



Internal Procedures to Receive and Manage Disclosures of Alleged Wrongdoing



Table of Contents

| | |
|--------------------------------------------------------------------------------------------------------|----|
| Introduction | 4 |
| Effective Date | 4 |
| Amendments and Updates | 4 |
| Objective | 4 |
| Application | 5 |
| Definition of Terms | 5 |
| Disclosure | 5 |
| Discloser..... | 5 |
| Procedural Fairness and Natural Justice | 5 |
| Reprisal | 6 |
| Wrongdoing | 6 |
| Confidentiality | 6 |
| General Information, Protection of Identity | 6 |
| Expectations | 7 |
| Access to Information and Privacy..... | 8 |
| Internal Disclosure Process | 8 |
| Submitting a Disclosure | 8 |
| Disclosure From a Member of the Public | 8 |
| Anonymous Disclosures | 8 |
| Preliminary Assessment | 9 |
| Investigating a Disclosure of Wrongdoing | 10 |
| Findings and Conclusions..... | 11 |
| Service Standards | 13 |
| Obstruction/Offences/Prohibition and Discipline | 14 |
| Information on Wrongdoing or Fear of Reprisal to the Public Sector Integrity Commissioner | 14 |
| Roles and Responsibilities | 15 |
| The Deputy Minister | 15 |
| The Senior Disclosure Officer | 15 |
| The Chief Audit Executive | 17 |
| The Office of Values and Ethics | 17 |
| Human Resources Services branch (HRSB) | 18 |
| Managers and Supervisors | 18 |
| Contact information for Inquiries and Disclosures of Wrongdoing | 19 |

| | |
|-------------------------------------------------------------------------------------------------------------------------------|-----------|
| References | 20 |
| Frequently Asked Questions | 20 |
| What is the difference between an employee and a public servant? .. | 20 |
| Why should I disclose wrongdoing?..... | 20 |
| How am I protected from reprisal? | 21 |
| If I contact your office with some general questions, would it be considered a disclosure? | 21 |
| Can I make an anonymous disclosure of wrongdoing?..... | 22 |
| Can I go public with a disclosure of wrongdoing? | 22 |
| I have witnessed wrongdoing in the workplace, but I'm not sure under what process it should be dealt with | 22 |
| What is "gross mismanagement"? | 23 |
| What is a "serious breach" of the Code of Conduct? | 23 |
| What is a "misuse of public funds or a public asset"? | 24 |
| I'm a manager or supervisor, what should I do if one of my employees comes to me to make a disclosure of wrongdoing? | 24 |
| Who do I contact if I see that wrongdoing is taking place? | 25 |
| I have been accused of wrongdoing, what are my rights? | 25 |
| What could happen if I make a disclosure that is frivolous, vexatious or in bad faith? | 25 |
| What happens if someone is found to have committed a wrongdoing? | 25 |
| What should I do if I am the target of a reprisal? | 25 |
| What is the role of the Public Servants Disclosure Protection Tribunal? | 26 |
| How do I receive more information regarding the PSDPA and the ESDC Internal Procedures for disclosure of wrongdoing? | 26 |



Introduction

The [Public Servants Disclosure Protection Act \(PSDPA\)](#) provides a mechanism for employees to make disclosures in the public interest if they can show that a wrongdoing has been or is about to be committed. Under the PSDPA, employees can be assured that they will be protected from reprisals when they make disclosures or take part in investigations.

Effective Date

These procedures take effect on October 1, 2018.

These procedures replace the Internal Procedures to Receive and Manage Disclosures of Alleged Wrongdoing 2012.

Amendments and Updates

These procedures were updated in 2018 to reflect amendments to the PSDPA, updates in terminology and results of investigations by the Public Sector Integrity Commissioner.

These procedures can be amended and updated at any time in the future by the Office of Values and Ethics, with the approval of the Senior Disclosure Officer.

Objective

The objectives of these procedures are to:

- a) Inform all employees of the PSDPA, how they can disclose wrongdoing, how their disclosure will be managed and how they are protected from reprisal.
- b) Assure all employees who come forward with information on wrongdoing that they will be treated fairly and objectively.
- c) Inform alleged wrongdoers that they have the right to procedural fairness.

Application

These procedures apply to all employees of Employment and Social Development Canada (ESDC).

Definition of Terms

Disclosure – the action by a public servant of presenting information or evidence about wrongdoing in the workplace. In order for a disclosure to be protected, it must meet the definition of “protected disclosure” as defined in the PSDPA, and the disclosure should be presented to a supervisor, the Senior Disclosure Officer or the Public Sector Integrity Commissioner.

Discloser – a public servant who presents information or evidence that could show that a wrongdoing has been committed or is about to be committed.

Procedural Fairness and Natural Justice – refers to the principles that guide the conduct of investigations performed under the PSDPA. These principles ensure that ESDC’s Senior Disclosure Officer follows a fair procedure in arriving at a decision. Within this context, the key principles of fairness and justice that guide all of the Senior Disclosure Officer’s investigations and decisions under the PSDPA are:

- The alleged wrongdoer has the right to be informed of the substance of the disclosure of wrongdoing that has prompted an investigation
- The alleged wrongdoer has the right to be heard and present all evidence they deem relevant to be considered in the investigation, if their interests may be adversely affected by a decision
- The alleged wrongdoer may be accompanied by another person of their choice at an interview with the investigator
- The alleged wrongdoer has the right to written reason(s) for the decision of the Senior Disclosure Officer
- The Deputy Minister and Senior Disclosure Officer must remain fair and impartial when rendering a decision in regards to founded wrongdoing. In rendering their decision, the Deputy Minister and Senior Disclosure Officer must consider all the relevant evidence and information, and their decision should not be based on speculation or suspicion.

