

Alberta Energy Regulator
Whistleblower Protection Policy and Procedures to Manage Disclosures
Under the *Public Interest Disclosure (Whistleblower Protection) Act*

1. Preamble

WHEREAS it is in the public interest to maintain confidence in the integrity of the operation of the Alberta Energy Regulator (AER/Regulator) as a public entity and subject to the *Public Interest Disclosure (Whistleblower Protection) Act*, SA 2012, c P-39.5 (PIDA);

WHEREAS the AER is committed to the highest standards of ethical and accountable conduct, complying with the laws and regulations to which it is subject and to protecting the funds, assets and resources of the AER from mismanagement;

WHEREAS the AER encourages employees to disclose instances of wrongdoing in the organization;

AND WHEREAS the AER is committed to ensuring a positive and supportive work environment whereby employees can seek advice or make a disclosure of wrongdoing without fear of reprisal; and

NOW THEREFORE, the AER endorses the following Whistleblower Protection Policy (Policy).

2. Purpose

(1) The purposes of this Policy are to:

- (a) deter and detect wrongdoing within the AER,
- (b) provide clear guidance to employees for the procedure to follow when making a disclosure of wrongdoing,
- (c) protect employees who disclose, in good faith, instances of wrongdoing from reprisal, and
- (d) ensure the AER complies with the PIDA.

(2) The purposes of the PIDA are to:

- (a) facilitate the disclosure and investigation of significant and serious matters in public entities that an employee believes may be unlawful, dangerous to the public or injurious to the public interest,
- (b) protect employees who make those disclosures,

(c) manage, investigate and make recommendations respecting disclosures of wrongdoings and reprisals,

(c.1) to provide for the determination of appropriate remedies concerning reprisals, and

(d) promote public confidence in the administration of public entities.

3. Definitions

(a) “Chief Officer” means the AER Chief Executive Officer.

(b) “Commissioner” means the Public Interest Commissioner appointed under section 38 of PIDA.

(c) “Designated Officer” means the senior official designated by the Chief Officer to manage and investigate disclosures under the PIDA and this Policy, the Chair of the Governance Committee of the AER’s Board of Directors.

(d) “disclosure” means a disclosure of wrongdoing made in good faith by an employee in accordance with this Policy and the PIDA.

(e) “employee” means an individual employed by, or an individual who has suffered reprisal and has been terminated by the AER, but does not include contractors.

(f) “good faith” means to act objectively and in a manner that is not biased, arbitrary or discriminatory in handling disclosures made under this Policy.

(f) “imminent risk” refers to situations that require immediate attention because they could pose significant risk to public health or safety, or impacts on the environment. (e.g., a sour gas leak in close proximity to a populated area).

(g) “reprisal” means any adverse employment action taken, directed or counselled against an employee who has, in good faith, sought advice on making a disclosure, made a disclosure, cooperated in an investigation of wrongdoing or declines to participate in wrongdoing as defined in this Policy and the PIDA. Examples include:

(i) dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a position, change of job location, reduction in wages, change in hours of work or reprimand;

(ii) any measure, other than one mentioned in clause (i), that adversely affects the employee’s employment or working conditions;

(iii) any threat to take any of the measures mentioned in clauses (i) or (ii).

(h) “wrongdoing” means

(i) a contravention of a statute or regulation made pursuant to an Act of the Province of Alberta or the Parliament of Canada;

(ii) an act or omission that creates

- (1) a substantial and specific danger to the life, health or safety of individuals other than a danger that is inherent in the performance of the duties or functions of an employee, or
- (2) a substantial and specific danger to the environment;
- (iii) gross mismanagement, including an act or omission that is deliberate and that shows a reckless or wilful disregard for the proper management of
 - (1) Public funds or a public asset,
 - (2) The delivery of a public service, including the management or performance of
 - (A) a contract or arrangement identified or described in the regulations, including the duties resulting from the contract or arrangement or any funds administered or provided under the contract or arrangement, and
 - (B) the duties and powers resulting from an enactment identified or described in the regulations or any funds administered or provided as a result of the enactment, or
 - (3) Employees, by a pattern of behaviour or conduct of a systemic nature that indicates a problem in the culture of the organization relating to bullying, harassment or intimidation;
- (iv) knowingly directing or counseling an individual to commit a wrongdoing mentioned in clauses (i) to (iii).

