

## The Public Interest Disclosure (Whistleblower Protection) Act (PIDA) Designated Officers: Assessing Disclosures

This tip sheet provides a brief overview on how to assess disclosures of wrongdoing made by employees under PIDA. PIDA designated officers are encouraged to seek advice from Manitoba Ombudsman as needed.

### 1 INITIAL CONSIDERATIONS

#### The disclosure is in writing and includes:

- Description of the wrongdoing
- Name of individual(s) alleged to have committed the wrongdoing
- Date of the wrongdoing
- Information which may be reasonably required to investigate
- Who else have they reported to and response received

#### Who is the disclosure from?

- Employee of your organization
- Non-employee: Non-employees can only make a disclosure under PIDA directly to Manitoba Ombudsman. Communicate the lack of jurisdiction to accept as a disclosure under PIDA and refer them to Manitoba Ombudsman. Is there another internal process to address their concerns?

#### Jurisdiction

- It occurred in your organization

#### Referring a disclosure

- Refer a disclosure to the ombudsman if it would be inappropriate for the designated officer to deal with it because of the nature of the wrongdoing or the persons involved
- Refer a disclosure to another designated officer if the wrongdoing is in or relates to another public service

### 2 ASSESSING THE DISCLOSURE

#### Is it wrongdoing?

A disclosure can be made about a wrongdoing. A wrongdoing is a very serious act or omission that is defined by PIDA as:

- An act or omission that is an offence under another law
- An act or omission that creates a specific and substantial danger to the life, health or safety of persons or the environment
- Gross mismanagement, including mismanagement of public funds or a public asset
- Knowingly directing or counselling a person to commit a wrongdoing

#### Is an investigation warranted?

Designated officers must review disclosures and make a decision regarding whether an investigation is required.

- Your organization procedures should be referred to for guidance.
- Designated officers may also consider other circumstances for when an investigation may not be required as outlined in the act (see next page)

## What may not require an investigation:

- It could be dealt with more appropriately under another act
- The matter/disclosure is frivolous or vexatious, or has not been made in good faith or is not sufficiently serious
- Investigating would not serve a useful purpose due to how much time has passed between the date the matter occurred and the date of the disclosure
- It relates to a matter that resulted from a balanced and informed decision-making process on a public policy or operational issue
- There is insufficient information about the wrongdoing
- It could be dealt with more appropriately under a collective agreement or employment agreement
- There is another valid reason for not investigating the disclosure

## 3 COMMUNICATING THE DECISION

### Declining

- PIDA disclosures are matters of public interest. If the disclosure does not deal with a form of wrongdoing, or there are other valid reasons for declining to investigate, the employee must be advised of the decision and of any alternate and more appropriate pathway.
- When the designated officer declines to investigate a disclosure, they must advise the employee that they may make their disclosure to Manitoba Ombudsman.

### Initiating:

- Initiate your investigation in accordance with your organization's procedures and inform the chief executive, complainant and persons accused of wrongdoing.

## 4 CONFIDENTIALITY

PIDA requires enhanced confidentiality provisions to protect the identities of those involved. Even if a disclosure is declined for investigation, the discloser's identity is protected and has protection from reprisal for making the disclosure.