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Whistleblower

Section:	Operations
Policy:	1.0 Whistleblower Policy
Approved:	November 2013
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Public Interest Disclosure (Whistleblower Protection) Act

Purpose

The purpose of this whistleblower policy is to provide direction to all current and former employees regarding the communication and disclosure of wrongdoings as defined by the Public Interest Disclosure (Whistleblower Protection) Act (PIDA), including: questionable financial, operational, or support related matters.

Purpose of the **Public Interest Disclosure (Whistleblower Protection) Act (PIDA)**

“(a) to facilitate the disclosure and investigation of significant and serious matters in or relating to the public service, that are potentially unlawful, dangerous to the public or injurious to the public interest; and

(b) to protect persons who make those disclosures.”

The policy is intended to:

- to facilitate making disclosures regarding wrongdoing
- to facilitate the investigation of disclosures
- to protect those who, in good faith, make disclosures

Definitions

Disclosure: A disclosure means a report provided in writing by an employee that identifies a wrongdoing as defined by PIDA and follows the formatting and submission processes outlined within this policy and the PIDA.

The Whistleblower or Discloser: Is anyone who has made a disclosure of wrongdoing under this policy and the PIDA.

Wrongdoing: Wrongdoing as defined by section 3 of the PIDA;

(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).

Potential examples of wrongdoings that fall within the definition provided by section 3 of the PIDA include, but are not limited to, significant and serious instances of:

- Theft
 - Theft of person supported funds
 - Theft of groceries, time, or other agency resources
- Negligence
 - Knowingly providing sub-standard support to people supported
 - Inappropriate recording or reporting of revenues and expenses
 - Inappropriate classification of assets and/or liabilities
 - A deliberate disregard or circumvention of VOI policies

If an employee is unsure whether a concern falls under the PIDA as a wrongdoing, they may seek advice from the Executive Director or the Manitoba Ombudsman. Requests for advice should be submitted in writing to ensure that a timeline for reprisal protection under the PIDA is established.

Matters that do not fit into the definition of wrongdoing under the PIDA may still be addressed within another law or policy.

Wrongdoing under this policy and the PIDA is not intended to cover general performance or operational questions or issues that should be addressed with a direct supervisor/leader. Human resources, employment, and labour issues are more appropriately handled by speaking to your immediate supervisor or human resources to identify the appropriate process.

Note: Matters concerning abuse or neglect towards people supported is covered under the Vulnerable Persons Living With a Mental Disability Act (VPA) should be reported immediately to a supervisor as per the Reporting Incidences Under the VPA Policy.

Policy Statements

Duty to Report Wrongdoing (Whistleblowing Incidents)

The Whistleblower must immediately communicate wrongdoing as soon as the Whistleblower becomes aware of OR suspects potential wrongdoing. Procedure for reporting wrongdoing is provided in appendix A.

Disciplinary Action

An employee who commits a wrongdoing is subject to appropriate disciplinary action, including termination of employment, in addition to and apart from any penalty provided for by law.

Whistleblower Protection

VOI is committed to creating an environment where employees are encouraged and supported in reporting whistleblower incidents. Section 27 of the PIDA provides protection from reprisal for any employee submitting a disclosure under this policy.

Reprisal complaints by employees are to be submitted to the Manitoba Ombudsman by mail, fax, or electronically via: the Reprisal Complaint Form: <https://www.ombudsman.mb.ca> or contacting (204) 982-9130 or 1-800-665-0531 (toll-free).

Whistleblower protection applies whether the Executive Director or Manitoba Ombudsman conducts the investigation into the alleged wrongdoing.

Reprisal means any of the following measures taken against an employee because the employee has, in good faith, sought advice from their supervisor, the Executive Director, or Manitoba Ombudsman about making a disclosure, has made a disclosure, or has co-operated in an investigation under this policy and/or the PIDA:

- a. a disciplinary measure
- b. a demotion
- c. termination of employment
- d. any measure that adversely affects his or her employment or working conditions
- e. a threat to take any of the measures listed above.

Reprisal is considered an offence under section 33 (4) of the PIDA and is liable on summary conviction to a fine of not more than \$10,000. Any VOI employee committing a reprisal action and found to be in violation of this policy of Whistleblower protection will face disciplinary action determined by VOI's disciplinary policy. Continued violation of this policy may result in termination of employment.

Confidentiality

It is a requirement of the PIDA and policy of VOI that to the fullest extent possible, VOI will treat the identities of those involved in the disclosure and investigation process confidentially and with discretion. All information collected during the course of the investigation will remain confidential except as is necessary to conduct a fair investigation and to take corrective or remedial action or in accordance with applicable law.