4. Roles and Responsibilities

4.1. Employees

All AER employees who participate in or are involved in any way in any process under this Policy must:

- (a) follow the internal processes established to raise instances of wrongdoing in the workplace;
- (b) respect the reputation of individuals by not making trivial or vexatious disclosures of wrongdoing;
- (c) keep information relating to any disclosure or process under this Policy strictly confidential;
- (d) refrain from discussing any disclosure or the fact of their involvement, except to the extent required for the purposes of any investigation and resolution; and
- (e) make disclosures under this Policy in good faith based on correct and accurate information and facts.

4.2. Chief Officer

The Chief Officer must:

- (a) establish and maintain a work environment that encourages employees to report wrongdoing;
- (b) establish an effective internal reporting system (as described in this Policy) to appropriately deal with reports of wrongdoing, support employees who report, and ensure reprisals are not taken against employees who made *bona fide* complaints under this Policy;
- (c) ensure employees are aware of this Policy, the procedures herein and the whistleblower protections of the PIDA through effective communication and training;
- (d) ensure that an experienced Designated Officer is responsible for receiving and dealing with reports of wrongdoing;
- (e) ensure that reports of wrongdoing are dealt with appropriately by:
 - (i) assessing all disclosures of wrongdoing according to established policies and procedures;
 - (ii) as applicable, ensuring confidentiality of the employee making the disclosure, the employee who is the subject of the disclosure, and any witnesses involved;
 - (iii) being advised on decisions made in investigation reports, and ensure that follow-up on recommendations or actions is completed according to established timeframes;
 - (iv) taking appropriate remedial action in response to any findings that substantiate the allegations of wrongdoing;
 - (v) implementing any organizational reform that is necessary to address any identified systemic issues;
 - (vi) ensuring systems and strategies are established to mitigate the risk of reprisals;
 - (vii) taking appropriate action against anyone who threatens or takes reprisal against a person disclosing a wrongdoing, and
- (f) ensure adequate financial and human resources are dedicated towards achieving the purposes of this Policy.

4.3. Designated Officer

The Designated Officer is appointed by the Chief Officer and is responsible for the day-to-day administration of this Policy. Specifically, the Designated Officer is responsible for:

- (a) liaising with the Chief Officer;
- (b) liaising with the Office of the Public Interest Commissioner;
- (c) serving as a contact person for general advice and guidance about the operation of this Policy and the PIDA;
- (d) impartially assessing each disclosure to determine whether it is a public interest disclosure;
- (e) coordinating the disclosure process;
- (f) ensuring investigations are carried out, either personally or by appointing an investigator;

- (g) overseeing and coordinating an investigation where an investigator has been appointed;
- (h) reviewing results of completed investigations and reporting the findings and any recommendations to the Chief Officer, the AER board of directors, and the AER board of directors audit and finance committee;
- (i) advising the whistleblower of the progress and outcome of an investigation into the disclosed matter;
- (j) establishing and managing a confidential filing and tracking system to manage disclosures and investigations;
- (k) collating and publishing statistics on disclosures made;
- (l) ensuring the identity of whistleblowers and individuals who are the subject of disclosure are kept confidential; and
- (m) protecting employees involved in a disclosure of wrongdoing from possible reprisals.

4.4. Public Interest Commissioner

Pursuant to section 45 of the PIDA the Commissioner is responsible for:

- (a) carrying out the purposes of legislation as set out in section 2 of the PIDA and subsection 2(2) of this Policy;
- (b) reviewing and investigating disclosures and complaints of reprisals made under the PIDA;
- (c) receiving anonymous disclosures of wrongdoing pursuant to section 21 of the PIDA;
- (d) receiving employee disclosures in the circumstances described in section 15.1 of the PIDA.

