

 The University of British Columbia Board of Governors	Policy No.: SC19
Long Title: Public Interest Disclosure Policy	
Short Title: PIDA Policy	

Background & Purposes

The *Public Interest Disclosure Act* [SBC 2018, c. 22] (“**PIDA**”) requires certain public sector employers to provide current and former employees with a process for disclosing or seeking advice about disclosing concerns of serious misconduct that is potentially unlawful, dangerous to the public or injurious to the public interest.

The purpose of this Policy is to set out that process.

1. Definitions

- 1.1 “**Designated Officer**” means the person(s) designated by the President in section 1.2 of the Procedures as being responsible for receiving requests for advice about Disclosures, receiving Disclosures, and investigating Disclosures;
- 1.2 “**Discloser**” means an Employee who makes a Disclosure.
- 1.3 “**Disclosure**” means a written report of Wrongdoing made by an Employee in accordance with section 3 of the Procedures.
- 1.4 “**Employee**” means:
 - 1.4.1 a current employee or current member of the Board of Governors of UBC; and
 - 1.4.2 a former employee of UBC, if the Wrongdoing occurred or was discovered by the former employee when the former employee was employed by UBC.
- 1.5 “**BC Ombudsperson**” means the Ombudsperson appointed under the *Ombudsperson Act*.
- 1.6 “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act*.
- 1.7 “**Personal Information**” means information about an identifiable individual.
- 1.8 “**PIDA Investigation**” means an investigation of a Disclosure or of a disclosure of Wrongdoing referred to UBC in accordance with PIDA that is undertaken by UBC pursuant to this Policy and its associated Procedures.

- 1.9 **“Protection Official”** means the:
- 1.9.1 provincial health officer in respect of a health-related matter;
 - 1.9.2 the agency responsible for the *Emergency and Disaster Management Act* in respect of an environmental matter; or
 - 1.9.3 an appropriate police force in any other case.
- 1.10 **“Respondent”** means any person currently employed by UBC who is alleged or found to have committed Wrongdoing.
- 1.11 **“Responsible Executive”** means the member(s) of the UBC Executive designated by the President as having primary responsibility for the implementation and administration of this Policy, its Procedures, and any associated Rules.
- 1.12 **“Reprisal”** means any of the following measures taken against, or counseled to be taken against, an Employee because the Employee has, in good faith, made a request for advice, a Disclosure, or a complaint about a Reprisal, or cooperated with a PIDA Investigation:
- 1.12.1 a disciplinary measure;
 - 1.12.2 a demotion;
 - 1.12.3 a termination of employment;
 - 1.12.4 any measure that adversely affects the Employee’s employment or working conditions;
 - 1.12.5 a threat to take any of the measures referred to in sections 1.12.1 to 1.12.4.
- 1.13 **“Wrongdoing”** means the following conduct in or relating to UBC, and includes conduct that occurred before the coming into force of PIDA:
- 1.13.1 a serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada;
 - 1.13.2 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 an Employee’s duties or functions;
 - 1.13.3 a serious misuse of public funds or public assets;
 - 1.13.4 gross or systemic mismanagement;
 - 1.13.5 knowingly directing or counselling a person to commit a wrongdoing described in sections 1.13.1 to 1.13.4.

2. Scope of PIDA Policy

- 2.1 UBC has robust rules for dealing with improper conduct within the UBC community, including, without limitation, under the Sexual Misconduct Policy, the Scholarly Integrity Policy, and the Financial Investigations Policy. UBC encourages those who become aware of improper conduct to report it in accordance with the applicable Policies. However, in compliance with PIDA, if an Employee wishes to report conduct that the Employee believes constitutes Wrongdoing and does not wish to do so under other applicable Policies, the Employee may do so under this Policy.
- 2.2 This Policy applies exclusively to Employees who make Disclosures or who wish to seek advice about making Disclosures. Matters that do not come under the scope of this Policy may be addressed in other UBC Policies, Procedures, Rules, or processes.
- 2.3 Except with respect to Reprisals, this Policy does not apply with respect to disputes between Employees and UBC respecting their employment with UBC. Employees who wish to address their individual employment disputes may do so in accordance with applicable UBC Policies, Procedures, Rules, processes, collective agreements, or employment Handbooks

3. Carrying Out Functions Under this Policy

- 3.1 Each person who receives, reviews, and investigates Disclosures must carry out those functions in an expeditious, fair, and proportionate manner as appropriate in the circumstances.

