropriate.

2. Ensure that the alleged disclosure of wrongdoing documentation is securely retained by your office in a sealed envelope that is marked 'personal and confidential – to be opened by the chief executive only'.

D. Review of a disclosure of wrongdoing

1. As a chief executive, you are responsible for all disclosures of wrongdoing that are received by you, either directly from an employee, or that have been forwarded to you by a supervisor.
2. You may request the disclosing employee to provide any additional information that you may reasonably require in order to review or investigate the matter set out in the disclosure.
3. If, in your opinion, the disclosure involves a real, potential, or perceived conflict of interest on your part, advise the employee accordingly, in writing, of their option to disclose the alleged wrongdoing directly to the PIDC. Notify your Minister and, if your public entity is a corporation, your board chair, of this information. In doing so, you must not divulge the identity of the employee who made the disclosure.
4. If, in your opinion, the disclosure pertains to a matter that would more appropriately be dealt with by another public entity, you may, with notice to the disclosing employee, refer the disclosure to the chief executive of the other public entity.

E. Investigation of a wrongdoing

1. In determining whether to conduct an investigation into an alleged wrongdoing, you may find it helpful to consider the discretionary authority afforded to the PIDC under section 20 of the [Act](#) to guide your decision.
2. If you determine that an investigation of the alleged wrongdoing is not required, advise the disclosing employee, in writing, of your decision and reasons for it, and of their option to disclose the alleged wrongdoing directly to the PIDC if they are not satisfied.
3. If, in your opinion, an investigation of a disclosure is required:
 - a) appoint an investigator who has the skills and experience necessary to carry out the investigation, given the nature, and scope of the alleged wrongdoing;
 - b) document your appointment and delegation of authority to the individual who will be investigating the alleged wrongdoing on your behalf;
 - c) consider any real, potential or perceived conflicts of interest concerning any members of the investigation team, including external subject-matter experts brought in to assist in the investigation;
 - d) ensure the investigation is conducted as informally and expeditiously as possible, and in accordance with the principles of natural justice, and procedural fairness;
 - e) ensure that to the fullest extent possible, the identities of all individuals involved in the disclosure process, including witnesses, are kept confidential;

- f) ensure that information collected throughout the disclosure process remains confidential, and is protected to the fullest extent possible; and
 - g) establish reasonable timeframes for completing, and reporting on the investigation.
4. If you receive multiple disclosures of wrongdoing concerning the same subject matter, you may wish to consider combining them into one investigation.
 5. Following your investigation, advise in writing, the employee who made the disclosure of the outcome of the investigation and any decisions made, as you consider appropriate in the circumstances, taking into account your obligation to respect the right to privacy and confidentiality of all those involved in the disclosure process, and the confidentiality of certain types of information that may have surfaced during the investigation of the disclosure. In your correspondence, also advise the employee of their right to disclose the alleged wrongdoing directly to the PIDC if they are not satisfied with your decision on the matter.

VII. Making a complaint of reprisal

1. Only the PIDC can investigate a complaint of reprisal under the Act, and must do so as informally and expeditiously as possible.
2. An employee who believes they have suffered a reprisal because they have in good faith (i.e., honestly, sincerely, and without malice) sought advice about making a disclosure, made a disclosure, cooperated in an investigation under the Act, or declined to participate in a wrongdoing, can make a written complaint of reprisal to the PIDC.
3. Generally, a complaint of reprisal must be filed within 90 days of the date on which the employee knew or, in the PIDC's opinion, ought to have known, that the reprisal was taken.
4. If a complaint of reprisal is made to the PIDC, the PIDC must notify the chief executive of the affected public entity, which will include divulging the identity of the employee who made the complaint. If the reprisal is alleged to have been taken by the chief executive, the PIDC must also notify the responsible Minister, and, if the public entity is a corporation, the chair of the governing board.
5. The PIDC cannot investigate and must cease to investigate a complaint if the employee has commenced or commences a procedure under another Act, an Act of Parliament, a collective agreement, an employment agreement or policy of Yukon government in respect of the complaint of reprisal.
6. The PIDC is not required to investigate a complaint of reprisal, and may cease an investigation if they are of the opinion that:
 - a. the subject matter has been dealt with or could better be dealt with according to a procedure provided for under another Act, an act of Parliament, a collective agreement, an employment agreement or a policy of the affected public entity;

- b. the complaint was not made in good faith; or
 - c. there is another valid reason.
7. If the PIDC decides not to investigate or ceases an investigation the PIDC must notify the employee who made the complaint, the employee's chief executive and anyone else who was notified of the complaint, and provide reasons.
8. The PIDC may at any time during or after an investigation take any steps they feel appropriate to help settle the complaint.
9. Upon completing an investigation of a complaint of reprisal, the PIDC must prepare a report containing findings, reasons for findings, and any recommendations about the complaint of reprisal. A copy of this report must be provided to the chief executive of the affected public entity, and if applicable, to any other individuals who were also initially notified of the complaint of reprisal (i.e., the responsible Minister, and board chair, as the case may be).
10. The PIDC will also notify the employee who made the complaint that a report has been prepared, and will provide the employee with any information respecting the report that the PIDC considers appropriate in the circumstances.
11. Employees should contact the office of the PIDC for more information about filing a complaint of reprisal with that office, and the processes that govern resolution of reprisal-complaints that may be made to that office.