5. Disclosure Process

5.1. When disclosure may be made

If an employee reasonably believes he or she has information that indicates a wrongdoing has been committed or is about to be committed, or that indicates that the employee has been asked to commit a wrongdoing, the employee may make a disclosure about that wrongdoing.¹ Employees should be aware of the distinction between wrongdoing as defined in the PIDA and employment grievances or performance management issues. Matters falling under the latter categories should be addressed pursuant to the policies outlined in applicable AER employee related policies.

In addition, employees should be aware of the importance of timely disclosure. Complaints should be made as soon as practicable to enable prompt investigation.

The Designated Officer is not required to investigate a disclosure or, if an investigation has been initiated, may discontinue the investigation if more than 2 years has passed since the date that the wrongdoing was discovered. This is consistent with s. 19(2) of PIDA

¹ PIDA, s. 9.

Employees may request advice regarding disclosures, this Policy or the PIDA from their supervisor, the Designated Officer, the Chief Officer or the Commissioner at any time.² The office of the Commissioner can be contacted for information by calling 1-855-641-8659 or via email at info@pic.alberta.ca.

5.2. Content of disclosure

Section 13 of the PIDA requires that disclosures be made in writing and contain the following information, if known:

- (a) a description of the wrongdoing;
- (b) the name of the individual or individuals alleged
 - (i) to have committed the wrongdoing, or
 - (ii) to be about to commit the wrongdoing;
- (c) the date of the wrongdoing;
- (d) whether a disclosure in respect of the wrongdoing has previously been made pursuant to this Policy and whether a response has been received, and if so, a copy of the response; and
- (e) any additional information that the Designated Officer or Public Interest Commissioner may reasonably require in order to investigate the matters set out in the disclosure.

The prescribed Disclosure of Wrongdoing form is to be used to make a disclosure under this Policy.

5.3. To whom disclosure can be made

In most instances, disclosure will be made to the Designated Officer.³ If the Designated Officer finds he or she has a conflict of interest in relation to the disclosure, the Alternate Designated Officer⁴ will assume the role for the duration of that disclosure's investigation process.

Notwithstanding the procedures set out in this document, disclosures may be made directly to the Commissioner.⁵ The disclosure must be in the Disclosure of Wrongdoing form.⁶

² PIDA, s. 8.

³ PIDA, s. 9(1), *Service Alberta, Best Practices for Key Elements of a Whistleblower Policy and Procedure*, (Edmonton: Government of Alberta, 2013) (Best Practices) at page 13.

⁴ Regulation, section 3(3) of the Regulation requires referral by the Chief Officer of an appropriate person to act as Alternate Designated Officer, if it is determined that the designated officer is in conflict of interest with respect to the nature of the disclosure.

⁵ PIDA, s. 15.1(1). If a disclosure is made directly to the Commissioner, the Commissioner may refer the matter to the Designated Official for handling under these procedures. PIDA, s. 15.1(5).

⁶ PIDA, s. 15.1(4).

An employee who has made a disclosure to the Designated Officer may also make a disclosure to the Commissioner, even if the Designated Official has made recommendations or concluded the investigation.⁷

If the Designated Officer or Alternate Designated Officer receives a disclosure which contains allegations against the Board, including the Chair or any of its Directors, the Designated Officer or Alternate Designated Officer will forward that disclosure to the Commissioner.

5.4. Procedure to be followed upon receipt of a disclosure

5.4.1. Acknowledgement

On receipt, the Designated Officer must stamp the date of receipt on the disclosure. Within 5 business days of receiving a disclosure, the Designated Officer must acknowledge receipt by confidential communication to the employee that made the disclosure.⁸

The Designated Officer may request additional information if the disclosure content is insufficient or additional information is required to undertake an investigation.

The Designated Officer must disclose to the employee if the investigation is to be undertaken by a person other than the Designated Officer.