4. Annual Reports of Disclosures

- 4.1 Annual reports regarding Disclosures will be published in the manner set out in the Procedures.



PROCEDURES ASSOCIATED WITH THE PIDA POLICY

Pursuant to the PIDA Policy, the President may approve Procedures or the amendment or repeal of Procedures. Such approvals must be reported at the next meeting of the UBC Board of Governors or as soon thereafter as practicable.

Capitalized terms used in these Procedures that are not otherwise defined herein shall have the meanings given to such terms in the accompanying Policy, being the PIDA Policy.

1. Designated Officers

- 1.1 The Responsible Executive for the Policy and its associated Procedures will be the Vice-President, Human Resources. The Responsible Executive may delegate some or all of their responsibilities, provided that the Responsible Executive remains responsible for ensuring that their delegates carry out those responsibilities properly.
- 1.2 For the purposes of section 1.1 of the Policy and subject to section 1.3 below, “**Designated Officer**” means the Vice-President, Human Resources or such other senior official(s) as the Vice-President, Human Resources may specify in writing. Any Designated Officer may delegate some or all of their responsibilities with respect to a given case of alleged Wrongdoing, provided that the Designated Officer remains responsible for ensuring that their delegates carry out those responsibilities properly.
- 1.3 The University Counsel or such other person(s) as the University Counsel may specify in writing will be the Designated Officer if:
 - 1.3.1 a request for advice or a Disclosure relates to the Vice-President, Human Resources; or
 - 1.3.2 the Vice-President, Human Resources has a Conflict of Interest (as defined in the COI Policy).

2. Requests for Advice

- 2.1 An Employee who is considering making a Disclosure may request and receive advice about making a Disclosure from:
 - 2.1.1 the Employee’s union representative or employee association representative, if any;
 - 2.1.2 a lawyer retained by the Employee personally at the Employee’s expense;
 - 2.1.3 the Employee’s supervisor, if any;

- 2.1.4 the Designated Officer; or
 - 2.1.5 the BC Ombudsperson.
- 2.2 Employees may make requests for advice anonymously. However, Employees who make requests for advice anonymously should be aware that this may limit UBC's ability to respond to the request.

3. Making Disclosures

- 3.1 If an Employee believes, based on reasonable grounds, that the Employee has information that could show that a Wrongdoing has been committed or is about to be committed, the Employee, in good faith, may make a Disclosure to any of the following:
- 3.1.1 the Employee's supervisor, if any;
 - 3.1.2 the Designated Officer; or
 - 3.1.3 the BC Ombudsperson.
- 3.2 A Disclosure made to the Employee's supervisor or to the Designated Officer must be made in writing in the form issued by the Designated Officer from time to time, and must include the following information, if known:
- 3.2.1 a description of the alleged Wrongdoing;
 - 3.2.2 the name of the person, if any, alleged:
 - (a) to have committed the Wrongdoing; or
 - (b) to be about to commit the Wrongdoing;
 - 3.2.3 the date of the alleged Wrongdoing;
 - 3.2.4 whether information or conduct that is being disclosed relates to an obligation under an enactment other than PIDA and, if so, a reference to that enactment;
 - 3.2.5 whether the alleged Wrongdoing has already been disclosed under this Policy or another UBC Policy, Procedure, Rule, or process; and
 - 3.2.6 if section 3.2.5 applies, the name of the person to whom the previous disclosure was made and the response, if any, that was received.

4. Anonymous Disclosures

- 4.1 A Discloser may make an anonymous Disclosure. However, the Disclosure must contain:
- 4.1.1 sufficient information to enable the recipient of the Disclosure to determine if the Discloser is an Employee; and

4.1.2 sufficient details about the alleged Wrongdoing to enable the allegation to be investigated.

