

Public Interest Disclosure Act Section 9 Procedures

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INTRODUCTION

Purpose

The BC Energy Regulator's Chief Executive Officer is required to develop procedures for managing requests for advice and disclosures under the *Public Interest Disclosure Act* (PIDA).

The following Procedures are established to fulfill the Chief Executive Officer's responsibilities under section 9 of PIDA. These Procedures reflect the guiding principle in PIDA that disclosures must be managed in an expeditious, fair and proportionate manner.

Note: The Ombudsperson has distinct PIDA procedures. Employees making requests for advice or reports of wrongdoing to the Ombudsperson can contact them for more information.

Scope

These Procedures apply to requests for advice and disclosures received under PIDA from employees and former employees of the BCER and to referred disclosures from the Ombudsperson or a Designated Officer.

Definitions

"Act" or "PIDA" means the *Public Interest Disclosure Act*.

"Chief Executive Officer" means the Commissioner and Chief Executive Officer.

"Designated Officer" means the senior official(s) designated by the Chief Executive Officer for receiving requests for advice, receiving disclosures and investigating disclosures under PIDA, including any staff or contractor delegated by a Designated Officer in their discretion to assess and investigate disclosures at their discretion and as required in the circumstances.

"Discloser" means an employee or former employee of the BCER who requests advice or makes a disclosure or a complaint about a reprisal under the Act.

"Disclosure" means a disclosure made by a discloser in accordance with the Act.

"Employee" means an employee of the BCER and includes former employees.

"Policy" means the BCER's Public Interest Disclosure Act Policy, as amended from time to time.

"Public Body" means a ministry, office or government body as defined in the Act.

"Reprisal" means a measure referred to in section 31(a) to (e) of the Act.

"Respondent" means a person alleged or found to have committed wrongdoing.

"Wrongdoing" means wrongdoing as defined in section 7(1) of the Act.

A. DISCLOSURE PROCEDURES

Requests for Advice

1. An employee who is considering making a disclosure or a complaint about a reprisal may seek and receive advice about doing so from:
 - (a) their union representative or employee association representative;
 - (b) a lawyer;
 - (c) their supervisor;
 - (d) a Designated Officer; or
 - (e) the Ombudsperson.
2. The supervisor or Designated Officer may require the employee to make the request for advice in writing.¹
3. Supervisors and Designated Officers will document all requests for advice received under PIDA and maintain a written record of the advice provided.
4. Employees may wish to specify that they are requesting advice under PIDA. Supervisors and Designated Officers are to clarify that a request for advice is being made under PIDA if the matter is unclear.
5. Supervisors and Designated Officers must respond to a request for advice within five business days where practicable. If it is not practicable to provide a response within five business days, the Supervisor or Designated Officer will notify the employee of the delay, reasons for the delay and the expected date on which a response will be provided.
6. Employees who seek advice as set out above are protected from reprisal under PIDA. This protection applies whether or not the employee decides to make a disclosure or a complaint about a reprisal.

Making a Disclosure

7. Employees can report allegations of wrongdoing under PIDA by making a disclosure to their supervisor, Designated Officer or the Ombudsperson. Allegations made to other persons are not covered by PIDA. In limited circumstances, employees may make public disclosures: see paragraphs 18-23.
8. Employees can make disclosures of wrongdoing as defined in section 7(1) of PIDA. This Act applies to the following wrongdoings in or relating to a ministry, government body or office, including wrongdoings that occurred before the coming into force of this Act:
 - (a) a serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada;

¹ PIDA, s. 11

- (b) 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;
- (c) a serious misuse of public funds or public assets;
- (d) gross or systemic mismanagement;
- (e) knowingly directing or counselling a person to commit a wrongdoing.

9. Employees can make disclosures, in good faith, about wrongdoings that they reasonably believe have occurred or are about to occur.

10. If an employee makes a disclosure to their supervisor, the supervisor must forward it to a Designated Officer as soon as possible. If a Designated Officer is the subject of the allegations, the supervisor may suggest the disclosure be submitted to the Ombudsperson.