5.4.2. Preliminary Analysis

Within 20 business days of receiving a disclosure, the Designated Officer will make a decision to proceed to a formal investigation or not, and will notify the employee of that decision.⁹ Reasons to substantiate the decision should be provided.¹⁰ The Designated Officer will assess the following aspects of the disclosure prior to deciding whether to proceed to a formal investigation or not:

- a. Do the contents of the disclosure meet the requirements of Section 13 of the Act?
- b. Does the disclosure relate to the organization where the wrongdoing that is alleged to have occurred is jurisdictional per Section 2(1) of the Act; (i.e. the alleged wrongdoing occurred within the AER)?
- c. Has the alleged wrongdoing occurred post enactment of the Act and has less than two years passed since the discovery of the wrongdoing?
- d. Have the allegations been made in good faith?
- e. On a prima facie basis, do the allegations meet the definition of *wrongdoing* as defined in section 3 of the Act;
- f. Do the allegations have a public interest component, and are not based only on perceived wrongs perpetrated against the individual complainant?

⁷ PIDA, s 15.1(2).

⁸ Regulation, s. 3(7)(a).

⁹ Regulation, s. 3(7)(b).

¹⁰ Best Practices, page 15.

A single investigation may be undertaken to address multiple disclosures that relate to the same matter.¹¹

5.4.3. Procedure for Reporting Imminent Risks

Should the Designated Officer or Chief Officer reasonably believe that the matter to which the disclosure relates constitutes an imminent risk of a substantial or specific danger to life, health or safety of individuals, or to the environment, he or she person must disclose the matter to:

- (a) an appropriate law enforcement agency;
- (b) in the case of a health-related matter, to the Chief Medical Officer of Health;
- (c) to the department, public entity or office responsible for managing, controlling or containing the risk; and
- (d) the Commissioner.¹²

5.4.4. Procedure for Reporting Possible Offences

Should the Chief Officer or Designated Officer have reason to believe that an offence has been committed under an Alberta or Federal Act or Regulation, he or she must report the alleged offence as soon as possible to a law enforcement agency and to the Minister of Justice and Solicitor General.¹³

6. Investigations

Should the Designated Officer decide to commence a formal investigation, he or she may personally undertake the investigation or appoint alternate investigators provided there are no conflicts of interest and assurances of confidentiality are made.

Formal investigations, including the submission of an investigation report to the Chief Officer, must be completed within 120 business days of receiving the disclosure.¹⁴

The purpose of an investigation is to collect information relevant to the disclosure, draw objective and impartial conclusions as a result of that information, and make recommendations for how to correct the wrongdoing and prevent recurrence. Investigations may be conducted in an informal manner and must respect the principles of procedural fairness in the treatment of witnesses and those alleged to have committed wrongdoing.

6.1. Terms of Reference

The Designated Officer will establish terms of reference for the investigation that include:

- (a) the purpose, procedure, and possible outcomes of the investigation;

¹¹ Regulation, s 3(6).

¹² PIDA, s 5(2)(c) and s 30(2).

¹³ PIDA, s 30(1)

¹⁴ Regulation, s 3(7)(c).

- (b) a projected date or timeline for completion of the investigation;¹⁵
- (c) a preliminary list of the witnesses that may be interviewed;
- (d) the data or documentary evidence required; and
- (e) any other resources and authorizations necessary to conduct the investigation.

6.2. Investigation Procedure

All investigations must comply with the principles of procedural fairness and natural justice.¹⁶ Investigators must be impartial in assessing the credibility of the employee making the disclosure and any witnesses. All relevant parties to a matter should be heard and their submissions considered. The person who is the subject of the disclosure is entitled to know the allegations made against them and to be given the right to respond.¹⁷ They should also be notified when the investigation is undertaken and concluded, and prior to the release of any reports.