4.2 An anonymous Discloser need not be notified under sections 8.2 and 8.7. If an anonymous Discloser provides contact information, notifications may be sent to the Discloser at the discretion of the Designated Officer.

5. Imminent Risk of Danger

5.1 Employees are subject to employment obligations, including a duty to maintain the confidentiality of their employer's information. However, an Employee may make a public disclosure of alleged Wrongdoing if:

5.1.1 the Employee reasonably believes that the alleged Wrongdoing constitutes an imminent risk of a substantial and specific danger to the life, health, or safety of persons, or to the environment;

5.1.2 the Employee consults a relevant Protection Official before making a public disclosure;

5.1.3 the Protection Official directs the Employee to make a public disclosure; and

5.1.4 the Employee makes the public disclosure in accordance with the direction from the Protection Official and does not share information that is confidential under any provincial or federal law, protected by solicitor-client privilege, protected by any common law rule of privilege, or subject to public interest immunity (unless with consent of the Attorney General).

5.2 Immediately after making a public disclosure pursuant to section 5.1 of these Procedures, the Employee must advise the Employee's supervisor, if any, or the Designated Officer about the public disclosure and make a Disclosure in accordance with the Policy and these Procedures.

6. Reprisal

6.1 Reprisal is prohibited under PIDA. Employees are protected from Reprisal when they do any of the following:

6.1.1 seek advice about making a Disclosure;

6.1.2 make a Disclosure;

6.1.3 cooperate with a PIDA Investigation; or

6.1.4 make a complaint about Reprisal.

6.2 If a Discloser has a concern that Reprisal may arise from seeking advice, making a Disclosure,

or cooperating with a PIDA Investigation, the Discloser may bring that concern to the attention of the Designated Officer. The Designated Officer will assess the risk of Reprisal and may implement measures where feasible to avoid or minimize the risk of Reprisal. Depending on the circumstances, the following are examples of measures that may be taken:

6.2.1 removal of the Discloser from the supervision of a specific supervisor or appointment of additional supervisors for the Discloser;

6.2.2 transfer of the Discloser to another department; or

6.2.3 change in the Discloser's performance evaluators.

6.3 In addition, if an Employee believes that they have experienced Reprisal, the Employee may contact the Designated Officer or the BC Ombudsperson's office to make a complaint. If an Employee is a member of a union or association, they may also wish to contact their union or association as a resource.

7. Receiving and Reviewing Requests for Advice and Disclosures

7.1 If an Employee requests advice about making a Disclosure from their supervisor, the supervisor may require that the request be submitted in writing and must, within 30 days if practicable, review the request and:

7.1.1 forward the request to the Designated Officer; or

7.1.2 acknowledge receipt of the request; and

7.1.3 establish and communicate anticipated timelines for any advice and amend such timelines as may be appropriate.

7.2 If a Disclosure is made to an Employee's supervisor, the supervisor must promptly provide the Disclosure to the Designated Officer.

7.3 If an Employee requests advice about making a Disclosure from the Designated Officer, the Designated Officer may require that the request be submitted in writing. When the Designated Officer receives requests for advice or Disclosures, the Designated Officer must take the following steps within 30 days if practicable:

7.3.1 review the request for advice or Disclosure, as applicable;

7.3.2 acknowledge receipt of the request for advice or Disclosure, as applicable; and

7.3.3 establish and communicate anticipated timelines for any advice or action and amend such timelines as may be appropriate.

7.4 If the Designated Officer reasonably believes that an offence has been committed under an enactment of British Columbia or Canada, the Designated Officer may report the alleged offence to a law enforcement agency.

8. Investigating Wrongdoing Allegations

8.1 Subject to sections 8.1.1 and 8.1.2, the Designated Officer is responsible for ensuring that Disclosures made in accordance with the Policy and these Procedures and disclosures of Wrongdoing referred to the Designated Officer from another ministry, government body or office, or the BC Ombudsperson are properly investigated.

