

## PUBLIC INTEREST DISCLOSURE

### Background:

The *Public Interest Disclosure (Whistleblower Protection) Act* (the “*Whistleblower Act*”) and the *Public Interest Disclosure (Whistleblower Protection) Regulation* (the “*Whistleblower Regulation*”) require public bodies such as school boards to create procedures for managing and investigating disclosures of serious wrongdoing, and protecting employees who make such disclosures.

### Definitions:

#### Reprisal:

(from the *Public Interest Disclosure (Whistleblower Protection) Act*, section 24)

No person shall take or direct, or counsel or direct a person to take or direct, any of the following measures against an employee because the employee has, in good faith, sought advice about making a disclosure, made a disclosure, co-operated in an investigation under this Act, declined to participate in a wrongdoing or done anything in accordance with this Act:

- a) a dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of job location, reduction in wages, change in hours of work or reprimand;
- b) any measure, other than one mentioned in clause (a), that adversely affects the employee’s employment or working conditions;
- c) a threat to take any of the measures mentioned in clause (a) or (b).

### Procedures:

#### 1. Wrongdoings that Must be Reported

The kinds of wrongdoings that must be reported are as follows:

- 1.1. a contravention of a provincial or federal act or regulation;
- 1.2. an act or omission that creates a substantial and specific danger to the life, health or safety of individuals (except a danger that is inherent in the performance of the duties or functions of an employee);
- 1.3. an act or omission that causes a substantial and specific danger to the environment;
- 1.4. gross mismanagement of public funds or a public asset; or
- 1.5. knowingly directing or counselling an individual to commit a wrongdoing.

#### 2. Responsible Persons

- 2.1. The *Whistleblower Act* designates the Superintendent as **chief officer**, with overall responsibility for these procedures, and for the management and investigation of disclosures of wrongdoing.
- 2.2. The Superintendent has designated the Division’s Associate Superintendent of Human Resources to be the **designated officer**, with responsibility for the management and investigation of disclosures under the *Whistleblower Act*.

- 2.3. The designated officer may delegate tasks required to be performed under these procedures, but retains overall management and investigatory responsibility, except in circumstances in which the chief officer has determined it is inappropriate for the designated officer to perform those roles in relation to a particular disclosure. In that case, the chief officer must assume management and investigatory responsibility, and may delegate tasks as the chief officer sees fit, or refer the matter to the public interest commissioner, who is the head of the government body that administers the *Whistleblower Act*.

### 3. Seeking Advice and Information

- 3.1. Any Division employee who is considering making a disclosure may request information or advice from the designated officer, chief officer or the public interest commissioner. The designated officer or chief officer may require that such requests for information or advice be made in writing.
- 3.2. The designated officer may be reached:  
By phone at: 780-417-8209  
By mail or email at the address set out in section 4.
- 3.3. The public interest commissioner may be reached:  
By phone at: 1-855-641-8659  
By mail at:  
9925 109 St, Suite 700  
Edmonton, AB T5K 2J8  
By visiting: [yourvoiceprotected.ca](http://yourvoiceprotected.ca)

### 4. Making a Disclosure

- 4.1. Disclosures must be in writing. The [Public Interest Disclosure Form](#) (Form 403-1) should be used.
- 4.2. Emails and other written disclosures submitted not using Form 403-1 must include the contents of Form 403-1, which are:
  - 4.2.1. Set out as much detail about the wrongdoing as you can, including whether it has already been committed, or is about to be committed.
  - 4.2.2. Set out the name(s) of the person(s) involved in the wrongdoing.
  - 4.2.3. If the wrongdoing has already been committed, state the date it was committed (or approximate if the actual date is not known).
  - 4.2.4. Describe or include any evidence or documentation supporting the alleged wrongdoing.
  - 4.2.5. Indicate whether a disclosure regarding the same wrongdoing has already been made pursuant to these procedures or to any other party. If it has, then indicate whether a response to the disclosure has been received. If it has, you must provide a copy of the response.
- 4.3. The designated officer may also require the employee to provide other information necessary to assist in the investigation.
- 4.4. Emails should be sent **from** a private email service, not the Division's system.
- 4.5. Emails should be sent **to** the address specified on Form 403-1. The Division has set up a special address on an email system called Hushmail, which is known for its

high degree of security. The email address for disclosures is accessible only by the designated officer.

