

AP 1-510 – PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWER)

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PART 1: THE PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWER PROTECTION) ACT

Administrative Procedure

Rationale

The Western School Division is committed to enhancing accountability and transparency by strengthening the ethical environment and framework.

Application of Procedures

- 1.1. The Public Interest Disclosure (Whistleblower Protection) Act (PIDA) facilitates the disclosure and investigation of significant and serious wrongdoing in or relating to public bodies and protects employees who make disclosures from reprisal.
- 1.2. The Western School Division is a public body under PIDA and is responsible for establishing and maintaining procedures in accordance with section 5(1) and 5(2) of PIDA. This procedural document serves to meet that requirement.
- 1.3. Matters that do not relate to wrongdoings defined by PIDA will continue to be managed in accordance with other divisional policies and procedures.

Purpose

- 1.4. The purpose of this policy and supporting procedures is to:
 - a. Comply with section 5(1) and 5(2) of PIDA.
 - b. Describe the roles and responsibilities related to PIDA.
 - c. Provide guidance on the management and investigation of disclosures.
 - d. Support employees who come forward to report wrongdoing, and make them aware of the protection provisions afforded to them by PIDA.

PART 2: ROLES AND RESPONSIBILITIES

Manitoba Ombudsman

- 2.1. “The Ombudsman” means the Ombudsman appointed under The Ombudsman Act. The Manitoba Ombudsman reviews and investigates disclosures of wrongdoing and complaints of reprisal made under The Public Interest Disclosure (Whistleblower Protection) Act by employees of a public body. The Manitoba Ombudsman also provides advice to employees, designated officers, and the public. A person who is not an employee of the division may provide information to the Ombudsman if he or she reasonably believes that a wrongdoing has been committed or is about to be committed.

Chief Executive (Superintendent)

- 2.2. The Superintendent will designate a senior official to be the designated officer that will receive and manage disclosures by their employees. The Superintendent is responsible for establishing and maintaining procedures in accordance with section 5(1) of PIDA for the Western School Division. The Superintendent will ensure that information about PIDA and the disclosure procedures are communicated annually to their employees. The Manitoba Ombudsman is also entitled to a copy of the procedures upon request and can make recommendations for improvements.



Designated Officer (Assistant Superintendent)

- 2.3. Designated officers are senior officials responsible for investigating disclosures of wrongdoing made to the employee's supervisor or to the Assistant Superintendent. The Assistant Superintendent is appointed by the Superintendent under section 6 of PIDA. The Assistant Superintendent is responsible for providing advice to employees who are considering making a disclosure. If no designation is made, the Superintendent is the designated officer.

Supervisors

- 2.4. Supervisors are anyone who has a reporting relationship with employees. Supervisors may receive a disclosure from an employee. The supervisor will refer the disclosure to the Assistant Superintendent. Supervisors will ensure they protect the identity of the disclosing employees and any information related to the disclosure remains confidential.

Employees

- 2.5. Employee means anyone employed by the Western School Division. Employees who believe wrongdoing is occurring within the school division are protected from reprisal when they report the wrongdoing to their supervisor, the Assistant Superintendent, or the Manitoba Ombudsman. Employees have a responsibility to report wrongdoing in good faith, to cooperate during an investigation, and to provide any information the Assistant Superintendent or the Manitoba Ombudsman may require. The disclosing employee has a responsibility to protect information related to the disclosure, including the identity of persons involved in the disclosure process.

PART 3: PROCEDURES FOR EMPLOYEES TO REPORT WRONGDOING

Reportable types of wrongdoing

- 3.1. PIDA facilitates the disclosure and investigation of "wrongdoing" in or relating to public bodies:
- a. An act or omission constituting an offence under an Act of the Legislature or the Parliament of Canada or a regulation made under an Act.
 - 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 the duties or functions of an employee.
 - c. Gross mismanagement, including of public funds or a public asset.
 - d. Knowingly directing or counselling a person to commit a wrongdoing described in clauses (a) to (c).