11. Employees who wish to make a disclosure must do so in writing. Employees are encouraged to use the **Disclosure Form**.² Disclosures must include the following information, if known:

- (a) a description of the wrongdoing;
- (b) the name(s) of the person alleged
 - (i) to have committed the wrongdoing, or
 - (ii) to be about to commit the wrongdoing;
- (c) the date(s) of the wrongdoing;
- (d) whether the information or conduct that is being disclosed relates to an obligation under another enactment and, if so, a reference to the enactment;
- (e) whether the wrongdoing has already been disclosed under PIDA or another enactment;
- (f) if paragraph (e) applies, the name of the person to whom the disclosure was made and the response, if any, that has been received.³

12. Employees can also make disclosures to their supervisor or a Designated Officer by email or mail. Employees are encouraged to note that they are making a public interest disclosure and to ensure that their disclosure includes the required information.

13. If an initial disclosure is not made in writing, the supervisor or Designated Officer will assist the employee to document their disclosure using the **Disclosure Form**.

Anonymous Disclosures

14. Employees who wish to make a disclosure may do so anonymously. However, anonymous disclosers should ensure that they have provided adequate particulars about the allegations to allow the Designated Officer to assess whether the allegations warrant investigation under these Procedures. Anonymous disclosers should consider providing contact information so that the Designated Officer can follow up to obtain more information about the disclosure as needed.

² Appendix A

³ PIDA, s. 15

15. Designated Officers will provide anonymous disclosers with the following information:

- (a) They will only share the discloser's identity with their express permission or for a lawful purpose.
- (b) Making an anonymous disclosure does not mean that their employer or colleagues will not suspect who made the disclosure.
- (c) PIDA provides protection from reprisal for disclosers, and the BCER does not tolerate retaliation against disclosers.
- (d) Without knowing the identity of the discloser, the Designated Officer cannot conduct a reprisal risk assessment or take certain measures to mitigate risk of reprisal to the employee.
- (e) If the anonymous discloser does not provide contact information, the Designated Officer may not be able to obtain sufficient information to assess the disclosure.
- (f) Any notices required to be given to a discloser (e.g., notice of an investigation, summary of the results, etc.) will not be provided to an anonymous discloser, except at the discretion of the Designated Officer and where the discloser has provided contact information.

Multiple Disclosers

16. If multiple disclosers come forward at the same time regarding the same alleged wrongdoing, the Designated Officer may assess and investigate the disclosures together as a single matter.

17. The fact that multiple disclosers have come forward about the same alleged wrongdoing will not be shared with the other disclosers. Each discloser will have protections from reprisal under PIDA and will be interviewed separately.

Public Disclosures

18. Section 16 of PIDA provides that an employee may make a public disclosure where they "reasonably believe that a matter constitutes an imminent risk of a substantial and specific danger to the life, health or safety of persons, or to the environment."⁴ An employee must take the following steps prior to making an urgent public disclosure:

- (a) Consult the relevant protection official, as follows:
 - in respect of a health-related matter, the Provincial Health Officer;
 - in respect of an environmental matter, Emergency Management BC;
 - in any other case, the appropriate police force.
- (b) Receive direction from the protection official about whether to make the disclosure, and if so, on what conditions; and
- (c) Where the protection official approves the disclosure, make the disclosure in accordance with any conditions the protection official imposes.

⁴ PIDA, s. 16(2)

19. There are a number of limits on the kind of information that an employee can share when making a public disclosure. Employees must not share information that is subject to a restriction under an enactment of B.C. or Canada. This means employees must not share information that they are prohibited from sharing under a statutory oath or any statute or other regulation.

20. In addition, PIDA does not authorize the release of information in a public disclosure that is:

- (a) Protected by solicitor-client privilege;
- (b) Protected by any common law rule of privilege; or
- (c) Subject to public interest immunity, including cabinet privilege.

21. If the protection official directs the employee not to make the disclosure public, the employee must not make it public. The protections for employees in PIDA may not apply to employees who do not follow the protection official's advice.

22. Immediately after making the disclosure public, the employee must advise their supervisor or Designated Officer about the public disclosure and then make the disclosure to their supervisor, Designated Officer or the Ombudsperson.

