



**MANITOBA
OMBUDSMAN**

2026 Legislative Review of The Public Interest Disclosure (Whistleblower Protection) Act

Suggestions for Amendment from the Manitoba Ombudsman

March 2026

Table of Contents

Introduction	3
Part 1: Purpose and Definitions	4
Part 2: Procedures & Disclosures of Wrongdoing.....	5
Part 3: Investigations	8
Part 5: General Provisions	9
Additional Responses to the 2023 Review of The Public Interest Disclosure (Whistleblower Protection) Act Report	11
Additional Suggestions.....	12
Concluding Remarks.....	12

This report is available in alternate formats upon request.

MANITOBA OMBUDSMAN
1-800-665-0531 | ombudsman@ombudsman.mb.ca
www.ombudsman.mb.ca

Introduction

The Public Interest Disclosure (Whistleblower Protection) Act (PIDA) supports accountability and integrity in Manitoba public services. The Ombudsman has had a significant role in PIDA since the legislation came into force in 2007.

The Ombudsman is one avenue where individuals may take whistleblower disclosures as well as whistleblowing-related reprisal complaints. Additionally, the Ombudsman answers inquiries from individuals seeking advice on whistleblowing, provides consultation on request to PIDA designated officers from Manitoba public bodies, and conducts reviews of PIDA procedures developed by public bodies.

Amendments made to PIDA in 2018 included a requirement to review PIDA every five years. In 2024, the Manitoba government published its [*2023 Review of The Public Interest Disclosure \(Whistleblower Protection\) Act*](#) on its website.

Due to the Ombudsman's role in the legislation, the Manitoba Ombudsman office was consulted and provided comments to the report's author, C. Lynn Romeo, during the review process.

This report provides further information, context and clarity on our comments and suggestions for the legislation.

Our office has identified several opportunities to improve the function and exercise of PIDA.

Part 1: Purpose and Definitions

1. Expand the descriptions under purpose of the act in section 1

The current purpose listed in the act is brief. We have found that many people who come forward to our office do not have a clear sense of the purpose of the legislation. There is an opportunity to expand on the current description to provide more understanding about the overarching intention of the legislation.

We propose expanding the statements to emphasize that the act can help preserve the integrity and value of public services as well as public confidence in the administration of public bodies.

Expanding this section would align sections 1 and 19 of the act and help communicate the intention of PIDA and its related processes.

Other jurisdictions, such as Alberta and Yukon¹, provide expanded phrasing about the purpose of their respective whistleblower legislation, both of which align with our suggested change.

2. Clarify the reprisal protections in section 1

Currently, the protections outlined in the purpose statements of the act, under 1(b) are specific to protecting people who make disclosures. It does not specify that other employees are also afforded protection.

In 2018, PIDA legislation was amended to include protections against reprisal for people who participate in a process under PIDA. These protections apply to not only disclosers, but those who seek advice about making a disclosure or those who participate in a PIDA investigation process such as being interviewed as a witness.

Adding a clarifying statement in the purpose would emphasize the importance of reprisal protection for all employees who participate in the PIDA process. It aligns the purpose with the protections identified in section 27 and may help increase confidence in PIDA as a safe process to report wrongdoing.

¹ [Public Interest Disclosure \(Whistleblower Protection\) Act, SA 2012, c P-39.5, s 2](#); [Public Interest Disclosure Of Wrongdoing Act SY 2014, c. 19, s 1](#)

3. Expand definition of public body and align coverage to all areas of the public service as defined in The Public Service Act

Currently there are public service employees not covered under PIDA. Employees of those entities may have knowledge of wrongdoing that should be reported, or they may have information or be witness to wrongdoing and be called on to cooperate in an investigation. We suggest that gaps be identified and considered.

Examples of groups of public service employees not covered under PIDA include the clerk of executive council and the administration branch of the Legislative Assembly of Manitoba.