Request for advice

- 3.2. An employee who is considering making a disclosure may request advice from the Assistant Superintendent or the Manitoba Ombudsman. Employees are protected from reprisal under PIDA when seeking advice. The Assistant Superintendent or the Manitoba Ombudsman may require the request to be in writing. Requesting advice in writing is encouraged.

Reporting wrongdoing

- 3.3. An employee can make a disclosure of wrongdoing to their supervisor, Assistant Superintendent, or the Manitoba Ombudsman. Employees are encouraged to make any disclosures as soon as they become



- aware of a potential wrongdoing as the quality of evidence and the ability to make corrective measures may decrease with time.
- 3.4. The disclosure will be in writing and provide the following information if known:
 - a. A description of the wrongdoing.
 - b. The names of the person or persons alleged to have committed or about to commit a wrongdoing.
 - c. The date of the wrongdoing.
 - d. If the matter has already been raised and the response received.
 - 3.5. Employees may report the wrongdoing to their supervisor or Assistant Superintendent using the prescribed Disclosure of Wrongdoing Form (see the division's website for the available form) or by other means, as long as the disclosure is in writing.
 - 3.6. Employees should clearly indicate they are making a disclosure under The Public Interest Disclosure (Whistleblower Protection) Act.
 - 3.7. Employees who choose to report an alleged wrongdoing to the Manitoba Ombudsman, may do so by submitting the prescribed form on Manitoba Ombudsman's website or by other means, as long as the disclosure is in writing.
 - 3.8. When an employee discloses an alleged wrongdoing to the Manitoba Ombudsman, the Ombudsman may take any steps he or she considers appropriate to help resolve the matter within the school division, including referring the matter to the Assistant Superintendent. If the matter is referred, the Manitoba Ombudsman may inquire about the steps taken or proposed steps to be taken to deal with the matter.

Anonymous disclosures

- 3.9. Anonymous disclosures may make the disclosure more difficult to investigate or substantiate, however anonymous disclosures will be acted on, whenever possible.

Making a public disclosure about an urgent matter - imminent risk

- 3.10. Under subsection 14(1) of PIDA an employee may make a disclosure to the public where the subject matter constitutes an imminent risk of a substantial or specific danger to the life, health, or safety of individuals or to the environment.
- 3.11. The employee will first make the disclosure to an appropriate law enforcement agency or in the case of a health-related matter, the chief public health officer. Disclosures to the public are subject to any direction that the agency or officers consider necessary in the public interest.
- 3.12. Immediately after a disclosure is made under subsection 14(1) of PIDA, the disclosing employee will also make a disclosure about the matter to their supervisor or Assistant Superintendent. The applicable procedures apply.
- 3.13. The Assistant Superintendent will notify the Superintendent that a public disclosure has been made.

PART 4: REPORTING REPRISALS

Reporting Reprisals

- 4.1. PIDA protects employees from reprisal who have in good faith:
 - a. Requested advice about making a disclosure from a supervisor, the Assistant Superintendent of Personnel, or the Manitoba Ombudsman.



- b. Made a disclosure under PIDA.
- c. Cooperated in an investigation under PIDA.
- 4.2. Any employee or former employee who believes they have been reprisal against for taking any of the above actions will make a written complaint of reprisal directly to the Manitoba Ombudsman.
- 4.3. A reprisal is defined as taking, directing, or counseling someone to take or direct:
 - a. Disciplinary measure.
 - b. Demotion.
 - c. Termination of employment.
 - d. Any measure that adversely affects his or her employment or working conditions.
 - e. Threat to take any of the measures referred to in clauses (a) to (d).
- 4.4. A reprisal is an offence under PIDA and anyone who reprisal against an employee for taking an action under 4.1 is liable to prosecution under PIDA.