8.1.1 The Designated Officer must refuse to investigate or must stop investigating a Disclosure if the Disclosure relates primarily to:

- (a) a dispute between an Employee and UBC respecting the Employee's employment;
- (b) a matter relating to law enforcement by members of a police force, or conduct of members of a police force;
- (c) a matter relating to the prosecution of an offence; or
- (d) the exercise of an adjudicative function of a court, tribunal, or other statutory decision maker, including a decision, or the processes or deliberations that have led to or may lead to a decision, by the court, tribunal, or other statutory decision maker.

8.1.2 The Designated Officer may refuse to investigate or may stop investigating a Disclosure if the Designated Officer believes that:

- (a) the Disclosure does not provide adequate particulars about the alleged Wrongdoing;
- (b) the Disclosure:
 - (i) is frivolous or vexatious;
 - (ii) has not been made in good faith;
 - (iii) has not been made by an Employee entitled to disclose under PIDA; or
 - (iv) does not deal with a Wrongdoing;
- (c) the investigation of the Disclosure would serve no useful purpose or could not reasonably be conducted because of the length of time that has elapsed, or for any other reason the Designated Officer considers to be appropriate in the circumstances;
- (d) the Disclosure relates solely to a public policy decision;
- (e) the Disclosure is being, or has already been, appropriately investigated;

- (f) the Designated Officer determines that the Disclosure would more appropriately be investigated under another UBC Policy or process, in which case, the Designated Officer will either refer the Discloser to the applicable UBC Policy or process or will forward the Disclosure to the appropriate UBC person(s) for that UBC Policy or process; or
 - (g) a prescribed reason under regulations issued pursuant to PIDA to refuse to investigate or to stop investigating applies.
- 8.2 The Designated Officer will notify the Discloser in writing within the time periods established pursuant to section 7.3.3:
 - 8.2.1 whether a PIDA Investigation will be undertaken, and if so, by whom; or
 - 8.2.2 if no PIDA Investigation will be undertaken, whether the Designated Officer will refer the subject matter of the Disclosure to another appropriate authority or a summary of reasons why no investigation is warranted.
- 8.3 If the Designated Officer proceeds with a PIDA Investigation, the Designated Officer will notify:
 - 8.3.1 the President (or, if the President is alleged to be responsible for the alleged Wrongdoing, the Chair of the Board of Governors) promptly unless the Designated Officer believes such notification may compromise the PIDA Investigation or expose the Discloser to Reprisal; and
 - 8.3.2 notify any Respondents that they are the subject of a PIDA Investigation at an appropriate time, considering the need to protect the integrity of the PIDA Investigation and the Respondent(s)' right to procedural fairness.
- 8.4 If, during a PIDA Investigation, the Designated Officer reasonably believes that another Wrongdoing has been committed, the Designated Officer may also investigate the other potential Wrongdoing or refer the matter to another appropriate authority.
- 8.5 Nothing in the Policy or these Procedures prevents the Designated Officer from consolidating a PIDA Investigation with another investigation in accordance with the Investigations Policy.
- 8.6 Subject to section 8.1.1 of these Procedures, the Designated Officer may postpone or suspend a PIDA Investigation if the Designated Officer:
 - 8.6.1 reports, under section 7.4 of these Procedures, an alleged offence identified during the PIDA Investigation;
 - 8.6.2 considers the PIDA Investigation may compromise another investigation internal or external to UBC; or
 - 8.6.3 becomes aware that the alleged Wrongdoing that is being investigated is also being investigated for the prosecution of an offence.
- 8.7 In the event that the Designated Officer determines that a PIDA Investigation should be

stopped, postponed, or suspended, the Designated Officer will notify those individuals who have been notified under section 8.2.1 and section 8.3 unless the Designated Officer considers the notification would compromise another investigation.