This proposal would expand jurisdiction under PIDA to include employees who fall under The Public Service Act. This would ensure that PIDA applies consistently across the public service, with all public service employees having equivalent rights and protections. All public service employees should be able to seek advice, make disclosures and participate in a PIDA process and have reprisal protections for doing so.

This proposal is also consistent with promoting the values established under Part 2 of The Public Service Act.

Part 2: Procedures & Disclosures of Wrongdoing

4. Improve procedures to require designated officers to create, store and retain records from internal investigations and from when employees make disclosures or seek advice.

PIDA requires public bodies to establish procedures to manage employee disclosures. The current provision for PIDA procedures do not contain requirements for the creation, storage and retention of PIDA-related records by public bodies.

It is important for public bodies to create and retain records of contact with staff seeking advice as well as investigation records. Records should be retained and stored with reasonable physical, administrative and technical safeguards consistent with the confidentiality requirements of the act.

We have seen instances where a public body does not have consistent policies for maintaining and retaining PIDA records. This can result in the designated officer not

knowing whether an employee has sought advice or made a disclosure, or new designated officers not knowing a previous investigation was undertaken, or where records were located or if they existed. This can present challenges for public bodies to uphold reprisal protections as well as in the Ombudsman's investigation of complaints of reprisal.

Consideration should be given to expanding the procedure requirements for public bodies to ensure the maintenance, management, confidentiality and security of records relating to inquiries, disclosures and investigations. Records should be retained for a minimum period to ensure records are available for the Ombudsman to investigate a complaint of reprisal, if made.

5. Improve procedures to require an assessment of risk of reprisal when employees make disclosures or seek advice from designated officers

Reprisal protection is essential for disclosers to feel safe coming forward.

Consideration should be given to expanding PIDA procedure requirements to require the chief executive to include an assessment of the risk of reprisal in its PIDA procedures. This would help enhance protections for disclosers and encourage public bodies to proactively implement measures to mitigate identified risks and strengthen employee confidence to bring forward concerns about alleged wrongdoing.

This proposal is consistent with British Columbia's whistleblower legislation.²

6. Add an express override clause that non-disclosure agreements do not prevent employees from making disclosures or witnesses from participating in investigations

Currently, section 15 of PIDA expressly allows employees to disclose information when submitting a disclosure even if another act or regulation prohibits it. However, this section does not specifically refer to non-disclosure agreements.

Any employee with information that speaks to the matter should not be prevented by a non-disclosure agreement from providing any information or answering any

² [Public Interest Disclosure Act, SBC 2018, c 22, s 9\(2\)\(a\)](#)

questions that will advance an investigation of public interest. An investigation that helps promote the integrity of public services is in the public interest.

We have had instances where individuals sought advice and were reluctant to file a disclosure of wrongdoing because they had signed a non-disclosure agreement related to the same matter. Similarly, potential witnesses in an investigation were hesitant to participate when they had signed a non-disclosure agreement. These individuals were fearful that legal actions would be taken against them, despite being informed of the Ombudsman's broad powers of investigation in clause 30(1) of The Ombudsman Act, as referenced in clause 22(6) of PIDA.

An amendment is needed to clarify that non-disclosure agreements cannot prevent employees or former employees from exercising their right to make a disclosure of wrongdoing or a complaint of reprisal under PIDA, or from taking part in a PIDA process.

7. Designated officer consultation with the Ombudsman when receiving a disclosure

Many designated officers have limited experience with receiving disclosures or conducting investigations under PIDA. Designated officers sometimes contact our office seeking guidance when they receive disclosures of wrongdoing. They request Ombudsman's assistance in assessing the disclosure to determine whether the disclosure meets the threshold, or during the planning stages of an investigation. In these instances, the Ombudsman's support is restricted to providing information about the requirements of the act.

PIDA explicitly limits consultation to the management of an investigation.³ Consideration should be given to expanding the ability for designated officers to consult with our office early in the PIDA process to enhance internal capacity to receive and manage disclosures.

