



Public Interest Disclosure Act Compliance Procedures

Issue Date: September 8, 2011

Revised Date:

Authority

The Crown Corporations Act, 1993
CIC Board Minute Number 138/2011

Applicability

This policy is applicable to CIC and its subsidiary Crown corporations and their subsidiaries.

Definitions

Disclosure - a disclosure of wrongdoing made in good faith by an employee in accordance with the Act

Wrongdoing - a contravention of any Act or Regulation (Provincial or Federal)
- an act or omission that creates a substantial and specific danger to the life, health or safety of persons or to the environment
- gross mismanagement of public funds or a public asset
- knowingly directing or counseling a person to commit a wrongdoing.

Purpose

The policy describes procedures for Crown corporations to follow to facilitate disclosures of wrongdoing by Crown corporation employees under *The Public Interest Disclosure Act* (the Act).

Policy Statements

The Act provides a mechanism for Crown corporation employees to disclose wrongdoings within the Crown corporation and provides protection from reprisals for those employees who make disclosures.

Crown corporations shall designate at least one senior official to be its designated officer, also serving as the designated officer for all subsidiaries of the Crown corporation. The designated officer shall receive and deal with disclosures by employees in accordance with the Act and this Policy.

Crown corporations shall establish procedures to manage disclosures by its employees under the Act, including procedures to:

- Receive and review disclosures under the Act, including setting periods for making recommendations to the Crown corporation and the CEO respecting any corrective measures that should be taken;
- Refer the matter to another government institution or the Public Interest Disclosure Commissioner, if appropriate;



- Review and investigate disclosures under the Act in accordance with the principles of procedural fairness and natural justice;
- Protect the confidentiality of information collected in the course of disclosures and investigations;
- Protect the identity of persons involved in the disclosure and investigation process, subject to the principles of procedural fairness and natural justice;
- Report the outcome of investigations;
- Enforce and follow-up on any disciplinary or corrective action recommended as a result of an investigation; and
- Comply with the Regulations.

Appendix A contains a model form of procedures for use by Crown corporations to comply with the Act. Crown corporations are expected to substantially follow the model form of procedures, with only minor modifications as necessary to integrate within the Crown corporation's existing policies and procedures.

Crown corporations shall widely communicate details about the Act and the procedures to their employees.

Reporting

Crown corporations shall prepare, and submit to the Ministry responsible for administration of the Act, a report on all disclosures made in the reporting period in accordance with the Act. A copy of the report will also be provided to CIC.

Administrative Information

Contact: Senior Vice-President and General Counsel, CIC, 787-5892

Reviewed: February 4, 2016



Appendix A

Model Form

The Public Interest Disclosure Act Compliance Procedures

Scope

The Government of Saskatchewan has enacted *The Public Interest Disclosure Act* (the “Act”), which may be accessed by clicking on the following link:

<http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/P38-1.pdf>

The Act provides that any employee of [*Crown corporation*] or its subsidiaries who reasonably believes that he/she has information that could show that a wrongdoing (as defined by the Act) has been, or is about to be committed, or could show that the employee has been asked to commit a wrongdoing, may in good faith make a disclosure **either** externally to the Public Interest Disclosure Commissioner or internally to the Designated Officer of [*Crown corporation*]. An employee considering making such a disclosure may also request advice from either the Commissioner or the Designated Officer of [*Crown corporation*].

Since members of the [*Crown corporation*] board of directors are not employees of [*Crown corporation*], they are neither subject to the Act nor these Procedures.

The Act also requires that [*Crown corporation*] establish procedures to manage any internal disclosures of wrongdoing by employees of [*Crown corporation*] and its subsidiaries to the designated officer of [*Crown corporation*].

Set out herein are procedures regarding the making and the handling of such disclosures.

These procedures are not, however, intended to replace or in any way diminish the responsibility of those in positions of authority, whether in-scope or out-of-scope, to promote and enforce [*Crown corporation*]'s various policies, operating procedures and other workplace rules. Neither are these procedures intended to replace or limit existing grievance or other internal investigative processes available to employees. [*Crown corporation*] retains the right to determine if any particular situation warrants an alternative investigative process.

Definitions

For purposes of these procedures, the following definitions apply:

Designated Officer - a senior official appointed by [*Crown corporation*] to receive and handle disclosures of wrongdoing under the Act. [*Crown corporation*]'s Designated Officer(s) is(are) _____.

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

Good faith - means that the employee has a reasonable and genuine belief that wrongdoing has occurred or is occurring and is not making the disclosure for personal gain or with an improper motive, and is not making a repeated disclosure where a matter has already been disclosed and a determination has been made.

Wrongdoing - means:

- a contravention of any Act or Regulation (Provincial or Federal)
- an act or omission that creates:
 - a substantial and specific danger to the life, health or safety of persons; or
 - a substantial and specific danger to the environment.
- gross mismanagement of public funds or a public asset
- knowingly directing or counseling a person to commit a wrongdoing mentioned above.