PART 5: SUPERVISOR'S PROCEDURES FOR RECEIVING DISCLOSURES

- 5.1. The supervisor will acknowledge receipt of the disclosure made by the employee within 5 business days. The supervisor will determine how the disclosing employee wishes to receive communication and respect the wishes of the employee.
- 5.2. The supervisor will advise the disclosing employee that the Assistant Superintendent will undertake a review of the allegation. The supervisor will promptly refer the matter to the Assistant Superintendent. The Assistant Superintendent will determine if the allegation warrants an investigation based on the definition of wrongdoing. If the subject relates to a matter under the supervisor's responsibilities, the supervisor will discuss with the Assistant Superintendent whether any action is required by the supervisor.
- 5.3. Relevant verbal communication should be documented and stored in a confidential manner.
- 5.4. The supervisor will advise the disclosing employee that the identity of the persons involved in the disclosure process – including witnesses and persons alleged to be responsible for wrongdoing – will be confidential to the fullest extent possible.
- 5.5. The supervisor will arrange with the Assistant Superintendent how the disclosing information will be forwarded in a secure and confidential manner. The supervisor will not keep any information including copies related to the disclosure.
- 5.6. If the subject matter of the disclosure involves the Assistant Superintendent, the supervisor will forward the relevant information to the Superintendent. The supervisor will advise the disclosing employee that a review of the disclosure will be undertaken by or under the direction of the Superintendent.
- 5.7. Supervisors should direct any questions about PIDA or their responsibilities to the Assistant Superintendent or the Manitoba Ombudsman and not to Human Resources.

PART 6: DESIGNATED OFFICERS

PROCEDURES FOR MANAGING AND INVESTIGATING DISCLOSURES OF WRONGDOING

Assessment of disclosure by the Assistant Superintendent

- 6.1. The Assistant Superintendent who receives a disclosure from an employee or from a supervisor will assess the disclosure and take the appropriate action. Disclosures containing allegations of serious imminent danger or risk will be acted upon immediately in accordance with section 14(1) of PIDA (see section 3.10).



- 6.2. The Assistant Superintendent will acknowledge receipt of the disclosure made by the employee within 5 business days. The Assistant Superintendent will determine how the disclosing employee wishes to receive communication and respect the wishes of the employee.
- 6.3. Relevant verbal communication should be documented and stored in a confidential manner.
- 6.4. The Assistant Superintendent will determine whether a disclosure made by an employee pertains to the Western School Division. If the Assistant Superintendent determines that the disclosure relates to another public body, the Assistant Superintendent will refer the matter to that public body's designated officer.
- 6.5. Within 4 weeks the Assistant Superintendent will decide if an investigation is required and notify the employee who made the disclosure of the decision and rationale.

Investigating disclosures of wrongdoing

- 6.6. The purpose of an investigation into a disclosure of wrongdoing is to bring the wrongdoing to the attention of the school division and to recommend corrective measures.
- 6.7. The Assistant Superintendent will conduct an investigation in accordance with the following procedures. An investigation is to be conducted as informally and quickly as possible.
- 6.8. The Assistant Superintendent may decide **not** to investigate a disclosure or may cease an investigation if he or she is of the opinion that:
 - a. The subject matter of the disclosure could more appropriately be dealt with, initially or completely, according to a procedure provided for under another Act.
 - b. The disclosure is frivolous or vexatious or has not been made in good faith.
 - c. So much time has elapsed between the date when the subject matter of the disclosure arose and the date when the disclosure was made that investigating it would not serve a useful purpose.
 - d. The disclosure relates to a matter that results from a decision-making process on a public policy or operational issue.
 - e. The disclosure does not provide adequate particulars about the wrongdoing as required by section 12 of PIDA.
 - f. The disclosure relates to a matter that could more appropriately be dealt with according to the procedures under a collective agreement or employment agreement.
 - g. If there is another valid reason for not investigating the disclosure.
- 6.9. A decision not to investigate and the rationale will be communicated to the person who made the disclosure. A disclosure may still be made to Manitoba Ombudsman.
- 6.10. The Assistant Superintendent will notify the Superintendent prior to initiating an investigation into a disclosure of wrongdoing. The Assistant Superintendent will ensure any information provided to the Superintendent protects all identities and is managed in a confidential manner.
- 6.11. The Assistant Superintendent may consult with the Superintendent, the Manitoba Ombudsman, and any other person considered necessary for the purposes of the investigation. This includes arranging for legal advice to further the purposes of PIDA.
- 6.12. The Assistant Superintendent may require an employee to provide information or record(s) and give written or oral replies to questions, for the purpose of an investigation.
- 6.13. If during an investigation the Assistant Superintendent has reason to believe that another wrongdoing has been committed or may be committed, the Assistant Superintendent may investigate the wrongdoing and notify the Superintendent.
- 6.14. If more than one disclosure of wrongdoing is received by the Assistant Superintendent with respect to the same matter a single investigation may be conducted rather than a separate investigation.