23. If the Designated Officer investigates a disclosure following a public disclosure, they will contact the protection official to gather information regarding the steps that the protection official has taken in response to the subject matter of the disclosure. The Designated Officer will consider the information obtained when assessing whether further investigation is warranted.

Reprisal

24. Reprisal against employees is prohibited under PIDA. Reprisal against employees is defined in section 31(1) of PIDA as follows:

31 (1) A person must not take any of the following measures of reprisal against an employee, or counsel or direct that any of the following measures of reprisal be taken against an employee, by reason that the employee has, in good faith, sought advice about making a disclosure, made a disclosure or cooperated with an investigation under this Act:

- (a) a disciplinary measure;
- (b) a demotion;
- (c) a termination of employment;
- (d) any measure that adversely affects the employee's employment or working conditions;
- (e) a threat to take any of the measures referred to in paragraphs (a) to (d).

25. Employees are protected from reprisal when they do any of the following acts:

- (a) Seek advice about making a disclosure
- (b) Make a disclosure
- (c) Cooperate with a PIDA investigation
(collectively, “Protected Acts”)

26. Employees are protected from any person taking an adverse measure against them which impacts their employment because they did a Protected Act under PIDA. An adverse measure can include termination, suspension and demotion, as well as subtler measures like bullying, ostracizing or a workplace transfer.

27. No person can take a reprisal against an employee, including supervisors, co-workers, senior executive or alleged wrongdoers.

28. The Ombudsperson is responsible for investigating complaints of reprisal from public bodies under PIDA’s jurisdiction. If an employee believes that a reprisal has been taken against them, they may contact the Ombudsperson’s office to make a complaint.

B. ASSESSMENT PROCEDURES

29. The Designated Officer is responsible for receiving disclosures and assessing whether they are made by an employee and meet the threshold for wrongdoing.

30. The Designated Officer will conduct this initial assessment prior to determining whether an investigation is warranted.

Initial Interview

31. The Designated Officer will confirm receipt of a disclosure to an employee within two business days. The Designated Officer will conduct an initial interview with a discloser as soon as possible after receipt of a disclosure. The interview, and any subsequent interviews, will be conducted in a manner and place that maintains the confidentiality of the identity of the discloser.

32. The purpose of the interview is to gather more information about the nature of the disclosure and to assess whether it meets the threshold for wrongdoing. The interview is also intended to inform the Designated Officer’s assessment of the urgency of the matter, as well as an initial consideration of any risk of reprisal to the discloser.

Risk Assessments

33. The Designated Officer is responsible for conducting two types of risk assessments: an urgency assessment and a reprisal risk assessment. Both assessments will be conducted as soon as practicable. The assessments are then conducted throughout the life of a file, particularly as new information is received, indicating the presence of a risk or when the file moves to a new phase (from assessment, to investigation, to reporting).

Urgency Assessment

34. The Designated Officer will assess whether the disclosure raises a matter which requires an urgent response. Urgent responses may be required where the subject matter of the disclosure indicates a serious risk to life, public health or safety or the environment. This includes disclosures made following an urgent public disclosure unless information indicates that any serious risk has already been addressed. An urgent response may also be required where:

- The alleged wrongdoing has not occurred and there is an opportunity to intervene before it occurs;
- There is a high risk that evidence will be lost or destroyed;
- There is an imminent risk of significant financial harm;
- There is a high risk of reprisal for the discloser.

35. Where a matter poses a risk of significant harm to the environment or the health or safety of persons, the Designated Officer will consider whether the public interest reporting provision in section 25 of the *Freedom of Information and Protection of Privacy Act* may be applicable. Where the Designated Officer believes section 25 may apply, the Designated Officer will consult the Chief Executive Officer.

Reprisal Risk Assessment

36. Employees are protected from reprisal under PIDA for making a disclosure, requesting advice about making a disclosure, cooperating with a PIDA investigation, or making a complaint about a reprisal.

37. The Designated Officer must conduct a reprisal risk assessment when they receive a disclosure. The reprisal risk assessment is intended to ensure any risks of reprisal are identified and managed to the extent possible.

Gathering Information

38. The Designated Officer is responsible for reviewing the employee's disclosure form or other written submission to ensure it meets the content requirements in section 15 of PIDA.