Action will be taken against an individual who fails to protect the confidential nature of the investigation process including those who make the report, respondents to the allegation(s) or witnesses. Actions taken against an individual who fails to protect the confidential nature of the investigation fall under Section 2.2.9 of VOI's Personnel Policy and Procedures Manual.

VOI will not protect a Whistleblower who intentionally makes an improper disclosure which is deliberately vexatious. Improper disclosure means a disclosure made in bad faith, which includes knowingly giving false information.

Improper disclosure will be viewed as employee misconduct and will be met with appropriate disciplinary action, up to and including termination of employment, as determined by VOI's disciplinary policy.

For questions regarding the Public Interest Disclosure (Whistleblower Protection) Act, contact the Manitoba Ombudsman at:

- (204) 982-9130 or 1-800-665-0531 (toll-free)
- <https://www.ombudsman.mb.ca>

Confidentiality of Documents: Disclosure files will be handled in a confidential manner, maintained in a secure location, and protected from unauthorized access.

Appendix A: Procedures for Whistleblower Policy

The Procedures section includes direction and information for:

- Process for submitting a disclosure
- Receiving and reviewing disclosures, including setting time periods for action
- Investigating disclosures
- Respecting the confidentiality of information collected in relation to disclosures and investigations
- Protecting the identity of persons involved in the disclosure process
- Reporting the outcomes of investigations
- Respecting any other matter specified in the regulations

Disclosure Process

Disclosure Instructions

If an employee reasonably believes they have information that could demonstrate a wrongdoing has been committed or is about to be committed, the employee must make a disclosure under PIDA in writing to:

the Executive Director via:

1. Delivered in a sealed envelope in person to the Executive Director
2. Emailed directly to the Executive Director
3. Via mail to Executive Director, 211-530 Century Street, Winnipeg, MB R3H 0Y4. Indicate on the envelope: Confidential: PIDA Designated Officer

Or the Manitoba Ombudsman in writing or via online form found on:

<https://www.ombudsman.mb.ca>

Contact the Manitoba Ombudsman Office at (204) 982-9130 or 1-800-665-0531 (toll-free) for questions and clarification.

OR their immediate supervisor via email or written letter.

Who Can Make a Disclosure?

A disclosure may be made by any current or former employee, contractor, volunteer, and partner of VOI.

Contractors, volunteers, and partners can only report wrongdoings to the Manitoba Ombudsman in writing or via online form found on: <https://www.ombudsman.mb.ca>

Contact the Manitoba Ombudsman Office at (204) 982-9130 or 1-800-665-0531 (toll-free) for questions and clarification.

What Should Supervisors Do if They Receive a Disclosure?

If a disclosure is made to a supervisor, the supervisor must immediately refer the disclosure to the Executive Director.

Roles involved in the disclosure process under PIDA

Employees:

- Follow guidelines and process outlined in this policy and the PIDA for disclosing in good faith.
- Cooperate in investigations.
- Maintain confidentiality of information learned and communicated through the disclosure process.
- Respond to a claim and/or outcome
- Seek advice from a supervisor, the Executive Director, or Manitoba Ombudsman when needed.

Supervisors:

- Follow guidelines and process outlined in this policy and the PIDA for providing advice and/or referring disclosures to Executive Director or Manitoba Ombudsman.
- Cooperate with investigations, maintaining confidentiality, and supporting actions related to outcomes of an investigation.
- Refer employees to the Executive Director or Manitoba Ombudsman when unable to answer a question relating to the PIDA or this policy.

Executive Director (PIDA Designated Officer):

- Follow guidelines and process outlined in this policy and the PIDA for providing advice and/or referring employees to the Manitoba Ombudsman.
- When unable to provide advice, contact the Manitoba Ombudsman for support.
- Receive a disclosure, respond to a disclosure, and conduct investigations when determined necessary.
- Communicate with parties involved in a disclosure and investigation.
- Maintain confidentiality of all disclosures, investigations, and related processes under the PIDA and this policy.

- Ensure follow through on actions required as a result of an investigation that they have conducted or the Manitoba Ombudsman has conducted.

Manitoba Ombudsman

- Follow processes outlined by the PIDA for supporting employees, supervisors, and the Executive Director with advice pertaining to the PIDA.
- Receive and respond to disclosures made under the PIDA.
- Conduct investigations and providing course of action to be taken by VOI in response to disclosure.

