

Kelsey School Division Box 4700 The Pas, MB R9A 1R4	Code: KEA
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PUBLIC INTEREST DISCLOSURE

Background:

School Divisions are required to develop their own policies on Public Interest Disclosure. This summary policy is based on the procedures of the Manitoba Civil Service Commission. Additional information on the PIDA section of the Civil Service Commission site, including FAQs and the PIDA responsibilities of various categories of individuals (employees, supervisors, and designated officers) may also be helpful.

Policy KEA Public Interest Disclosure

Part 1: Policy and Procedures

1. Application of Procedures

The Public Interest Disclosure (Whistleblower Protection) Act (PIDA) facilitates the disclosure and investigation of significant and serious wrongdoing in or relating to public bodies and protects employees who make disclosures from reprisal.

2. Purpose

The purpose of this policy and supporting procedures is to:

- a. comply with section 5 (1) and 5 (2) of PIDA
- b. describe the roles and responsibilities related to PIDA
- c. provide guidance on the management and investigation of disclosures
- d. support employees who come forward to report wrongdoing, and make them aware of the protection provisions afforded to them by PIDA..

Part 2: Roles and Responsibilities

The Manitoba Ombudsman reviews and investigates disclosures of wrongdoing and complaints of reprisal made under The PIDA by employees of a public body. The Manitoba Ombudsman also provides advice.

1. Chief Executive

The superintendent of the school division is the chief executive officer, and must designate a senior official to be the designated officer that will receive and manage disclosures by their employees. The superintendent is responsible for establishing and maintaining procedures in accordance with section 5 (1) of PIDA for the school division, and must ensure that information about PIDA and the disclosure procedures are communicated annually to their employees.

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2. Designated Officer

Designated officers are senior officials responsible for investigating disclosures of wrongdoing made to the employee’s supervisor or to the designated officer. The designated officer is responsible to provide advice to employees who are considering making a disclosure. If no designation is made, the superintendent is the designated officer.

3. Supervisors

Supervisors are anyone who has a reporting relationship with employees, and may receive a disclosure from an employee. The supervisor must refer the disclosure to their designated officer. Supervisors must ensure they protect the identity of the disclosing employees.

4. Employees

Employees who believe wrongdoing is occurring within their public body are protected from reprisal when they report the wrongdoing to their designated officer, supervisor or the Manitoba Ombudsman. Employees have a responsibility to report wrongdoing in good faith, to cooperate during an investigation, and to provide any information the designated officer or the Manitoba Ombudsman may require.

Part 3: Procedures

1. Reportable types of wrongdoing

PIDA facilitates the disclosure and investigation of “wrongdoing” in or relating to public bodies:

- a. an act or omission constituting an offence under an Act of the Legislature or the Parliament of Canada, or a regulation made under an Act
- b. an act or omission 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 the duties or functions of an employee
- c. gross mismanagement, including of public funds or a public asset
- d. knowingly directing or counselling a person to commit a wrongdoing described in the above clauses (a -c).

2. Request for advice

An employee who is considering making a disclosure, may request advice from their designated officer, or the Manitoba Ombudsman. Employees are protected from reprisal under PIDA when seeking advice. The designated officer or the Manitoba Ombudsman may require the request to be in writing.

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3. Reporting wrongdoing

Employees are encouraged to make any disclosures as soon as they become aware of a potential wrongdoing, as the quality of evidence and the ability to make corrective measures may decrease with time. The disclosure must be in writing and provide the following information, if known:

- a. a description of the wrongdoing
- b. the names of the person or persons alleged to have committed or about to commit a wrongdoing
- c. the date of the wrongdoing
- d. if the matter has already been raised and the response received.

Employees may report the wrongdoing to their supervisor or designated officer using the prescribed Disclosure of Wrongdoing Form, clearly indicating they are making a disclosure under The Public Interest Disclosure (Whistleblower Protection) Act.

4. Anonymous disclosures

Anonymous disclosures may make the disclosure more difficult to investigate or substantiate, but will be acted on, whenever possible.

Part 4: Reporting Reprisals

1. PIDA protects employees from reprisal who have, in good faith:

- a. requested advice about making a disclosure from a supervisor, the designated officer, or the Manitoba Ombudsman
- b. made a disclosure under PIDA
- c. cooperated in an investigation under PIDA.

2. Any employee or former employee who believes they have been reprisal against for taking any of the above actions must make a written complaint of reprisal directly to the Manitoba Ombudsman. A reprisal is defined as taking, directing or counseling someone to take or direct:

- a. disciplinary measure
- b. demotion
- c. termination of employment
- d. any measure that adversely affects his or her employment or working conditions;
- e. threat to take any of the measures referred to in clauses (a) to (d).

3. A reprisal is an offence under PIDA, and anyone who reprises against an employee for taking an action under 4 is liable to prosecution under PIDA..

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Part 5: Supervisory Procedures for Receiving Disclosures

1. The supervisor must acknowledge receipt of the disclosure made by the employee within 5 business days. The supervisor must determine how the disclosing employee wishes to receive communication.
2. The supervisor must promptly refer the matter to the designated officer. The designated officer will determine if the allegation warrants an investigation based on the definition of wrongdoing. If the subject relates to a matter under the supervisor’s responsibilities, the supervisor must discuss with the designated officer whether any action is required by the supervisor.
3. Relevant verbal communication should be documented and stored in a confidential manner.
4. The supervisor must advise the disclosing employee that the identity of the persons involved in the disclosure process, including witnesses and persons alleged to be responsible for wrongdoing, must be confidential to the fullest extent possible.
5. The supervisor must arrange with the designated officer how the disclosing information will be forwarded in a secure and confidential manner. The supervisor must not keep any information including copies, related to the disclosure.
6. If the subject matter of the disclosure involves the designated officer, the supervisor must forward the relevant information to the chief executive.