39. If the content requirements are not met, the Designated Officer will identify the information that is outstanding and ask the discloser to provide that additional information, if known.

40. If the employee makes a disclosure verbally, the Designated Officer will assist the employee to follow up with a written disclosure, as described in paragraph 13 above.

Assessing the Disclosure

41. The Designated Officer will assess the disclosure to confirm the following:

- (a) the discloser is an employee or former employee⁵ of the BCER;
- (b) the alleged wrongdoing occurred in or relating to a public body;
- (c) the allegations meet the threshold of wrongdoing for at least one of sections 7(1)(a) to (e); and
- (d) the disclosure is in writing and contents of the disclosure meet the requirements of section 15.

42. If the Designated Officer determines that the allegations, if proven, would meet the threshold of wrongdoing, the Designated Officer will also consider whether there is a reasonable basis to support an investigation. The Designated Officer will assess whether the discloser has provided some evidence that could support a conclusion that the alleged wrongdoing occurred. Mere speculation on the part of the discloser without any evidentiary support does not suffice.

Deciding Whether to Investigate

43. Once the assessment of a disclosure is complete, the Designated Officer must determine whether or not to investigate. The Designated Officer will decide whether to investigate within 30 days of receipt of the disclosure where practicable.

44. If the Designated Officer concludes the assessment will require more than 30 days, they will notify the Chief Executive Officer of the delay, reasons for the delay, and the expected date on which the assessment will be complete and a decision made.

Refusing or Stopping Investigation

45. If the disclosure is not made by an employee or former employee, or if the wrongdoing alleged does not relate to a public body, the Designated Officer must refuse to investigate under PIDA.

46. If the disclosure does not meet the threshold for wrongdoing under section 7, or there is no reasonable basis to support an investigation, the Designated Officer must refuse to investigate under PIDA.

47. Where the disclosure meets the assessment criteria, the Designated Officer must consider whether they are prohibited from investigating under PIDA.⁶

48. The Designated Officer is prohibited from investigating if the disclosure relates primarily to:

- (a) a dispute between an employee and the BCER respecting their employment;
- (b) a matter relating to law enforcement;
- (c) a matter relating to the prosecution of an offence; or

⁵ If the employee is a former employee, the alleged wrongdoing must have occurred or been discovered during the employee's employment: PIDA, s. 2(a)(ii)

⁶ PIDA, s. 9(2)(g)(ii)

- (d) 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.

If any of the above circumstances apply, the Designated Officer must not investigate the disclosure, or stop an investigation, as applicable.

49. If the Designated Officer determines they are not prohibited from investigating, they will consider whether they should exercise their discretion to refuse to investigate, or stop an investigation, as applicable, applying the following discretionary considerations⁷:

- (a) The disclosure does not provide sufficient details or particulars about the wrongdoing;
- (b) The disclosure is frivolous or vexatious;
- (c) The disclosure was not made in good faith;
- (d) The investigation of the disclosure would serve no useful purpose or could not be reasonably conducted because of the length of time that has passed between the date when the subject matter of the disclosure arose and the date of the disclosure;
- (e) The disclosure relates solely to a public policy decision;
- (f) The disclosure has been referred to another appropriate authority for investigation; or
- (g) The disclosure has already been or is being appropriately investigated.

50. The Designated Officer may seek additional sources of information to assist in determining whether or not an investigation is appropriate.

51. Unless the disclosure was made anonymously, the Designated Officer will notify the discloser of a decision not to investigate the disclosure or to stop an investigation and will provide reasons for the decision. If the disclosure was made anonymously and the anonymous discloser has provided contact information, the Designated Officer may send notification to the anonymous discloser at the Designated Officer's discretion, along with reasons for the decision. The Designated Officer must also, except in extenuating circumstances, notify the Chief Executive Officer of a decision not to investigate or to stop an investigation.

52. Where the Designated Officer decides not to investigate or to stop an investigation, the Designated Officer will consider whether there are other mechanisms available for addressing the discloser's concerns and provide that information to the discloser as appropriate.