Written Disclosure Format

- a. Clear indication in the opening paragraph and subject line that you are making a disclosure under The Public Interest Disclosure (Whistleblower Protection) Act.
- b. Description of the wrongdoing
- c. Name of the person or persons alleged to have committed the wrongdoing, or be about to commit the wrongdoing
- d. Date of the wrongdoing
- e. Whether a wrongdoing has already been disclosed and, if so, what response was received
- f. Preferred method to receive communications from the Executive Director regarding the disclosure.

Good Faith Disclosure

Reports of alleged wrongdoings should be made in good faith, be factual, and should contain as much specific detail as possible to allow for assessment. The report should be candid and should contain all of the relevant information that the complainant knows regarding the allegation or concern. It should also contain any corroborating information to support an investigation, including names of witnesses, if appropriate.

Disclosure of Personal or Confidential Information

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

Requesting Advice

As per Section 9 of the PIDA, an employee who is considering making a disclosure may request advice from the Executive Director or the Manitoba Ombudsman. The Executive Director or

Manitoba Ombudsman may require the request for advice to be in writing to establish timelines for reprisal protection.

Conflict of Interest

PIDA disclosures about the Executive Director should be made directly to the Manitoba Ombudsman. An employee who is considering making a disclosure may request advice from the Manitoba Ombudsman (contact information and disclosure process identified under “Disclosure Instructions”).

The Executive Director must recuse themselves where there may be an apprehension, bias, or conflict of interest (whether real, potential, or perceived).

Urgent and Immediate Disclosure

Making a public disclosure about an urgent matter: 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. The employee must 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. Immediately after a disclosure is made under subsection 14 (1) of PIDA, the disclosing employee must also make a disclosure about the matter to their supervisor or the Executive Director.

Allegations of serious or imminent risk, whether made under Section 14(1) or not, must be acted on immediately by the Executive Director.

Receipt and Review of Disclosure

Timeline of Acknowledgement

The Executive Director must acknowledge receipt of the disclosure made by the employee within five (5) business days.

The Acknowledgement

The Executive Director must determine how the disclosing employee wishes to receive communication and respect the wishes of the employee – this should be highlighted in the disclosure submission.

The Executive Director must advise the disclosing employee that they will undertake a review of the allegation and will determine if the allegation warrants an investigation based on the definition of wrongdoing.

Relevant verbal communication should be documented and handled in a confidential manner by maintaining in a secure location and protecting from unauthorized access.

Executive Director must not keep any information including copies, related to the disclosure.

Executive Director should direct any questions about PIDA or their responsibilities to the Manitoba Ombudsman and not to human resources.

Reviewing and Investigating a Disclosure

If an investigation is deemed appropriate based on the disclosure, the Executive Director will follow the process for investigation provided in this policy.

Purpose of the Investigation

The purpose of an investigation into a disclosure is to identify if a wrong doing has occurred and to recommend actions or corrective measures be taken based on the findings. The focus of an investigation as outlined by the PIDA is detecting and remedying wrongdoing. It is not to identify the discloser or wrongdoer.

The Executive Director may consult with the Ombudsman and any other person considered necessary for the purpose of the investigation.

Review and Investigation Process

The Executive Director will provide regular status updates to the discloser regarding the process outlined below.

1. Receive – the Executive Director receives a confidential disclosure in writing
2. Assess – the Executive Director will review and assess the disclosure provided and determine a course of action.
3. Action – the Executive Director will recommend and VOI will take action and respond to the disclosure.
4. Conclude – Notify the discloser and update on the status. Follow through with any corrective measure should be implemented.

Assessing the Elements of a Disclosure

The content and accuracy of the disclosure is important so as to efficiently process the allegation. The elements and factors that can affect the assessment of disclosures include:

- Good Faith. Disclosures that appear to be frivolous or extortive will not be assessed.

- Timeliness – how recent did the wrong doing occur? Wrongdoings that are alleged to have occurred more than 6 months ago may be more difficult to verify and prove. The sooner the disclosure, the better.
- Public Interest. The Executive Director will assess whether it is in the public interest to act on the disclosure.

Additionally, considerations for assessing disclosures are set out in the context of section 21(I) of the PIDA:

21(1) The designated officer or Ombudsman 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 or does not deal with a sufficiently serious subject matter;

(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 balanced and informed 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; or

(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;
or

(g) there is another valid reason for not investigating the disclosure

Follow-up and Courses of Action

After conducting a preliminary assessment of the disclosure, the Executive Director will decide on a course of action. The next steps could include:

- Requesting Additional Information: If the Executive Director determines additional information or clarification is required, they will contact the discloser based on the preferred method of contact.