- 4.6. Deliveries and postal mail should be addressed:  
Private and Confidential  
Elk Island Public Schools  
Central Administration Building  
683 Wye Road  
Sherwood Park, AB T8B 1N2  
Attn: Associate Superintendent of Human Resources

## 5. Making a Disclosure to the Public Interest Commissioner

- 5.1. Most disclosures should be made to the designated officer. However, section 10 of the *Whistleblower Act* allows an employee of the Division to make a disclosure directly to the public interest commissioner in the following circumstances:
- 5.1.1. if the employee has made a disclosure to the Division in accordance with these procedures and an investigation regarding the disclosure has not been completed in accordance with the procedures;
  - 5.1.2. if the employee has made a disclosure in accordance with these procedures and the matter has not been resolved within the time periods established under the procedures;
  - 5.1.3. if the employee has made a disclosure in accordance with these procedures, a final decision has been issued regarding the disclosure and the employee is dissatisfied with the decision;
  - 5.1.4. if the subject matter of the disclosure involves the chief officer or the designated officer;
  - 5.1.5. if the employee reasonably believes a matter constitutes an imminent risk of a substantial and specific danger to the life, health or safety of individuals, or to the environment, such that there is insufficient time to make a disclosure to the Division;
  - 5.1.6. if the employee has made a disclosure in accordance with these procedures and is unable to continue because a reprisal has been taken or directed against the employee;
  - 5.1.7. if the employee reasonably believes a reprisal is likely to be taken or directed against the employee if the disclosure is made to the Division; or
  - 5.1.8. in the circumstances prescribed in the Whistleblower Regulation.

## 6. Anonymous Disclosures

- 6.1. If an anonymous disclosure is made, the designated officer will attempt to investigate in the same manner as if the disclosure had not been made anonymously, and will have the same obligations of confidentiality regarding the investigation. No information about an investigation will be given to an anonymous discloser.

## 7. Disclosures Made to Other Officials

- 7.1. If a disclosure is received by a member of the Board of Trustees or any employee other than the chief officer or designated officer, such Board member or employee must immediately forward the disclosure to the designated officer.

## 8. Acknowledging Receipt of a Disclosure and Reporting to Chief Officer

- 8.1. The designated officer will provide a written response to the discloser within five business days following the date of receipt of the disclosure advising the disclosure has been received, except where the disclosure is made anonymously.
- 8.2. The designated officer will advise the chief officer within five business days following the date of receipt of the disclosure about the disclosure.

## 9. Designated Officer's Initial Review

- 9.1. The designated officer will review the disclosure to ensure it meets content requirements, and is the kind of disclosure contemplated by Section 3 of the *Whistleblower Act*.
  - 9.1.1. If the content requirement is not met, the designated officer will request the additional information required. If the person making the disclosure does not comply, the designated officer will seek guidance from the chief officer to determine whether the investigation will continue.
  - 9.1.2. If the disclosure is not the type contemplated by section 3 of the *Whistleblower Act*, the designated officer will determine whether the disclosure should be dealt with pursuant to other Division policies or procedures, referred to some other agency or not pursued.
- 9.2. The designated officer may request advice from the public interest commissioner with respect to the management and investigation of a disclosure.
- 9.3. The designated officer or the chief officer may decide a disclosure should be referred to the public interest commissioner or some other agency. The referral will be made within 10 business days following receipt of the disclosure, and the employee who made the disclosure will be advised.

## 10. Preliminary Investigation

- 10.1. If the designated officer decides to conduct a preliminary investigation to determine whether a formal investigation should be undertaken, the disclosing employee shall be advised.
- 10.2. A preliminary investigation must be completed not more than 10 business days following receipt of the disclosure.
- 10.3. The designated officer will direct that a disclosure **not** be formally investigated if it is determined the disclosure:
  - 10.3.1. is not credible, or is frivolous or vexatious;
  - 10.3.2. is more appropriately dealt with through mediation or under a different policy or procedure of the Division;
  - 10.3.3. should be referred to the public interest commissioner because the disclosure involves an imminent risk of a substantial or specific danger to the life, health or safety of individuals or the environment;
  - 10.3.4. should be reported to another public entity, including law or regulatory enforcement agencies, because the designated officer believes an offence may have been committed;
  - 10.3.5. is about a matter that occurred more than two years before the disclosure was made, unless in all the circumstances the designated

officer and the chief officer determine a formal investigation should be conducted despite the breach of the two-year time limit; or  
10.3.6. is not the type of wrongdoing contemplated in Section 3 of the *Whistleblower Act*.

- 10.4. The designated officer will conclude the preliminary investigation by:
- 10.4.1. advising the disclosing employee, within 10 business days following receipt of the disclosure, whether a formal investigation will proceed; and
  - 10.4.2. documenting the reasons for the decision.