Referral to the Ombudsperson

53. Where the Designated Officer determines that the disclosure is eligible for investigation under PIDA, the Designated Officer will consider whether the disclosure, in whole or in part, would be more appropriately

⁷ PIDA, s. 9(2)(g)(ii)

investigated by the Ombudsperson. In assessing whether to refer a disclosure to the Ombudsperson, the Designated Officer will consider:

- the level and position of the alleged wrongdoer(s);
- potential conflicts of interest or perceptions of conflict;
- the likelihood of voluntary compliance of witnesses;
- whether the disclosure involves sensitive political or social issues;
- implications to the public interest;
- the risk of reprisal to the discloser and;
- any other relevant factors that arise on the facts of the case.

54. The Designated Officer will consult with the Chief Executive Officer prior to referring a disclosure to the Ombudsperson, and make the referral at the direction of the Chief Executive Officer, unless the disclosure is about the Chief Executive Officer.

55. The Designated Officer will refer any disclosure involving the Chief Executive Officer to the Ombudsperson.

56. Unless the disclosure was made anonymously, the Designated Officer will inform the discloser in writing of a referral to the Ombudsperson. If the disclosure was made anonymously and the anonymous discloser has provided contact information, the Designated Officer may inform the anonymous discloser at the Designated Officer's discretion.

Report to Law Enforcement

57. The Designated Officer may report an alleged offence relating to a request for advice, a disclosure or a reprisal complaint under the Act to a law enforcement agency if the Designated Officer has reason to believe an offence may have been committed. The offence may be reported regardless of whether the disclosure is determined to meet the threshold for wrongdoing or whether the Designated Officer decides to investigate the allegations. In assessing whether to make a report, the Designated Officer will consider the seriousness of the allegations and whether the alleged offence may be a criminal offence.

58. The victim, if applicable, of any alleged offence will be consulted prior to a report being made, unless consultation poses health and/or safety concerns. Designated Officers may also wish to consider concerns about reporting to law enforcement in cases where persons involved belong to communities or groups that have historically been overpoliced.

59. The Designated Officer will not report an alleged offence without first consulting the Chief Executive Officer, unless the Chief Executive Officer is implicated in the alleged offence.

60. The Designated Officer will provide no more information to law enforcement than is necessary to make the report.

Postponing or Suspending an Investigation

61. The Designated Officer may postpone or suspend an investigation if they:

- (a) report an alleged offence to law enforcement prior to, or during an investigation;
- (b) consider that investigation may compromise another investigation; or
- (c) become aware that the alleged wrongdoing being investigated is also being investigated in the prosecution of an offence.

62. The Designated Officer must consult with the Chief Executive Officer prior to postponing or suspending an investigation, unless the Chief Executive Officer is implicated in the wrongdoing.

63. Unless the disclosure was made anonymously or the Designated Officer considers the notification would compromise another investigation, the Designated Officer must notify the discloser of a decision to postpone or suspend an investigation. If the disclosure was made anonymously and the anonymous discloser has provided contact information, the Designated Officer may send notification to the anonymous discloser at the Designated Officer's discretion. The Designated Officer must also, except in extenuating circumstances, notify the Chief Executive Officer of a decision to postpone or suspend an investigation.

64. The discloser must be notified of the decision to postpone or suspend an investigation, unless the Designated Officer considers the notification would compromise another investigation.

65. If the Designated Officer decides a disclosure warrants investigation under PIDA, the Designated Officer must investigate in accordance with Part C of these Procedures, and in accordance with the principles of procedural fairness and natural justice.

C. INVESTIGATION PROCEDURES

Notifying Parties

Notice to Discloser

66. The Designated Officer must notify the discloser of the decision to investigate, unless the disclosure was made anonymously, in which case the Designated Officer may, if the anonymous discloser has provided contact information, send notification to the anonymous discloser at the Designated Officer's discretion.⁸ The notification may be brief and may be provided orally or in writing. The notification will include the scope of the investigation. If only part of the disclosure will be investigated, the Designated Officer will provide the discloser reasons for their decision not to investigate the remaining portions of the disclosure.

Notice to Chief Executive Officer

67. Generally, the Designated Officer will provide notice to the Chief Executive Officer of the decision to investigate. Notice may be delayed until an appropriate time if the Designated Officer considers that notification may compromise the investigation or expose the discloser to reprisal.