- 6.15. The Assistant Superintendent will conclude an investigation within a suitable timeframe that is consistent with procedural fairness and natural justice.
- 6.16. Procedural fairness and natural justice principles will be upheld at all times. The disclosing employee, the alleged wrongdoer, and the Superintendent will be advised of the outcome within the same timeframe. The Superintendent may extend the original timeframe to complete the investigation where necessary. Please see Part 7 for more information on procedural fairness.
- 6.17. In conducting investigations, the Assistant Superintendent should strive to maintain balance between timeframes and procedural fairness.
- 6.18. If a timeframe is extended, the Assistant Superintendent will maintain ongoing communication with the disclosing employee regarding the status of the investigation.
- 6.19. At the conclusion of an investigation, the Assistant Superintendent will prepare a report outlining the allegations investigated, whether the investigation found wrongdoing, and recommendations for corrective measures. The Superintendent will be provided with a copy of the report.
- 6.20. The Assistant Superintendent will inform the employee who made the disclosure the results of the investigation. The Assistant Superintendent may do so in a manner and at a time considered appropriate. The Assistant Superintendent will provide as much information as possible while ensuring confidentiality.

Referring disclosures of wrongdoing

- 6.21. The Assistant Superintendent may refer a disclosure of wrongdoing to an alternate authority, including the Manitoba Ombudsman. Factors in considering whether to refer a disclosure of wrongdoing include:
 - a. Whether the subject matter of the disclosure would more appropriately be dealt with by another authority (related to another department).
 - b. The complexity of the subject matter of the disclosure.
 - c. Whether a perceived conflict of interest may exist.
 - d. If the subject matter pertains to an individual that supersedes the hierarchal position of the Assistant Superintendent. The person who made the disclosure will be advised when a referral is made.
- 6.22. As a result of an employee seeking advice or the receipt, review, or investigation of a disclosure, the Assistant Superintendent may become aware of a situation that is not a wrongdoing under PIDA, but requires attention. In said situations the Assistant Superintendent is responsible to take the appropriate action to ensure the matter is addressed. This responsibility may arise under an Act, policy, or a public service responsibility.

PART 7: PROCEDURAL FAIRNESS, NATURAL JUSTICE, AND CONFIDENTIALITY

Ensuring procedural fairness and natural justice

- 7.1. Disclosures of wrongdoing are investigated in accordance with the principles of procedural fairness and natural justice. For example, the alleged wrongdoer has the right to know the nature of the disclosure, receive relevant information as required, and be given an opportunity to respond to the disclosure.
- 7.2. If wrongdoing is found, the respondent and alleged wrongdoer will be provided the opportunity to make representations prior to finalizing the report. This may be done through legal counsel.
- 7.3. The Assistant Superintendent will recuse themselves from an investigation where they believe they are in a conflict of interest or when they believe a bias exists. The Superintendent may appoint an alternate individual to function as the Assistant Superintendent or may refer the matter to an alternate authority.
- 7.4. The parties involved also have the right to have the matter reviewed and determined by an impartial, unbiased decision-maker. If the Assistant Superintendent is aware or becomes aware of any actual



potential or perceived conflict of interest or bias, they should refer the matter immediately to their Superintendent or, if this is not possible, to Manitoba Ombudsman.