Reprisal- means any of the following measures taken against an employee because the employee has, in good faith, sought advice about making a disclosure, made a disclosure, co-operated in an investigation pursuant to the Act or declined to participate in suspected wrongdoing:

- 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;
- any other measure that adversely affects the employee's employment or working conditions; or
- a threat to take any of the measures noted above.

Procedures

If an employee opts to make a disclosure to the Designated Officer, the following procedures apply.

1. Making a Disclosure

Any disclosure under these Procedures, including a disclosure involving senior management, is to be made to the Designated Officer in writing on the form prescribed in the Act, and should be sent by interoffice or regular mail, in a sealed envelope marked "Personal and Confidential" which shall be forwarded, unopened, to the Designated Officer.

The employee making the disclosure is to provide only that information as is reasonably necessary to make the disclosure. The employee must take reasonable care to ensure that the information is accurate and relevant. The information should be factual and should not contain conclusions or speculations. The employee must not undertake their own investigation or go looking for information which is not otherwise properly available to them in the course of their employment or to which they otherwise have a right of access. Improper accessing of information may itself constitute wrongdoing. The Designated Officer may request that the employee provide any additional information that may reasonably be required to investigate the disclosure.

2. Referral

[Crown corporation] retains the prerogative to determine if any particular situation, due to its nature or other relevant circumstances, ought reasonably to be referred to another government institution for handling. The decision to refer a disclosure to another government institution shall be made by the Designated Officer within thirty days of the receipt of the disclosure and shall be communicated to the employee who made the disclosure.

3. Receipt and Review of Disclosures

On receiving a disclosure, the Designated Officer shall immediately register the receipt in a log and open a file for the same, which shall be kept in a secure location. The Designated Officer will consider whether or not a meeting or conversation is required with the employee in order to discuss the disclosure and if required, all efforts should be made by the Designated Officer to do so as quickly as possible, taking into consideration the nature of the alleged wrongdoing. If the Designated Officer

concludes a meeting or conversation is not required then the Designated Officer should at least acknowledge receipt of any disclosure made from the employee.

The Designated Officer shall determine whether the disclosure alleges wrongdoing which is covered by the Act and will do a preliminary review to determine if the disclosure is credible and genuine. No investigation will be undertaken if the disclosure is frivolous, vexatious, has not been made in good faith, concerns a trivial matter, or where too great a time period has elapsed between the date when the subject-matter of the disclosure arose and the date when the disclosure was made such that an investigation would not serve a useful purpose. Otherwise, the Designated Officer shall conduct, or direct, an internal investigation which protects the integrity of these Procedures and is in keeping with these Procedures and the Act. The Designated Officer should inform the employee whether or not an investigation is being conducted, within a reasonable period of time from receiving a disclosure.

4. Investigating Disclosures

The Designated Officer may, in his/her sole discretion, consult with any member or committee of management or the board of directors who is not a subject of the allegations in the disclosure and who may have appropriate and necessary expertise to assist in conducting the investigation, to either act as a consultant through the investigation, or to assist in recommending appropriate action. The Designated Officer shall have access to all books and records of *[Crown corporation]*, for the purposes of conducting an investigation. *[Crown corporation]*'s directors, senior management and other employees are expected to fully cooperate in an investigation. Failure to do so on the part of any employee may be met with discipline.

If in the opinion of the Designated Officer, it would be inappropriate for him or her to deal with the disclosure either because of the nature of or the persons involved in the alleged wrongdoing, the Designated Officer may refer the disclosure to the Public Interest Disclosure Commissioner and the Designated Officer should notify the employee of such.

Investigations will be undertaken as quickly as possible having regard to the nature and potential risk associated with the disclosure. When the alleged wrongdoing constitutes an imminent risk of a substantial and specific danger to either the life, health or safety of persons, or to the environment, or could have serious financial or legal consequences for *[Crown corporation]*, the Designated Officer may take whatever action he/she deems appropriate in the circumstances to prevent potential or actual wrongdoing before an investigation has been undertaken or completed. In addition, unless the allegations involve members at the senior management level, the Designated Officer should immediately notify the President and appropriate members of senior management of the potential risk.

Once a disclosure is filed with the Designated Officer, it cannot be withdrawn.

All parties to an investigation will be treated fairly. Within thirty days of the conclusion of the investigation, a corporate decision on the alleged wrongdoing will be made by the Designated Officer. The personal motivation of the employee who made the disclosure will not affect the consideration of whether or not the disclosure is substantiated. If the Designated Officer determines that the disclosure has been substantiated, any employee who committed a wrongdoing will be subject to appropriate disciplinary action up to, and including termination of employment. The Designated Officer will, after consultation with the supervisor, divisional Executive Member involved and/or the President and CEO, as applicable, determine and implement the appropriate measure of discipline. Each individual case will require discretion and judgment. Discipline will depend on the nature and the severity of the wrongdoing and the circumstances surrounding such.