⁸ PIDA, s. 9(2)(g)(i), s. 14(2) & (3)

68. If the Chief Executive Officer is alleged to be responsible for the wrongdoing, the Designated Officer will notify the Chair of the Board of Directors or a member of Executive, and the Minister, Ministry of Energy, Mines and Low Carbon Innovation.

Notice to Respondents

69. The Designated Officer will notify any respondents that their conduct is the subject of an investigation at an appropriate time, taking into account the need to protect the integrity of the investigation and the respondents' rights to procedural fairness. Respondents will in all cases receive notice of the allegations prior to being interviewed.

Requiring Another Body to Suspend or Postpone an Investigation

70. PIDA does not limit the authority of a public body to undertake other investigations while a Designated Officer investigates a disclosure of wrongdoing. However, where there is *prima facie* evidence that a public body undertook an investigation to compromise an investigation of a disclosure under PIDA, the Designated Officer may require the public body to suspend or postpone its investigation.⁹

71. The Designated Officer will not suspend or postpone another investigation without first consulting the Chief Executive Officer, except in circumstances where the Chief Executive Officer is implicated in the wrongdoing.

Maintaining Confidentiality

72. Designated Officers and supervisors may collect, use and disclose personal information for the purpose of PIDA where the personal information is included in a disclosure or is for the purpose of an investigation or report.

73. Information about the identity of the discloser must be maintained in confidence and may only be used or shared for the purposes of the Act, including as described in the Policy and these Procedures, or as otherwise authorized or required by the Act or other applicable laws.

74. Where necessary to effectively carry out an investigation, a Designated Officer may share that the employee who made the disclosure was a witness and a source of evidence. Wherever possible, the Designated Officer will not share or confirm that the employee made the disclosure.

75. The Designated Officer will explain the confidentiality provisions in the Act to the discloser.

76. Information and documents obtained in the disclosure process will be stored in a safe and secure manner and must be protected from unauthorized access, use and disclosure.

⁹ PIDA, s. 18

Obtaining Documentary and Written Evidence

77. The Designated Officer will seek to obtain information in the order, format and fashion they determine is most appropriate and effective. They may contact whoever is most appropriate to obtain records related to the allegations.

Conducting Interviews

General

78. Interviews of disclosers, respondents and witnesses will be conducted in the order and format (i.e. in-person, telephone or video) appropriate for the circumstances. Efforts should be made to accommodate the individual's preferences and accessibility needs.

79. Interviewees will be provided notice of an interview date, time and place along with the general nature of the interview. Interviews may be held outside the workplace as necessary to maintain confidentiality and the integrity of the investigation.

80. In some cases, it may be necessary for the Designated Officer to provide the interviewee with copies of documents in advance of the interview, including where doing so will enhance the effectiveness of the interview and/or to accommodate the interviewee's needs.

81. The Designated Officer will remind each witness of the prohibition in section 6(3) of PIDA and explain the prohibition against reprisal in section 31(1) of PIDA.

Respondent Interviews

82. Respondents are afforded a high level of procedural fairness. They must be provided notice they are under investigation and the opportunity to respond to the allegations against them. If documents will be discussed in an interview with a respondent, the Designated Officer will consider providing advance opportunity for the respondent to review the documents unless they have reason to believe that doing so could compromise the investigation.

83. If, during an interview of a witness, the Designated Officer receives information that raises concerns the witness may be implicated in a wrongdoing, they must stop the interview and inform the person of this concern. The person will then be treated as a respondent and provided the same level of procedural fairness provided to all respondents. The interview will be rescheduled to allow sufficient time for the person to prepare for the interview and seek advice should they choose.

Presence of Third Parties

84. Interviewees may be permitted to have a support person present during the interview, such as a family member or friend, at the Designated Officer's discretion. Requests for the attendance of a union representative or lawyer will be considered on a case-by-case basis.

85. Interviewees must obtain permission for any third party to attend at least five days in advance of the scheduled interview. Third parties may not be permitted in an interview in some circumstances, for example where:

- They are a witness or respondent in the investigation.
- They were not requested by the interviewee to attend.
- They did not receive permission to attend.
- Their presence would present a conflict of interest or jeopardize the integrity of the investigation.