VIII. Privacy

1. The Act requires an employee making a disclosure that involves personal or confidential information to take reasonable precautions to ensure that no more information is disclosed than is necessary to make the disclosure.
2. The identity of all persons involved in a wrongdoing disclosure process must be protected to the fullest extent possible. This means that all disclosure-related information, including the identity of an employee who sought advice about making a disclosure or who made a disclosure, or the identity of a person alleged to have committed a wrongdoing, is shared only with those who require the information in order to fulfil their responsibilities under the Act or to facilitate achievement of the Act's purposes.

IX. Confidentiality

1. All employees, including supervisors and chief executives, are expected to exercise the highest degree of confidentiality relating to a request for advice about a disclosure of wrongdoing or a disclosure of wrongdoing they make or receive, or in relation to an investigation of a wrongdoing in which they may be involved.
2. Information that comes to a person's attention or knowledge through the performance of their duties under the Act must not be disclosed except as required under this or another Act.
3. Supervisors and chief executives are expected to ensure that all records containing information related to a request for advice about a wrongdoing or a disclosure of wrongdoing are stored separately from all other records and that their access is restricted to only those individuals who have a legitimate need to access them.

X. Collection and use of personal information

1. A public entity may collect, directly or indirectly, personal information for the purposes of the Act and may, despite any other Act, use personal information for the purposes of the Act.

XI. Annual report

1. A chief executive is required by the Act to prepare and submit an annual report to their Minister and, in the case of a board or corporation, to their board chair, on:
 - a) any disclosures of wrongdoing that were made to their public entity; and
 - b) any complaints of reprisal of which they were notified.
2. The annual report must include the following information:
 - a) the number of disclosures and complaints of reprisals received;
 - b) the number of disclosures and complaints of reprisals acted on and not acted on;
 - c) the number of investigations commenced; and
 - d) in the case of an investigation that results in:
 - a finding of wrongdoing, a description of the wrongdoing and any corrective actions taken or the reasons why no corrective action was taken; and
 - a finding of reprisal, a description of the reprisal and any corrective action taken or the reasons why no corrective action was taken.
3. A chief executive must also provide a copy of their annual report to the PIDC, for inclusion in the PIDC's own annual report to the Yukon Legislative Assembly.
4. The PIDC's annual reports are typically compiled on a calendar year basis and tabled in the Spring Sitzings of the Legislative Assembly. To facilitate the PIDC's obligation to report, a chief executive

should endeavor to provide the PIDC with their report by the end of January in each calendar year.

XII. Offences and penalties

1. It is an offence under the Act to:
 - a) knowingly make a false or misleading statement, orally or in writing, when seeking advice about or making a disclosure, in making a reprisal complaint, or during an investigation or an arbitration under the Act;
 - b) willfully obstruct a person in the performance of a function or a duty under the Act;
 - c) destroy, mutilate, alter, falsify, or conceal a document or thing knowing it is likely to be relevant to an investigation or arbitration under the Act;
 - d) take a reprisal against an employee or direct that one be taken against an employee because the employee has sought advice about making a disclosure, made a disclosure, cooperated in an investigation under the Act, or declined to participate in a wrongdoing; or
 - e) direct, counsel or cause, in any manner, a person to do any of the above.
2. A person who commits an offense, as outlined above, may be prosecuted and liable to a fine of up to \$10,000.
3. A prosecution for an offence must be commenced within two years of the alleged offence taking place.

XIII. Legislation

Public Interest Disclosure of Wrongdoing [Act](#)

Access to Information and Protection of Privacy [Act](#)

XIV. More Information

1. These guidelines have been developed specifically for employees of the Yukon government, and are intended to complement the legislation, policies, practices, and workings of the Yukon government. **They are not disclosure procedures as referenced in sections 5 to 7 of the Act, nor should they be considered as such.**
2. In the event a public entity adopts formal disclosure procedures in accordance with sections 5 to 7 of the Act, those disclosure procedures supersede these guidelines.
3. Your department's most senior human resources consultant may be a good resource for further information about the Act and these guidelines.
4. The office of the PIDC is also an information resource. The office can be contacted at:

[Public Interest Disclosure Commissioner](#), Suite 201, 211 Hawkins Street Whitehorse, Yukon Y1A 1X3
Phone: 867-667-8468 or toll free at 1-800-661-0408 ext.8468. Email: info@ombudsman.yk.ca.