Protecting confidentiality

- 7.5. Subject to the principle of procedural fairness, the Assistant Superintendent will ensure the confidentiality of the information collected and will protect the identity of the persons involved in the disclosure process including the disclosing employee, any witnesses, and the alleged wrongdoer(s), to the fullest extent possible.
- 7.6. Information that comes to a person's attention or knowledge through the performance of their duties under PIDA will be protected and will not be disclosed except as required under PIDA or another Act.
- 7.7. Disclosure files (electronic or hard copies) will be treated in a confidential manner, maintained in a secure location, and protected from unauthorized access.
- 7.8. Maintaining confidentiality and procedural fairness provides reassurance to disclosing employees and witnesses when coming forward with information.
- 7.9. With respect to the alleged wrongdoer(s), maintaining confidentiality is important given that allegations are untested until an investigation is complete.
- 7.10. There may be situations where an individual's identity will need to be disclosed to test the credibility of allegations. Disclosing the identities of employees, witnesses, or alleged wrongdoer(s) should only occur when there is no other way to test the allegations. The individuals involved will be advised in advance if this becomes necessary.
- 7.11. The focus shall remain on detection and remedy of wrongdoing and not on the identity of the discloser or the alleged wrongdoer(s).

PART 8: ANNUAL REPORTING REQUIREMENTS

- 8.1. The Superintendent will prepare on an annual basis a report on any disclosures of wrongdoing that were made to a supervisor or Assistant Superintendent of the Western School Division.
- 8.2. The report will include the following information:
 - a. The number of disclosures received, 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 or corrective actions taken in relation to the wrongdoing; and
 - iii. the reasons why no corrective action was taken.
- 8.3. The Superintendent will not publicly identify an employee who requested advice, made a disclosure of wrongdoing or complaint of reprisal, or publicly disclose identifying information within the annual report.
- 8.4. The report will be included in the annual report of the school division. Otherwise the Superintendent will make the report available to the public on request.

DEFINITIONS

under The Public Interest Disclosure (Whistleblower Protection) Act

Chief Executive: means the Superintendent.

Department: means department of the School Division.



Designated Officer: means the Assistant Superintendent.

Disclosure: means a disclosure made in good faith by an employee in accordance with this Act.

Employee: means an employee of the Western School Division.

Government body: means

- a) a government agency as defined in The Financial Administration Act;
- b) a regional health authority established or continued under The Regional Health Authorities Act;
- c) a child and family services agency incorporated under The Child and Family Services Act;
- d) a Child and Family Services Authority established under The Child and Family Services Authority Act;
- e) a school division or a school district;
- f) a municipality that is designated in the regulations as a government body for the purposes of this Act;
- g) a local government district that is designated in the regulations as a government body for the purposes of this Act; and
- h) any other body designated as a government body in the regulations.

Public Body: means

- a) a department;
- b) a government body; and
- c) an office.

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, or cooperated in an investigation under this Act;

- a) a disciplinary measure;
- b) a demotion;
- c) termination of employment;
- d) any measure that adversely affects his or her employment or working conditions; and
- e) a threat to take any of the measures referred to in the clauses (a) to (d).

Work Place: means any school or department of the School Division.

Wrongdoing: means

- a) an act or omission constituting an offence under an Act of the Legislature or the Parliament of Canada or a regulation made under an Act;
- b) an act or omission that creates a substantial danger to the life, health, or safety of persons or to the environment, other than a danger that is inherent in the performance of the duties or functions of an employee;
- c) gross mismanagement, including of public funds or a public asset; and
- d) knowingly directing or counselling a person to commit a wrongdoing described in clauses (a) to (c).



Reference:

Public Interest Disclosure Act (PIDA)

Adopted:

October 9, 2019