³ [The Public Interest Disclosure \(Whistleblower Protection\) Act, CCSM c P217, s 19.1\(2\)](#)

Part 3: Investigations

8. Require designated officers to inform the Ombudsman when they open an investigation

Under PIDA an employee of a public body can submit a disclosure to their supervisor, the designated officer or the Ombudsman. In some cases, disclosures are submitted to a public-body's designated officer and the Ombudsman.

The Ombudsman may decide to decline to investigate a disclosure if the subject matter is already being investigated by a designated officer. Adding this provision would ensure the Ombudsman is aware of investigations already underway for consideration in the decision of whether to investigate. A requirement that designated officers inform the Ombudsman when opening an investigation would avoid duplication of process.

Informing the Ombudsman of investigations also provides an early opportunity for designated officers to use their existing authority to consult on the management of the investigation if they consider it necessary. This could include discussions about reprisal protections for disclosers and witnesses, and strategies to manage potential risks of reprisal.

9. Allowing the Ombudsman to notify an alternate oversight entity when investigations involve the chief executive

The Ombudsman must notify the deputy minister or administrative head of a public body before investigating under PIDA⁴. The act does not contain an alternate notification process when the disclosure involves the chief executive, deputy minister or administrative head.

Only notifying the administrative head in these cases is inconsistent with PIDA's reporting requirements, which require the Ombudsman to report to an additional body or person when investigations involve the chief executive.

Allowing or requiring notification to an entity with administrative oversight of the chief executive, such as the clerk of executive council in the case of a deputy minister

⁴ [Section 22\(6\) of PIDA](#) states that section 25 of the Ombudsman Act applies to PIDA investigations, with necessary changes.

or the board of directors in the case of chief executive of a body defined in regulation, would ensure an appropriate entity is aware of investigations. This proposal would also align the act's notification and reporting requirements and promote accountability and integrity in public services.

10. Reporting when an investigation involves a chief executive

PIDA requires the Ombudsman to report to an additional body or person when investigations involve the chief executive.

Under section 24(3)(f) of PIDA, the Ombudsman is required to provide a report of investigation findings and any recommendations for corrective action to the board of directors and "the minister responsible" for any other government body.

Some government bodies identified in regulation include private corporations and arms-length entities not created under statute. For these organizations the board of directors holds administrative oversight for the chief executive. Providing an investigation report to the board is consistent with the intended accountability within these organizations. It is often not clear who, if anyone, is the minister responsible for the organization.

A clarification could be added to requirement listed in 24(3)(f) by adding "if any" after "the minister responsible." This proposal is consistent with reporting provisions in Alberta, British Columbia and Quebec whistleblower legislation.⁵

Part 5: General Provisions

11. Add a clear referral power for the Ombudsman to disclose information about an offence under PIDA

Section 22(6) of PIDA specifies certain sections of The Ombudsman Act apply to PIDA investigations, including Section 12(1). Under The Ombudsman Act, section 12(1) specifies that the Ombudsman must maintain secrecy in respect of all matters that come to their knowledge in the exercise of their duties and functions.

⁵ [Public Interest Disclosure \(Whistleblower Protection\) Act, SA 2012, c P-39.5, s 23\(1\)\(c\)](#); [Public Interest Disclosure Act, SBC 2018, c 22, s 27\(4\)\(b\)\(ii\)](#); [Act to facilitate the disclosure of wrongdoings relating to public bodies, CQLR c D-11.1, s 15](#)

In addition, section 33 establishes general offences under PIDA. Specifically, it is an offence to act in reprisal against an employee or contractor for taking part in the PIDA process, make false or misleading statements, obstruct the Ombudsman, or destroy, falsify or conceal information.

Currently, PIDA does not provide explicit disclosure authority for prosecution purposes. The Ombudsman's confidentiality requirement under section 12(1) of The Ombudsman Act prohibits the disclosing of information for enforcement purposes under PIDA.