Investigating Other Wrongdoings

86. If, during an investigation, the Designated Officer reasonably believes that another wrongdoing has been committed, the Designated Officer may investigate that wrongdoing.¹⁰ The same policies and procedures that apply to disclosures, with necessary modifications, will apply to other potential wrongdoings identified during an investigation.

Discontinuing an Investigation

87. At any time after an investigation has commenced, the Designated Officer may discontinue an investigation for the reasons set out in paragraphs 48-49 above. If the Designated Officer decides not to complete an investigation after it has begun, the discloser must be notified of the decision to discontinue the investigation unless the disclosure was made anonymously, in which case the Designated Officer may, if the anonymous discloser has provided contact information, send notification to the anonymous discloser at the Designated Officer's discretion. Any notice will be provided in writing, setting out the reasons for discontinuing the investigation.

Timelines

88. Investigations will be completed and a draft report prepared within four months from the decision to investigate. If the Designated Officer concludes the investigation will require more than four months to complete, they must notify the Chief Executive Officer of the delay, reasons for the delay, and the expected date on which the investigation will be completed.

D. REPORTING PROCEDURES

Draft Investigation Report

89. Upon conclusion of gathering, reviewing and analyzing evidence, the Designated Officer will prepare a draft investigation report. The report will include the allegations, applicable laws and policies, evidence, analysis, findings and any recommendations to address findings of wrongdoing, as applicable.

90. Recommendations may be developed through a consultative process between the Designated Officer and the Chief Executive Officer.

¹⁰ PIDA s. 9(2)(h)

Draft Report to Person(s) Adversely Affected

91. In accordance with the principles of procedural fairness, the Designated Officer will provide all those who may be adversely affected by any findings or recommendations in the investigation report with the opportunity to make representations before it is finalized. Representations may be provided orally or in writing.

92. Generally, the Chief Executive Officer, any respondents and other individuals who may be adversely impacted by the investigation report will be provided the opportunity to make representations. The Designated Officer may provide a copy of the draft report, excerpts of the report, or a summary of evidence and findings as the context requires.

93. The Designated Officer will review and consider all representations received before finalizing the investigation report.

Final Reports

94. The final investigation report will be provided to the Chief Executive Officer, unless the Chief Executive Officer is implicated in founded wrongdoing. If the Chief Executive Officer is implicated in founded wrongdoing, the report will be provided to the Chair of the Board of Directors; a member of Executive or a person occupying a comparable position with respect to the BCER; or the Minister, Ministry of Energy, Mines and Low Carbon Innovation.

95. The final investigation report must include:

- (a) the findings;
- (b) the reasons to support the findings; and
- (c) any recommendations.

96. The Chief Executive Officer will consider the findings and recommendations and take corrective measures to remedy the wrongdoing and any other deficiencies identified in the report. Where the Chief Executive Officer declines to take corrective measures, they will set out the reasons for declining to do so in the annual report.¹¹

97. The Designated Officer will provide a summary of the investigation report to the discloser. Where practicable, the Designated Officer will also provide a summary of the report to any person alleged or found to be responsible for wrongdoing. The kind of information and level of detail contained in the summary will be decided by the Designated Officer in consultation with the Chief Executive Officer, on a case-by-case basis.

¹¹ PIDA, s. 38(2)(c)(iii)

Annual Reporting

98. The Chief Executive Officer, or delegate, will report annually on all disclosures of wrongdoing received and investigated with respect to the BCER. The annual report must include:

- (a) the number of disclosures received, including referrals of disclosures, and the number acted on and not acted on;
- (b) the number of investigations commenced as a result of a disclosure;
- (c) in the case of an investigation that results in a finding of wrongdoing,
 - (i) a description of the wrongdoing,
 - (ii) any recommendations, including those made by the Ombudsperson, and
 - (iii) any corrective action taken in relation to the wrongdoing or the reasons why no corrective action was taken;
- (d) any other information prescribed by regulation.¹²

99. The annual report must not include any information that would:

- (a) identify the discloser;
- (b) identify a respondent; or
- (c) unreasonably invade a person's privacy.¹³