Part 6: Managing and Investigating Disclosures

1. A designated officer who receives a disclosure from an employee or from a supervisor must assess the disclosure and take the appropriate action. Disclosures containing allegations of serious, imminent danger or risk must be acted upon immediately in accordance with section 14 (1) of the PIDA..
2. The designated officer must acknowledge receipt of the disclosure made by the employee within five business days. The designated officer must determine how the disclosing employee wishes to receive communication and respect the wishes of the employee.
3. Relevant verbal communication should be documented and stored in a confidential manner.

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4. The designated officer must determine whether a disclosure pertains to the public body of the employee who made the disclosure. If the designated officer determines that the disclosure relates to another public body, the designated officer must refer the matter to the designated officer of that public body.

5. Within four weeks, the designated officer must decide if an investigation is required, and notify the employee who made the disclosure of the decision and rationale.

Investigating disclosures of wrongdoing

1. The purpose of an investigation into a disclosure of wrongdoing is to bring the wrongdoing to the attention of the appropriate public body and to recommend corrective measures.

2. A designated officer must conduct an investigation in accordance with the procedures established by the superintendent. An investigation is to be conducted as informally and quickly as possible.

3. The designated officer may decide not to investigate a disclosure, or may cease an investigation, if he or she is of the opinion that

- a. the subject matter of the disclosure could more appropriately be dealt with, initially or completely, according to a procedure provided for under another Act
- b. the disclosure is frivolous or vexatious, or has not been made in good faith
- c. so much time has elapsed between the date, when the subject matter of the disclosure arose and the date when the disclosure was made that investigating it would not serve a useful purpose
- d. the disclosure relates to a matter that results from a 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 12 of PIDA
- f. the disclosure relates to a matter that could more appropriately be dealt with according to the procedures under a collective agreement or employment agreement
- g. if there is another valid reason for not investigating the disclosure.

4. A decision not to investigate and the rationale must be communicated to the person who made the disclosure.

5. The designated officer may consult with the chief executive, the Manitoba Ombudsman and any other person considered necessary for the purposes of the investigation. This includes arranging for legal advice to further the purposes of PIDA.

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- 6. The designated officer may require an employee to provide information or record(s) and give written or oral replies to questions, for the purpose of an investigation.
- 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 executive.
- 8. If more than one disclosure of wrongdoing is received by a designated officer with respect to the same matter, a single investigation may be conducted
- 9. The designated officer must conclude an investigation within a suitable timeframe that is consistent with procedural fairness and natural justice.
- 10. Procedural fairness and natural justice principles must be upheld at all times. The superintendent may extend the original timeframe to complete the investigation
- 11. In conducting investigations, designated officers should strive to maintain balance between timeframes and procedural fairness. If a timeframe is extended, the designated officer will maintain ongoing communication with the disclosing employee regarding the status of the investigation.
- 12. At the conclusion of an investigation, the designated officer must prepare a report outlining the allegations investigated, whether the investigation found wrongdoing and recommendations for corrective measures. The chief executive must be provided with a copy of the report.
- 6.20. The designated officer must inform the employee who made the disclosure, the results of the investigation

Referring disclosures of wrongdoing

- 1. The designated officer may refer a disclosure of wrongdoing to an alternate authority, including the Manitoba Ombudsman. 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 perceived conflict of interest may exist
 - d. If the subject matter pertains to an individual that supersedes the hierarchal position of the designated officer.

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Part 7: Procedural Fairness, natural Justice and Confidentiality.

Ensuring procedural fairness and natural justice

1. Disclosures of wrongdoing are investigated in accordance with the principles of procedural fairness and natural justice. The alleged wrongdoer has the right to know the nature of the disclosure, receive relevant information as required, and be given an opportunity to respond to the disclosure.
2. If wrongdoing is found, the respondent and alleged wrongdoer must be provided the opportunity to make representations prior to finalizing the report. This may be done through legal counsel.

Protecting confidentiality

1. 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,
2. Disclosure files (electronic or hard copies) must be treated in a confidential manner, maintained in a secure location, and protected from unauthorized access.
3. Maintaining confidentiality is important given that allegations are untested until an investigation is complete.
4. There may be situations where an individual’s identity will need to be disclosed to test the credibility of allegations. Disclosing the identities of employees, witnesses, or alleged wrongdoer(s) should only occur when there is no other way to test the allegations. The individuals involved must be advised in advance if this becomes necessary.

Part 8: Annual Reporting Requirements

1. A superintendent must prepare, on an annual basis, a report on any disclosures of wrongdoing that were made to a supervisor or designated officer of the public body for which the superintendent is responsible.

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- 2. The report must be included in the annual report of the public body and include the following information:
 - a. the number of disclosures received, acted on and not acted on
 - b. the number of investigations commenced as a result of a disclosure
 - c. in the case of an investigation that results in a finding of wrongdoing,
 - (i) a description of the wrongdoing
 - (ii) any recommendations or corrective actions taken in relation to the wrongdoing (ii) the reasons why no corrective action was taken.

- 3. The chief executive will not publicly identify an employee who requested advice, made a disclosure of wrongdoing or complaint of reprisal, or publicly disclose identifying information within the annual report.