

Act Purpose

1. What's the purpose of the *Public Interest Disclosure of Wrongdoing Act (PIDWA)*?

The purposes of this Act are to:

- (a) facilitate the disclosure and investigation of **significant** and **serious** matters in or relating to 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; and
- (c) promote public confidence in the administration of public entities.

Act Application

2. Who does the Act apply to?

The law applies to the following public entities:

- Yukon government departments, directorates, secretariats or other similar executive agencies;
- Workers' Compensation Health and Safety Board, Yukon Development Corporation, Yukon Energy Corporation, Yukon Hospital Corporation, Yukon Housing Corporation, and Yukon Liquor Corporation; and
- other specified public entities, including Yukon College, the Legislative Assembly Office, Office of the Child and Youth Advocate, and Office of the Chief Electoral Officer.

Current employees – including contract employees – of these public entities can seek advice about making, or make, a disclosure of wrongdoing, and be reprisal protected for doing so.

A former employee who believes their employment was terminated (i.e. was fired) in reprisal for engaging in disclosure-related activities while previously employed by a public entity, is also eligible to make a reprisal complaint under the Act.

3. Who is the Public Interest Disclosure Commissioner?

The Public Interest Disclosure Commissioner (PIDC) is a position established by this Act. Unless another person is appointed according to the process in the Act, Yukon's Ombudsman is the PIDC.

4. What's the role of the Public Interest Disclosure Commissioner under the Act?

The Public Interest Disclosure Commissioner (PIDC) is generally responsible for dealing with wrongdoing disclosures and complaints of reprisal that are received by the PIDC's office. The Act sets out the PIDC's authorities, obligations and discretionary powers in relation to handling disclosures and complaints received by the PIDC.

Wrongdoing Definition

5. What is a 'wrongdoing' under the Act?

For the purposes of this Act, a wrongdoing means:

- breaking a Yukon or federal law;
- doing something that creates a substantial and specific danger to people or to the environment – or creating that kind of danger by not doing something;

- gross mismanagement of public funds or assets; or
- knowingly directing or counselling someone to do any of these things.

A disclosure under the law can be about a wrongdoing that has been committed or is about to be committed.

An employee who commits a wrongdoing may be disciplined appropriately up to and including dismissal, in addition to and separate from any penalty provided for by law.

Disclosure of Wrongdoing

6. What is a disclosure under the Act?

A disclosure of wrongdoing sets out the information that an employee, in good faith, wants to bring to attention so the matter can be considered in the public interest. The employee must reasonably believe they have information that could show that a wrongdoing has been committed or is about to be committed.

A disclosure must be in writing, and include, if known:

- a description of the wrongdoing;
- the name of the individual(s) alleged to have committed the wrongdoing, or about to commit the wrongdoing;
- the date of the wrongdoing;
- whether the wrongdoing has been disclosed by the employee to someone else to whom a disclosure can be made under the Act, and whether a response has been received; and
- any other information prescribed by regulation.

The employee making the disclosure may be asked to provide additional information that may reasonably be required in order to investigate the matter.

7. Where can I get advice about making a disclosure?

An employee who is considering making a disclosure can request advice from:

- the Public Interest Disclosure Commissioner,
- the chief executive of their organization (e.g. deputy minister, president, or chief executive officer), or
- their immediate supervisor.

If a chief executive establishes formal procedures to manage disclosures by employees of the organization, the Act requires that those procedures designate a senior official of the organization to receive and deal with disclosures by employees of that public entity, for the purposes of the Act. So in this case, an employee can *also* request advice from their designated officer.

A person from whom advice can be sought can require the request for advice to be in writing.

8. What if it's not a significant and serious matter?

The *Public Interest Disclosure of Wrongdoing Act* (PIDWA) is intended to facilitate the disclosure and investigation of significant and serious matters that an employee believes may be unlawful, dangerous to the public or injurious to the public interest. It is not intended to deal with routine operational or human resource matters, nor is it intended to provide another avenue for employees whose relationship with their employer may be in dispute under a collective agreement or employment agreement as a result of human resource issues.

Employees who have concerns about such matters should follow existing procedures to deal with those issues.

You can seek advice on making a disclosure of wrongdoing. See [question 7](#).