100. The annual report will be made publicly available on the BCER's website.¹⁴

APPENDIX

A. Disclosure of Wrongdoing Form

¹² PIDA, s. 38(2)

¹³ PIDA, s. 38(4)

¹⁴ PIDA, s. 39

Disclosure of Wrongdoing Form

This form may be completed to provide information to report allegations of serious or systemic wrongdoing to your supervisor or a Designated Officer of the BCER for review under the Public Interest Disclosure Act (PIDA).¹

Reports must be made in writing and may be submitted to the BCER's Designated Officers via email (SpeakUp@bc-er.ca) or mail.² Reports may also be provided through your supervisor.

The BCER's Designated Officer(s) under PIDA will use the information provided when assessing whether to investigate your report. Please provide as much detail as possible. If you require assistance completing this form, please contact a Designated Officer.

Under PIDA, it is an offence to share the identity of a party making a report except in limited and specific circumstances. Further, PIDA prohibits people from retaliating against employees who speak up about potential wrongdoing in the public sector.

Important: *Reports under PIDA can be made anonymously but may not be investigated without obtaining more information from you. Your report will be treated with the strictest confidence. The information you provide will be reviewed, while taking strict measures to keep your identity confidential.*

Items with a star "" next to them are required fields.*

CONTACT INFORMATION:

First Name:

Email:

Last Name:

Preferred contact method:

Pronouns:

Address:

Preferred contact time:

Telephone number:

Telephone number:

May we leave a voice message? ☐ Yes ☐ No

¹ This information is collected by the BCER under s. 26(c) of the Freedom of Information and Protection of Privacy Act and will be used to assess and investigate allegations of serious wrongdoing made under the Public Interest Disclosure Act (PIDA). If you have any questions about the collection of personal information, please contact a Designated Officer.

² Reports may be sent to the BCER's Designated Officer(s) via restricted email, marked CONFIDENTIAL in the subject line, to SpeakUp@bc-er.ca | or via mail, in an envelope marked CONFIDENTIAL, to Attention: BCER Designated Officer, BC Energy Regulator, PO Box 9331 Stn Prov Govt, Victoria, BC, V8W 9N3.

EMPLOYMENT INFORMATION:

1. Are you a current or former employee of the BC Energy Regulator?

☐ I am a current employee. ☐ I am a former employee. I worked there from:

DESCRIPTION OF THE WRONGDOING:

A Disclosure may be made in relation to the following kinds of wrongdoing,:

- A serious act or failure to act that, if proven, would constitute an offence under an enactment of British Columbia or Canada.
- An act or failure to act 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.
- A serious misuse of public funds or public assets.
- Gross or systemic mismanagement.
- Knowingly directing or counselling a person to commit a wrongdoing described above.

Note: *If none of the above apply, the Public Interest Disclosure Act may not be the best way to raise your concern. Please consider addressing the matter through other internal policies (e.g., Employee Code of Conduct and Ethics, Bullying and Harassment Policy, etc.) and procedures or contact your supervisor or human resources for guidance.*

2. ***Please describe your concerns**, keeping in mind how wrongdoing is defined, above. Provide as much detail about the specific allegations as possible, including:

- **What** is the wrongdoing,
- **Where** the wrongdoing happened or is likely to happen,
- **Who** committed or is about to commit wrongdoing (please use name, title and contact information where available),
- **When** the wrongdoing occurred or is expected to occur,
- **How** you learned of the wrongdoing.
- Please identify any applicable laws, acts, regulations, or policies that may apply in relation to the wrongdoing.

If you need additional space to provide information about the alleged wrongdoing, you may submit further details in a separate document(s) along with this form.

3. *Have you already **reported the wrongdoing** to anyone in the organization or to an external party? Please provide details of who you reported to, when, and their response.
4. *Do you know of any other organization addressing these allegations? Please provide details.
5. Do you consider the matter urgent? If so, please explain why.

EVIDENCE

6. Please attach any documents, records, correspondence, recordings or other evidence you have in your possession to support the allegations of wrongdoing.

DECLARATION

- ☐ I have provided this information in good faith and on the reasonable belief that it could show a wrongdoing has been or is about to be committed.