By creating a referral power, it is clear that the Ombudsman's disclosure of confidential information is for a lawful purpose. This proposal is consistent with provisions of FIPPA and PHIA which allow the Ombudsman to disclose information relating to the commission of an offence to the Minister of Justice and Attorney General.

12. Time limit for commencing a prosecution

Currently the time limits for prosecution are based on when the alleged offence was committed indicating that prosecution cannot commence after two years. This time limit for prosecutions is inflexible and risks serious misconduct going unaddressed in cases where there is a timelapse between the date of the offence under the act, the date the disclosure was made, and the date the subject matter of the disclosure arose or investigation findings.

Calculating the deadline for prosecution based on when evidence came to the Ombudsman's knowledge would better support the intended deterrent effect of the act's offence provisions. This proposal is also consistent with the prosecutorial time limits under FIPPA and PHIA.⁶

The day on which evidence came to the knowledge of the Ombudsman can be established through the Ombudsman issuing a certificate with the date.

⁶ [The Personal Health Information Act, CCSM c P33.5, s 63\(6\); The Freedom of Information and Protection of Privacy Act, CCSM c F175, s 85\(2\)](#)

Additional Responses to the 2023 Review of The Public Interest Disclosure (Whistleblower Protection) Act Report

13. Own Motion Power to Conduct Audits

The 2023 report recommended the Ombudsman be empowered to undertake own initiative investigations under PIDA.⁷ This recommendation was based on consultations with our office.⁸

We want to clarify that we are not seeking the general power to conduct own initiative wrongdoing investigations. The authority to conduct own initiative investigations and audits of public bodies would be for the purposes of monitoring or assessing the public body's exercise of a power or performance of a duty and its compliance with PIDA and the regulations.

This amendment is consistent with the powers and duties of the Ombudsman under Part 4 of The Freedom of Information and Protection of Privacy Act, and The Personal Health Information Act.

14. Revision to Good Faith Test

The 2023 report also recommended replacing the “good faith” requirement for disclosures and reprisal complaints with a reasonable belief requirement. The Manitoba Ombudsman supports this proposal.

Public bodies sometimes focus on this requirement in internal procedures and when reviewing disclosures. Employees can also be hesitant to discuss concerns out of fear of consequence(s) if they are mistaken.

PIDA is intended to facilitate the disclosure and investigation of significant and serious matters, protecting those who take part in the process. A reasonable belief requirement is consistent with this purpose.

⁷ [2023 Review of The Public Interest Disclosure \(Whistleblower Protection\) Act, December 27, 2023, \(2023 Review\) Recommendation 10, page 35, 49](#)

⁸ [2023 Review, page 34](#)

15. Public Body Reporting

The 2023 report recommends an amendment requiring public bodies to submit their PIDA annual reports to the Ombudsman.⁹ The Manitoba Ombudsman supports this proposal.

Additional Suggestions

16. Duty to Educate

Some designated officers have indicated to our office that they do not feel equipped to manage PIDA disclosures, assessments and investigations. Given the authority and responsibility placed on designated officers, and the role of supervisors in receiving disclosures, consideration should be given to requiring regular and ongoing education and training for these staff. Training will provide designated officers with the necessary knowledge and skill to undertake investigations, while ongoing training and education to supervisors on their role will strengthen their awareness of PIDA and enable them to fulfill their responsibilities under the act. This will build capacity within the public service to provide advice and to receive and investigate disclosures made by employees, and enhance accessibility and trust in the PIDA process.

Concluding Remarks

This report is intended to inform the legislative review and amendments process identifying amendments to the act's purpose and scope, the powers and duties of the Ombudsman, reprisal protections and management of disclosures that align with the legislation's objective of providing employees with a process to confidentially raise concerns about serious and significant matters in public services and protect those who make disclosures, and ultimately protect the public interest.

The public release of this report follows the release of the [*2023 Review of The Public Interest Disclosure \(Whistleblower Protection\) Act*](#).

⁹ [2023 Review, page 34](#)