## 11. Formal Investigation

- 11.1. The designated officer will assess and monitor reprisal risk throughout the process.
- 11.2. If more than one disclosure is made with respect to a particular issue, the designated officer may deal with all of the disclosures in one investigation.
- 11.3. The designated officer will determine the process of an investigation and whether to conduct the investigation internally or utilize an external investigator. In making this determination, the designated officer will consider all relevant factors, including, but not limited to, the following:
  - 11.3.1. the nature of the matters to be investigated;
  - 11.3.2. logistical considerations such as the availability of an investigator free of any conflicts of interest or real or perceived bias, investigative competence in light of the nature of the matters to be investigated, and the ability to maintain the obligations of confidentiality; and
  - 11.3.3. the ability to maintain, throughout the investigation, both real and perceived procedural fairness and natural justice.
- 11.4. If the designated officer or the chief officer determines the designated officer has a perceived or real conflict of interest relating to the matters or persons to be investigated, the chief officer will appoint a different investigator.

## 12. Confidentiality

- 12.1. Section 29 of the *Whistleblower Act* provides that the chief officer and the designated officer are authorized to collect, use and disclose personal information, individually identifying health information and any other information considered necessary to manage and investigate disclosures. These broad powers, while necessary for investigation of wrongdoing, require strong rules regarding the maintenance of confidentiality wherever possible. As a result, the Division requires that every person involved with an investigation will make every effort to maintain confidentiality of information and identity. This includes, but is not limited to, ensuring information about disclosures, wrongdoing and investigations is shared only on a “need-to-know” basis and informing employees they cannot share information about disclosures or wrongdoing with employees or persons external to the Division, except for those who need to know the information. This includes the identity of those who make a disclosure, those alleged to have committed a wrongdoing, witnesses, information collected and the results of an investigation.
- 12.2. Despite the obligations of confidentiality, the chief officer or designated officer may inform the Board of Trustees, senior officials, board solicitors, auditors,

occupational health and safety officers, and law enforcement agencies about a wrongdoing and/or an investigation at any time.

### **13. When Confidentiality Does Not Apply**

- 13.1. Section 5 of the *Whistleblower Act* provides that obligations of confidentiality **will not apply** when there is an imminent risk of a substantial and specific danger to the life, health or safety of individuals or to the environment.

### **14. Procedures for Handling Information**

- 14.1. The designated officer will ensure:
  - 14.1.1. the identity of complainants, witnesses and alleged wrongdoers;
  - 14.1.2. the fact an investigation is taking place;
  - 14.1.3. details regarding investigations; and
  - 14.1.4. details regarding any attempted or actual reprisalsare protected against improper disclosure. If there is any perceived risk to the disclosing employee, the designated officer may impose stricter measures.
- 14.2. All information relating to disclosures, investigations and reprisals must be included in a confidential file maintained on paper and digitally by the designated officer.

### **15. Matters of Urgency**

- 15.1. If a matter poses an imminent risk of a substantial or specific danger to a person's life, health or safety, or to the environment, an employee must disclose directly to the public interest commissioner under section 5(2) of the *Whistleblower Act*.
- 15.2. The disclosing employee must also disclose the wrongdoing to the designated officer, who will begin an internal investigation.

### **16. Investigation Protocols**

- 16.1. The principles of procedural fairness and natural justice will be maintained throughout the investigative process and, to the extent possible, strict confidentiality will be maintained.
- 16.2. Investigations will conform with the following:
  - 16.2.1. specified timelines will be adhered to;
  - 16.2.2. where no timelines are specified, the investigator will proceed with diligence in accordance with the nature of the disclosure and its possible impact on the Division, its trustees and employees, and any others affected by the investigation;
  - 16.2.3. legal principles relating to chain of possession and protection of documents or other materials will be followed; and
  - 16.2.4. decisions and recommendations (if any) will be made fairly and impartially.

### **17. Procedural Fairness and Natural Justice**

- 17.1. The principles of procedural fairness and natural justice include the following:
  - 17.1.1. all investigators must be free of real or perceived bias and conflicts of interest;
  - 17.1.2. investigators must make findings of fact only, and not speculate;
  - 17.1.3. findings of fact are based solely on evidence detailed in an investigator's report, and the sources of that evidence shall be detailed and preserved;

- 17.1.4. conclusions are based solely on relevant evidence, properly disclosed in the investigator's report;
  - 17.1.5. no relevant evidence is omitted from consideration or excluded from an investigator's report;
  - 17.1.6. all parties to an investigation are treated with fairness, openness and honesty; and
  - 17.1.7. where adverse conclusions are drawn, the person against whom the conclusions are made will be given an opportunity to respond to the investigator's report.
- 17.2. Despite the duty of procedural fairness and natural justice, the designated officer will determine at which point, if any, a person about whom a disclosure has been made will be advised of the facts and details of the disclosure. This decision will be made in light of all relevant considerations, including the nature and seriousness of the matters disclosed, and the potential impact on persons and property.