9. Can I disclose confidential information?

With some exceptions, an employee can make a disclosure under *The Public Interest Disclosure of Wrongdoing Act* even if another law or regulation prohibits disclosure of the information. The disclosure must be made in accordance with all the rules of the Act, including to whom the disclosure may be made.

The law does not authorize an employee to disclose:

- information described in Subsection 15(1) of *Access to Information and Protection of Privacy Act* (Cabinet confidences), except in circumstances mentioned in subsection 15(2) of that Act; or
- information that is protected by solicitor-client privilege. (In very general terms, this information includes all communications, verbal or written, of a confidential character between a lawyer and a client related to seeking, formulating or giving legal advice or assistance.)

If the disclosure involves personal or confidential information, the employee must take reasonable precautions to ensure that no more information is disclosed than is necessary to make the disclosure.

If the employee is making a disclosure to the public (see question 13), the employee cannot disclose information that is protected or restricted by any Yukon or federal law.

10. To whom can I make a disclosure?

An employee can make a disclosure to:

- the Public Interest Disclosure Commissioner,
- the chief executive of their organization (e.g. deputy minister, president, or chief executive officer), or
- their immediate supervisor.

If a chief executive establishes formal procedures to manage disclosures by employees of the organization, the Act requires that those procedures designate a senior official of the organization to receive and deal with disclosures by employees of that public entity, for the purposes of Act. So in this case, an employee can also make a disclosure directly to the designated officer.

If a disclosure implicates a chief executive of an organization, consider dealing directly with the Public Interest Disclosure Commissioner.

A disclosure of wrongdoing must be in writing. See [question 6](#) for details.

11. Can I make an anonymous disclosure of wrongdoing?

No, the law does not permit anonymous disclosures.

12. Will my identity be protected?

The identity of a disclosing employee and others involved in the disclosure process, as well as the confidentiality of any information collected, are expected to be protected to the fullest extent possible by all persons involved in the disclosure process.

Disclosure procedures that may be established by a chief executive must, among other things, set out procedures that ensure the right to natural justice and procedural fairness and for protecting the identify of individuals involved.

The Public Interest Disclosure Commissioner is similarly obliged in relation to any investigations undertaken by that office.

13. If a situation is urgent, can I make a 'public' disclosure?

If an employee reasonably believes that:

- a matter poses an imminent risk of a substantial and specific danger to the life, health or safety of persons, or to the environment; and
- the situation is so urgent that there is insufficient time to make a disclosure to the Public Interest Disclosure Commissioner, chief executive, designated officer (if applicable), or immediate supervisor,

then the employee may make a disclosure to the public. However, the employee must:

- **first** make the disclosure to an appropriate law enforcement agency;
- follow any direction that the law enforcement agency considers necessary in the public interest; and
- **immediately after** the public disclosure is made, make a disclosure about the matter to their immediate supervisor or chief executive, or designated officer (if applicable).

14. Will every disclosure be investigated?

The Act provides a mechanism for making a disclosure. Whether a disclosure is investigated will depend on the nature of the information disclosed. For example, if on review of a disclosure it was determined that the subject matter is *not* a wrongdoing as contemplated by the Act but an operational or human resource matter for which there are established processes to deal with the concern, then the disclosure may not be investigated.

The Public Interest Disclosure Commissioner has discretion to not investigate a disclosure or to cease a disclosure investigation on various grounds, including but not limited to a disclosure being deemed frivolous or [vexatious](#), not having been made in good faith, or not dealing with a sufficiently serious matter. See subsection 20(1) of the Act for details.

15. As a manager/supervisor, what do I do if I receive a disclosure of wrongdoing?

If the chief executive (e.g. deputy minister) of your organization has established formal procedures for managing disclosures of wrongdoing (as outlined in Act section 5) then you should refer to those procedures for direction.

If formal procedures for managing disclosures have not been established, then you may want to confidentially discuss the matter with your chief executive.

16. Am I reprisal protected if I make a disclosure, and no wrongdoing is found?

Yes, provided you made your disclosure in good faith and in accordance with the requirements of the Act.

Reprisal Protection

17. What is reprisal?

Reprisal is any of the following measures taken against an employee because the employee in good faith sought advice about making a disclosure, made a disclosure, cooperated in an investigation under the Act, or declined to participate in a wrongdoing:

- a disciplinary measure;
- a demotion;
- termination of employment;
- any measure that adversely affects the employee's employment or working conditions; or
- a threat to take any of these measures.