The Designated Officer will also determine and implement, or recommend, again after consultation with the supervisor, divisional Executive Member involved and/or the President and CEO, as

applicable, other corrective or remedial actions to be taken. Appropriate measures will also be taken to prevent further violations. The Designated Officer will also take necessary actions to review and confirm that the corrective actions have been implemented.

5. Recording and Reporting of Disclosures

The Designated Officer of *[Crown corporation]* will maintain the log of complaints and individual disclosure files, tracking the receipt, actions taken and the outcome. These records are the property of *[Crown corporation]* and will be maintained in accordance with applicable laws and *[Crown corporation]*'s document retention policies, subject to appropriate safeguards to ensure their confidentiality, but also in a manner which will serve *[Crown corporation]*'s overall compliance initiatives.

Unless there exists a legal requirement or other public interest to the contrary, the employee who made the disclosure will be informed of the outcome of the investigation to the extent it is possible to do so.

[Annually or twice annually or quarterly], the Designated Officer will provide the *[committee]* of the Board of Directors with a summary of the number and nature of any reported disclosures and the status, or the conclusions and outcome, of any investigations. He/she will advise the *[committee]* of the Board of Directors promptly of any disclosure which may have significant and material consequences for *[Crown corporation]*.

The Designated Officer will prepare and submit to the Ministry responsible for administration of the Act, a report on all disclosures made in the reporting period in accordance with the Act. A copy of the report will also be provided to CIC.

6. Confidentiality of Information and Protection of Identities

Any disclosure made in accordance with these Procedures is considered confidential but on the record. Confidentiality will be respected unless there is an imminent risk of a substantial and specific danger to either the life, health or safety of persons, or to the environment.

The identities of those involved in the disclosure process, including the employee making the disclosure, witnesses and persons alleged to have committed a wrongdoing, and the circumstances relating to the alleged wrongdoing, will not be shared with anyone except as is necessary in accordance with the principles of procedural fairness and natural justice to investigate the disclosure, to take corrective, remedial or disciplinary action with regard to a substantiated wrongdoing, to comply with these Procedures and the Act, or where required by law.

Any sharing of information will be carefully and sensitively evaluated, and done on a need-to-know basis as determined by the Designated Officer, and can arise in the course of, or as a result of an investigation. Any employee or external party, who is privy to information regarding a disclosure, whether he/she made the disclosure, is entrusted with information in the course of an investigation, or otherwise has knowledge relating to the disclosure, is expected to hold the information in confidence. The failure to do so by any employee may be met with discipline, up to and including dismissal.

7. Reprisal

The Act offers protections from reprisal against employees who, in good faith, make a disclosure in accordance with the Act.

Any reprisal against an employee who makes a disclosure or against any witness or other participant in an investigation is strictly prohibited and will not be tolerated. Any agent or contractor of *[Crown corporation]* who engages in a reprisal against an employee will be subject to any remedies permitted by law.

Any employee who reasonably believes that he/she is being subjected to a reprisal as a result of making a disclosure or cooperating or assisting in an investigation should promptly inform the Designated Officer. Reasonable and appropriate actions will be taken to protect the employee from a reprisal. This protection does not extend so far as to insulate the employee from any repercussions if the employee was involved or complicit in the disclosed wrongdoing. Employees also have the option to submit a complaint of reprisal, in the prescribed form, to the Public Interest Disclosure Commissioner.

[Crown corporation] employees who are not involved in an investigation under these Procedures shall not make any effort, nor tolerate any effort, to ascertain the identity of any person involved in an investigation, whether that be the person who made the disclosure, the person who allegedly committed the wrongdoing or any witnesses.

If there is reasonable evidence that a disclosure was not made in good faith, disciplinary action may be taken against the employee who made the disclosure. If an investigation uncovers no wrongdoing or if the alleged wrongdoing cannot be substantiated, but there is no evidence that the disclosure was not made in good faith, no action will be taken against the employee who made the disclosure.

8. Other Avenues

The Designated Officer may, as deemed necessary or appropriate by him or her, retain independent legal, financial or other professional advisors or external authorities to investigate any disclosure of wrongdoing, report the results of the investigation(s), and provide recommendations for appropriate corrective or remedial action.

If any investigation under these Procedures leads to the reasonable conclusion that a crime has, or may have been committed, the results of the investigation may be reported to the appropriate law enforcement agency. If any investigation under these Procedures leads to the reasonable conclusion that an employee has engaged in conduct which is, or may be a violation of an applicable code of conduct of any professional association of which the person is a member, or to which the person belongs, the results of the investigation may be reported to the professional association by the Designated Officer.

In a situation where a disclosure of wrongdoing or reprisal has been made or referred to the Public Interest Disclosure Commissioner, the Designated Officer and any other *[Crown corporation]* employees involved shall co-operate fully with the Commissioner.