#### **18. When Other Wrongdoings Are Discovered**

- 18.1. An investigator who discovers another wrongdoing has occurred or might occur must provide this information to the designated officer or chief officer as soon as possible.
- 18.2. The designated officer or chief officer will determine the appropriate course of action, including initiating another investigation, referral to the public interest commissioner, or referral to law enforcement or regulatory agencies.

#### **19. Reporting Results of a Formal Investigation**

- 19.1. When a formal investigation is finished, the designated officer must prepare a report detailing at least the following matters:
  - 19.1.1. date of report;
  - 19.1.2. executive summary;
  - 19.1.3. name of the person who made the disclosure of wrongdoing;
  - 19.1.4. date the disclosure was received;
  - 19.1.5. a copy of the disclosure;
  - 19.1.6. date of acknowledgment of receipt of the disclosure;
  - 19.1.7. date on which the chief officer was advised;
  - 19.1.8. date, if any, of referral to the public interest commissioner or other agency;
  - 19.1.9. date of appointment of investigator;
  - 19.1.10. date investigation was commenced and completed;
  - 19.1.11. names of all persons interviewed;
  - 19.1.12. table of documentary and other evidence;
  - 19.1.13. time frame of investigation;
  - 19.1.14. findings of fact with reference to sources and rationale for the findings;
  - 19.1.15. all interview notes or transcript of recording (may be a reference to a digital repository); and
  - 19.1.16. recommendations of the designated officer regarding any corrective measures the Division should take.

## 20. Timelines

- 20.1. Section 3(7) and section 5 of the Whistleblower Regulation provide that:
  - 20.1.1. a formal investigation be completed and a report prepared and submitted to the chief officer within 120 business days following receipt of a disclosure;
  - 20.1.2. upon request by the designated officer, the chief officer may grant an extension of up to 30 business days, provided the extension includes a requirement that the report must be submitted to the chief officer within the 30-business-day time period; and
  - 20.1.3. a further extension may only be granted with the permission of the public interest commissioner.
- 20.2. It also provides that where any extension of time is granted for the completion of an investigation and report under these procedures, the disclosing employee must be advised when the next procedural step will occur or be completed.

## 21. Recommendations and Corrective Action

- 21.1. The designated officer will determine whether to include recommendations regarding corrective measures that should be implemented.

## 22. Chief Officer's Annual Report

- 22.1. Section 32 of the *Whistleblower Act* provides that the chief officer must prepare a report annually on all disclosures that have been made.
- 22.2. The designated officer will prepare the report for the chief officer's approval.
- 22.3. The report must include the following information:
  - 22.3.1. the number of disclosures received, the number of disclosures acted on and the number of disclosures not acted upon;
  - 22.3.2. the number of investigations commenced as a result of disclosure; and
  - 22.3.3. in the case of an investigation that results in a finding of wrongdoing, a description of the wrongdoing and any recommendations made or corrective measures taken in relation to the wrongdoing or the reasons why no corrective measure was taken.
- 22.4. The chief officer's report will be presented annually to the Board of Trustees at a public Board meeting.

## 23. Protection from Reprisals

- 23.1. Reprisal against any employee who has made a disclosure or participated in an investigation of a disclosure is strictly prohibited. Swift and serious measures will be taken against any employee who attempts or inflicts any sort of reprisal. Such measures may include discipline or termination of employment. Section 24 of the [Public Interest Disclosure \(Whistleblower Protection\) Act](#) provides the definition of reprisal.
- 23.2. It is the designated officer's responsibility to initially assess and monitor the potential for reprisal throughout an investigation and to take whatever steps are necessary if a reprisal or attempted reprisal is detected.
- 23.3. If an employee is subject to a reprisal and wishes to make a complaint about it, the *Whistleblower Act* requires the employee **to make the complaint directly to the**

**public interest commissioner.** A [complaint form](#) is set out in Schedule 3 of the Whistleblower Regulation and can be found at [yourvoiceprotected.ca](#).

- 23.4. The public interest commissioner will investigate the complaint and make recommendations to the chief officer.
- 23.5. The *Whistleblower Act* provides that any person found by the public interest commissioner to have taken, directed or counseled, or directed another person to take or direct a reprisal against an employee is guilty of an offence and subject to a fine of up to \$25,000 for a first offence and up to \$100,000 for a subsequent offence.

#### **24. Offences and Penalties under the *Whistleblower Act***

- 24.1. Part 7, sections 46 to 52, of the [Public Interest Disclosure \(Whistleblower Protection\) Act](#) outlines offences and associated fines.

#### **Reference:**

*Freedom of Information and Protection of Privacy (FOIP) Act*  
*Public Interest Disclosure (Whistleblower Protection) Act*  
Public Interest Disclosure (Whistleblower Protection) Regulation