18. How does the *Public Interest Disclosure of Wrongdoing Act* protect me from employment reprisal?

An employee who believes they are suffering a reprisal can make a complaint to the Public Interest Disclosure Commissioner (PIDC). Other options may also be available to an employee, such as filing a grievance under a collective agreement or employment policy.

As the PIDC cannot investigate a complaint and must cease to investigate a complaint if the employee has commenced or commences a procedure under another law or policy (see questions 19 and 20), an employee should carefully consider their options for pursuing a reprisal complaint before initiating any complaint procedure.

The PIDC can, at any time during or after an investigation into a complaint, take any steps considered appropriate to help settle a complaint. The terms of any proposed settlement must be agreed upon by the employee and the person with the authority to implement the remedy.

Following a complaint investigation, the PIDC is required to make a report containing findings, the reasons for the findings, and any recommendations about the complaint – for example, a remedy to be provided to a person the PIDC considers to have suffered a reprisal. If the PIDC and the affected public entity do not agree either on a finding of reprisal or the remedy to be provided, either party can initiate a binding arbitration procedure to resolve the matter. If in such a situation the arbitrator finds that an employee has suffered a reprisal, the arbitrator can order various remedies for the affected employee, such as permitting the employee to return to work, or paying appropriate damages or compensation. See section 38 of the Act for details.

In addition – reprisal is an offence under the Act, punishable on summary conviction to a fine of up to \$10,000.

19. Is there a timeline to file a complaint of reprisal?

A complaint of reprisal must be filed with the Public Interest Disclosure Commissioner (PIDC) not later than 90 days after the day on which the employee knew, or in the PIDC's opinion, ought to have known, that the reprisal was taken. However, the PIDC has discretion to accept a later complaint if the PIDC believes it is appropriate, considering the circumstances of the employee.

Other processes that may be available to an employee to deal with a reprisal – such as a collective agreement or employment policy – may have different filing timelines.

Reprisal Investigation

20. Will every complaint be investigated?

The Public Interest Disclosure Commissioner (PIDC) is not authorized to investigate a complaint, and must cease an investigation into a complaint, if the employee who made the complaint has commenced or commences another procedure in respect of the complaint subject matter. This could be a procedure under another Yukon or federal law, a collective agreement, or an employment agreement or policy of the affected public entity.

The PIDC also has discretion to not investigate a complaint or to cease a complaint investigation on various grounds, including but not limited to a complaint that is found not to have been made in good faith. See subsection 30(1) of the Act for details.

Employee Obligations

21. What are my obligations?

Employees engaged in either a disclosure or complaint process are obliged to act in good faith, are expected to maintain confidentiality, and must co-operate with investigations.

Timing

22. How does the Act work in relation to a wrongdoing that may have occurred before the Act came into force?

The Act is silent on a wrongdoing that may have occurred before the Act came into force. However, the Public Interest Disclosure Commissioner has discretion to not investigate a disclosure for various reasons, including, if in her opinion, so much time has passed 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.

Offences

23. Are there any offences under the Act?

Specific offences under the Act, punishable by a fine of up to \$10,000, include:

- knowingly making a false or misleading statement, orally or in writing, in seeking advice about or in making a disclosure or complaint of reprisal, or during an investigation or an arbitration under the Act;
- wilfully obstructing a person in the performance of a function or their duty under the Act;
- destroying, mutilating, falsifying or concealing a document or thing knowing it is likely to be relevant to an investigation or arbitration under the Act, or directing, counselling or causing another person to do such a thing;
- taking a reprisal against an employee or directing that one be taken against an employee because the employee, in good faith, sought advice about making a disclosure, made a disclosure, co-operated in an investigation under the Act, or declined to participate in a wrongdoing.

Reporting

24. How are wrongdoing disclosures and complaints of reprisal reported to the general public?

All public entities are required to report annually on the number and nature of disclosures of wrongdoing and complaints of reprisal made to them. A copy of these reports must be provided to the Public Interest Disclosure Commissioner (PIDC) who will include pertinent information in the PIDC's own annual report.

The PIDC can also prepare a special report regarding any matter within the scope of the PIDC's responsibilities under the Act.

The PIDC's reports will be tabled in the Yukon Legislative Assembly.