The investigation must involve:

- (a) selection of an investigation team, including a lead investigator, appointed by the Designated Officer;
- (b) informing the employee who made the disclosure of the start and completion of the investigation and providing them with the contact information of the lead investigator;
- (c) gathering a complete list of required evidence and witnesses;
- (d) drafting preliminary questions and the order in which witnesses are to be interviewed;
- (e) completing all required interviews and compiling all evidence necessary for the investigation;¹⁸
- (f) regularly reporting to the Designated Officer; and
- (g) reporting alleged offences to law enforcement agencies should such offences be revealed during the investigation.¹⁹

Should instances of other or related wrongdoings be revealed or discovered during the course of an investigation, the investigation team must either amend its terms of reference to investigate all instances, or disclose the matter to the Designated Officer such that a separate investigation may be initiated, if appropriate.²⁰

6.3. Report of the Investigation Team

¹⁵ The investigation must be completed within 120 days of receiving the disclosure. However, if necessary, the Chief Officer or Commissioner may extend this timeframe in accordance with section 5 of the Regulation.

¹⁶ PIDA, s. 5(2)(d).

¹⁷ It is important to note that natural justice does not require disclosure of the identity of the person who made the allegation.

¹⁸ Interviews should be conducted in person if possible, and investigators must comply with the rules of documentary evidence. For example, notes should be signed and dated by each witness, and all documents (original copies where possible) must be authenticated.

¹⁹ PIDA, s 5(2)(f).

²⁰ PIDA, s 5(2)(e).

On conclusion of an investigation, the investigation team will provide a report to the Designated Officer. The report may make recommendations for corrective action or preventative measures, the final determination of which will be made by the Designated Officer. The purpose of the report is to provide the Designated Officer with all the information required to make such determinations. The report should be logical, clear, concise, and void of any personal opinions or extraneous comment. The Designated Officer will review the report and ensure that all questions are answered and all conclusions are substantiated.

The report of the investigation team must be completed within 90 days following commencement of the investigation.

6.4. Designated Officer's Report

The Designated Officer will make a separate report to the Chief Officer that includes whether the disclosure was substantiated and, where applicable, any recommendations on corrective action.

The Designated Officer's report must be submitted to the Chief Officer within 10 days of receiving the report of the investigation team.²¹ The Designated Officer must simultaneously provide a copy of the report submitted to the Chief Officer to the AER board of directors.

Prior to the Chief Officer deciding whether to release the Designated Officer's report or the report of the investigation team, the Chief Officer must consult with the AER board of directors to obtain their input. If the Chief Officer decides to release the Designated Officer's report or the report of the investigation team²², the employee who made the disclosure must be notified prior to the release.

7. Confidentiality

Confidentiality is of the utmost importance for the success of this Policy. The overarching principle is that information about disclosures should only be shared with authorized persons and on a "need to know" basis. Authorized persons include the Chief Officer, the Designated Officer, the investigation team, and, to the extent necessary to complete an investigation under this Policy, employees involved in the investigation. Persons subject to this Policy have differing confidentiality responsibilities as follows:

Employees

Employees who have made or are planning to make a disclosure should not share that information or the evidence of wrongdoing with fellow staff or take actions that allow co-workers to easily identify them when a disclosure is made. Employees involved as witnesses or otherwise in an investigation should not discuss their involvement with fellow staff.

²¹ The timelines under sections 6.3 and 6.4 are necessary for the investigation report to be submitted to the Chief Officer within 120 days of the disclosure being received as required under section 3(7) of the Regulation.

²² Please note, *only* the Chief Officer is expressly authorized by s. 29 of PIDA to disclose information.

Designated Officer and Investigation Team

Persons administering this Policy must ensure that the identity of those individuals involved or implicated in any investigation is treated as confidential and not disclosed outside the investigation team and Designated Officer. During the course of an investigation, witnesses should be interviewed separately.

All records, files and information being utilized as evidence in the investigation must be treated as confidential. Unique identifiers or codes may be assigned to files, files should be kept separate from others and access should be restricted to authorized persons (i.e. the investigation team). A password-protected folder will be created for electronic files. Any hard copy documents will be kept in a single investigation folder that must be returned to the investigation team lead at the conclusion of any meeting, interview, etc. The folder will be clearly marked as an investigation file and have a prominent warning on the front. The investigation team lead is responsible for ensuring confidentiality of those documents and that they are only used for the purpose of conducting the investigation.