- Investigate: If the Executive Director deems the disclosure warrants an investigation, the Executive Director will investigate the wrongdoing and identify the appropriate corrective measure, action, and disciplinary measure to address the wrongdoing.
- Determine that an investigation is not necessary: If it is assessed that the disclosure is not suitable to justify corrective measures or actions, the discloser will be made aware of the reasons that investigation of their disclosure has been declined.. The Executive Director will advise the discloser that they may make a disclosure to the Ombudsman if they do not agree with the decision.
- Referrals to another body: The Executive Director may refer to another body if the matter is in, or relates to another part of the public service; may refer to the Manitoba Ombudsman if the matter is complex, if there is real or perceived conflict of interest; if the matter supersedes the hierarchal position of the Executive Director; OR the nature of the disclosure makes the Executive Director’s involvement inappropriate. If a referral is going to be made to another body, the Executive Director will notify the discloser.

Section 15 of the PIDA allows an employee to disclose information that is otherwise prohibited from disclosure under another act or regulation:

15 Subject to section 16, an employee may make a disclosure under this Act, even if a provision in another Act or regulation prohibits or restricts disclosure of the information.

The Executive Director may require an employee to:

- a. Produce any records in his or her possession or under his or her control that may be relevant to an investigation
- b. Participate in an investigative interview.

If, during an investigation, the Executive Director has reason to believe that another wrongdoing has been committed, they may investigate further wrongdoings.

Investigation Requirements: Confidentiality and Fairness

An investigation is to be conducted as informally and expeditiously as possible. The investigation must also maintain a balance between expedient timeframes and ensuring procedural fairness for all involved.

The person conducting an investigation must respect and approach the investigation with procedural fairness and natural justice of all persons involved, including persons making disclosures, witnesses and persons alleged to be responsible for wrongdoing.

The alleged wrong doer has the right to know the nature of the disclosure and be given an opportunity to respond to the allegations.

The person conducting an investigation, and any other person involved in the management of a disclosure, must take reasonable steps to protect the identity of each person involved in the investigation, including a person making a disclosure, a witness and a person alleged to be responsible for a wrongdoing as per section 22(3) of the PIDA.

If an investigation results in a civil court proceeding, individuals will not be required to produce records, or disclose any information that could reasonably be expected to reveal the identity of a person who has made a disclosure under the Act as per section 32.1(1) of the PIDA.

Reporting Outcomes of the Investigations

Upon completing an investigation, the Executive Director must prepare a report containing their findings and any recommendations about the disclosure to the VOI Board of Directors.

The Executive Director must inform the employee who made the disclosure of the results of the investigation. The Executive Director may do so in the manner and at the time they consider appropriate.

Employee Outcome Complaints

Employees unsatisfied with the handling of their disclosure by VOI can make a further complaint to the Manitoba Ombudsman.

Reprisals and Other Matters Specified in the Regulations

Reprisal Complaint to the Ombudsman

An employee or former employee who alleges that a reprisal has been taken against him or her for seeking advice, participating in an investigation, or making a disclosure may make a written complaint to the Manitoba Ombudsman.

Reprisal complaints by employees are to be submitted to the Manitoba Ombudsman by mail, fax, or electronically via: the Reprisal Complaint Form found: <https://www.ombudsman.mb.ca> or contacting (204) 982-9130 or 1-800-665-0531 (toll-free).

Annual Report

Part 4.1 of PIDA requires VOI provide an annual report that is provided to the public either on request or through addition to an already existing annual report made to the public. The report must include the following information:

- a. Number of disclosures received and the number acted on and not acted on
- b. Number of investigations commenced as a result of a disclosure
- c. A description of the wrongdoing and any recommendations or corrective actions taken in relation to the wrongdoing or the reasons why no corrective action was taken.

Disclosure of Wrongdoing by Public

If an employee is approached by members of the public about making a disclosure of wrongdoing about VOI, they should be directed to contact the Manitoba Ombudsman.

Behaviour Standard During an Investigation

No person shall — in seeking advice about making a disclosure, in making a disclosure, or during an investigation — knowingly make a false or misleading statement, orally or in writing.

No person shall, knowing that a document or thing is likely to be relevant to an investigation under this Act

- a. destroy, mutilate or alter the document or thing
- b. falsify the document or make a false document
- c. conceal the document or thing;
- d. direct, counsel or cause, in any manner, a person to do anything mentioned in clauses (a) to (c).

No person shall willfully obstruct an investigation - under PIDA – (section 33)

Any person who contravenes any of the above provisions is guilty of an offence and is liable on summary conviction to a fine of not more than \$10,000 – section 33(4) of PIDA.