9. Investigation Reports

- 9.1 Upon completing a PIDA Investigation, the Designated Officer must prepare a written report containing the following:
 - 9.1.1 findings of Wrongdoing, if any;
 - 9.1.2 reasons for those findings; and
 - 9.1.3 any recommendations that the Designated Officer considers appropriate to address those findings.
- 9.2 The Designated Officer must provide a copy of each report to the President, unless the Designated Officer was restricted from notifying the President of the PIDA Investigation or the report includes a finding that the President was responsible for Wrongdoing, in which cases the Designated Officer must provide the report to the Chair of the Board of Governors.
- 9.3 The Designated Officer must provide, in a form that the Designated Officer considers appropriate, a summary of the report to:
 - 9.3.1 the Discloser; and
 - 9.3.2 subject to section 9.2, any Respondent, if practicable.
- 9.4 For clarity, where a Respondent has been found to have committed Wrongdoing, the Respondent may face disciplinary or other measures.

10. Confidentiality

- 10.1 In order to protect the integrity, fairness, and effectiveness of investigations and to ensure compliance with FIPPA and PIDA, all participants in a PIDA Investigation must act in accordance with the confidentiality requirements set out in this section 10.
- 10.2 Individuals, including the Discloser and any Respondents, who have obtained Personal Information through their participation in a PIDA Investigation must not disclose this information to anybody except their own personal advisors or representatives, or as required by law.
- 10.3 Section 10.2 does not prevent:
 - 10.3.1 any participants in the PIDA Investigation from disclosing information about themselves, or information they have obtained outside the PIDA Investigation;
 - 10.3.2 UBC employees, contractors, or volunteers from disclosing investigation-related information as authorized under section 10.4; or

10.3.3 Disclosers and any Respondents from disclosing the information they have received under section 9.3.

However, Disclosers or Respondents who choose to disclose such information should keep in mind that the disclosure of such information may result in a legal claim being made against them by the other party or other individuals (including, for example, a defamation or breach of privacy claim) and may wish to seek independent legal advice before doing so.

10.4 UBC will not disclose any Personal Information related to a PIDA Investigation except to the extent such disclosure is:

10.4.1 expressly authorized by the affected individual;

10.4.2 to a UBC employee, contractor, or volunteer, if necessary for the performance of that individual's duties;

10.4.3 to a Discloser, Respondent, witness or other participant in the PIDA Investigation, if necessary for the conduct of the PIDA Investigation;

10.4.4 to a Discloser or Respondent in accordance with section 9.3;

10.4.5 authorized by the University Counsel for compelling health or safety reasons;

10.4.6 authorized by the University Counsel to correct misleading or inaccurate information if necessary to protect the integrity of the PIDA Investigation or UBC's investigatory processes; or

10.4.7 authorized or required under law.

10.5 Under FIPPA, UBC is only authorized to disclose disciplinary actions it has taken against the Respondent if the disclosure is authorized by the University Counsel for compelling health or safety reasons. For example, UBC will normally inform Disclosers of any restrictions that may have been imposed upon the Respondent's movement or activities if relevant to the Discloser for health or safety reasons.

11. Annual Report

11.1 On an annual basis, the Designated Officer will provide a report regarding Disclosures received during the applicable year to the Responsible Executive. Each report prepared pursuant to this section 11.1 will contain the following information:

11.1.1 the number of Disclosures received and the number acted on and not acted on; for the purpose of this section 11, "Disclosures" include: (i) any disclosures of Wrongdoing made to the BC Ombudsperson if the BC Ombudsperson has notified the Designated Officer about the disclosures or related investigations, and (ii) any referrals of disclosures of Wrongdoing made in accordance with PIDA;

11.1.2 the number of PIDA Investigations commenced as a result of a Disclosure;

11.1.3 in the case of a PIDA Investigation that results in a finding of Wrongdoing:

- (a) a description of the Wrongdoing,
- (b) any recommendations, including any made by the BC Ombudsperson; and
- (c) any corrective action taken in relation to the Wrongdoing or the reasons why no corrective action was taken.

11.2 The Responsible Executive will consolidate, organize, and anonymize the information received from the Designated Officer pursuant to section 11.1 above, and will publish an annual report on the following website: <http://www.hr.ubc.ca/>.

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