7.1. Anonymous Disclosures

Under section 21 of the PIDA, anonymous disclosures may be made directly to the Commissioner by employees or non-employees. Anonymity is preserved throughout the investigation process, which may be conducted by the Commissioner's office, or the process contained in this Policy should the Commissioner refer the matter to the Chief Officer.

Employees should note that it is common for anonymous disclosures to have incomplete information such that an investigation is not possible. Excepting their name, individuals making an anonymous disclosure should provide all information requested on the Disclosure of Wrongdoing Form.

8. Post-Investigation Action

The employee who made the disclosure must be notified that the investigation is complete and what (if any) recommendations were made or corrective actions were taken as a result. Outcomes should be fair and reasonable and may include any one or more of the following:

- an explanation
- an apology
- mediation
- an admission of fault
- a change in decision
- a change of a policy, procedure or practice
- a correction of misleading records
- financial compensation, including a refund of any fees
- waiving of a debt
- revocation of a penalty
- protection of the employee making the disclosure
- disciplinary action
- referral of a matter to an external agency for further investigation or prosecution

Taking steps to implement recommendations resulting from investigations and correct deficiencies that led to wrongdoing is critical for ensuring the effectiveness of this Policy and the PIDA. Should the Chief Officer decide to implement corrective actions or recommendations resulting from an investigation, he/she should begin the implementation process within 90 days of receiving the Designated Officer's investigation report.²³

9. Protection from Reprisal

A primary purpose of this Policy and the PIDA is to protect employees who make a disclosure, seek advice about making a disclosure or participate in an investigation from reprisal. It is therefore an offence under the PIDA to take, or threaten to take, a reprisal as a result of the above actions.²⁴ The person who takes reprisal action in such circumstances is liable to pay \$25 000 for a first offence and \$100 000 for subsequent offences.²⁵

“Reprisal” includes any of the following:

- dismissal
- layoff
- suspension
- demotion
- transfer
- reprimand
- discontinuation or elimination of a job
- change of job location
- reduction in wages
- change in hours of work
- any measure that adversely affects employment or working conditions
- threat to take any of the aforementioned measures

9.1. Complaints of Reprisals

If an employee believes that a reprisal has been made against them as a result of making, or being involved with, a disclosure they may make a written complaint to the Commissioner.²⁶ The complaint must be in the form prescribed by Schedule 3 of the Regulation. The Complaint of Reprisal form meets the requirements of the regulation and may be used.

Employees may contact the office of the Commissioner for advice at 1-855-641-8659 or via email at info@pic.alberta.ca.

²³ Section 5(2)(a) of PIDA requires agencies to establish a timeframe for making recommendations to the department after the Investigation Report is complete.

²⁴ PIDA, s. 24.

²⁵ PIDA, s. 49.

²⁶ PIDA, s. 25.

10. Record-keeping and Reports

In order to evaluate the effectiveness of this Policy and to assist the Government of Alberta in evaluating the effectiveness of the PIDA, the Chief Officer is responsible for maintaining and publishing statistics relating to this Policy on an annual basis.

Annual Report of Chief Officer

Under section 32 of the PIDA, such statistics must be included as part of the AER's annual reporting provided to the Ministry of Energy and contain the following information:

(a) Disclosures

- Number of disclosures received by or referred to the Designated Officer
- Number of disclosures that resulted in an investigation
- Number of disclosures that did not result in an investigation
- If an action other than an investigation was commenced in response to the disclosures, a description of that action.

(b) Investigations

- Number of investigations commenced by the Designated Officer
- Number of investigations that resulted in a finding of wrongdoing
- For each case provide a description of the wrongdoing, and
 - Description of any recommendations made or corrective measures taken, or
 - Reasons why no corrective measures were taken.