Reprisal – Defined in the PSDPA to include any of the following measures taken against a public servant because the public servant made a protected disclosure, or has cooperated in an investigation with regards to a disclosure: disciplinary measure, demotion, termination of employment or any other measure that adversely affects the employment or working conditions of that public servant. It includes a threat to take any of these measures, or ordering someone to take reprisal action, against the public servant.

Wrongdoing – Defined in the PSDPA as the conduct of a public servant that is in one or more of the following six categories:

- A contravention of any Act of Parliament or of the legislature of a province or of any regulations made under any such Act
- A misuse of public funds or a public asset
- A gross mismanagement in the public sector
- An act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment
- A serious breach of the Values and Ethics Code for the Public Sector or ESDC code of conduct; and
- Knowingly directing or counselling a person to commit any of the above wrongdoings.

Confidentiality

General information, protection of identity

Throughout the entire disclosure process, the Senior Disclosure Officer will protect, to the extent possible and subject to any other Act of Parliament and the principles of procedural fairness and natural justice, information and the identity of disclosers and witnesses involved in the disclosure process. The identity of the alleged wrongdoer will also be protected if the allegation against them is determined to be unfounded by the Senior Disclosure Officer. This will be accomplished by:

- a) Restricting the information on disclosures, to a limited number of people, on a need-to-know basis;
- b) Managing disclosure of wrongdoing cases centrally by the Senior Disclosure Officer and the Office of Values and Ethics in national headquarters;

- c) Providing for a dedicated and confidential office space, telephone number and email address for disclosures;
- d) Maintaining all records and documentation of disclosures of wrongdoing within the Office of Values and Ethics;
 - a. Supervisors and managers who have received a disclosure of wrongdoing from their staff should not maintain a copy of records and documents related to disclosures; all records and documents related to disclosures of wrongdoing are to be transmitted to the Senior Disclosure Officer.
 - b. Investigators or consultants who conduct fact-finding exercises or administrative investigations on behalf of the Senior Disclosure Officer are expected to transmit all records and documents to the Senior Disclosure Officer immediately after the conclusion of their fact-finding exercise or investigation.
- e) Using the provisions under the *Access to Information* and *Privacy Acts* accordingly.

There are, however, no absolute guarantees. External factors may lead to the identity of the discloser or witness being revealed. For example, someone may have brought the issue to light in the workplace before a disclosure of wrongdoing was made. Also, if the Senior Disclosure Officer makes a finding of wrongdoing and corrective measures are imposed, the wrongdoer may submit a grievance against the corrective measure. Should the grievance be brought to adjudication before the Federal Public Sector Labour Relations and Employment Board (FPSLREB), witnesses would likely be called upon to testify.

The disclosure of any information concerning criminal activity cannot be kept confidential. They will be referred to the appropriate authorities for investigation. In these cases, it will not be possible to protect the identity of the discloser.

Expectations

Once a disclosure is made, the discloser and the witnesses involved in an investigation are obliged to maintain confidentiality. Failure to protect confidentiality could compromise the integrity of an investigation and could potentially lead to disciplinary measures against the discloser and witnesses.

Access to Information and Privacy

The *Access to Information Act* and the *Privacy Act* contain mandatory, permanent exemptions related to the PSDPA. They respectively contain provisions to the effect that records containing information or personal information that was created for the purpose of making a disclosure or in the course of an investigation into a disclosure of wrongdoing are permanently protected and cannot be released in response to a request for information under the *Access to Information Act* and/or the *Privacy Act*.

Internal Disclosure Process

Submitting a disclosure

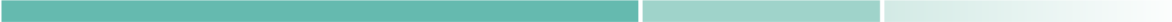
To make a disclosure, the discloser is encouraged to complete the Public Servants Disclosure Protection Act Employee Disclosure Form (ESDC HRB5037) and provide information that could show that a wrongdoing has been committed, is about to be committed, or that the discloser has been asked to commit a wrongdoing. The form must clearly indicate the manner in which they wish to be contacted by the Senior Disclosure Officer, e.g. e-mail, cell phone, home number, etc. The discloser should then submit the completed form to the Senior Disclosure Officer, their manager or to the Office of Value and Ethics. Where appropriate, the Senior Disclosure Officer may informally resolve the subject matter of the disclosure directly with the discloser.

Disclosure from a member of the public

Members of the public who have reason to believe that an ESDC employee is involved in wrongdoing can bring the matter to the Senior Disclosure Officer, or the ESDC Office of Values and Ethics, or to the Public Sector Integrity Commissioner.

Anonymous Disclosures

If the Senior Disclosure Officer receives a disclosure of wrongdoing from an anonymous source, and the disclosure concerns serious wrongdoing, appears credible and is sufficient



to enable the allegation to be investigated, the Senior Disclosure Officer may act on the information or refer the matter to the appropriate branch or office for conducting a review or an administrative investigation. If the matter is referred to another branch or office within ESDC, the Senior Disclosure Officer should be informed of the results of the review or administrative investigation.

Preliminary assessment

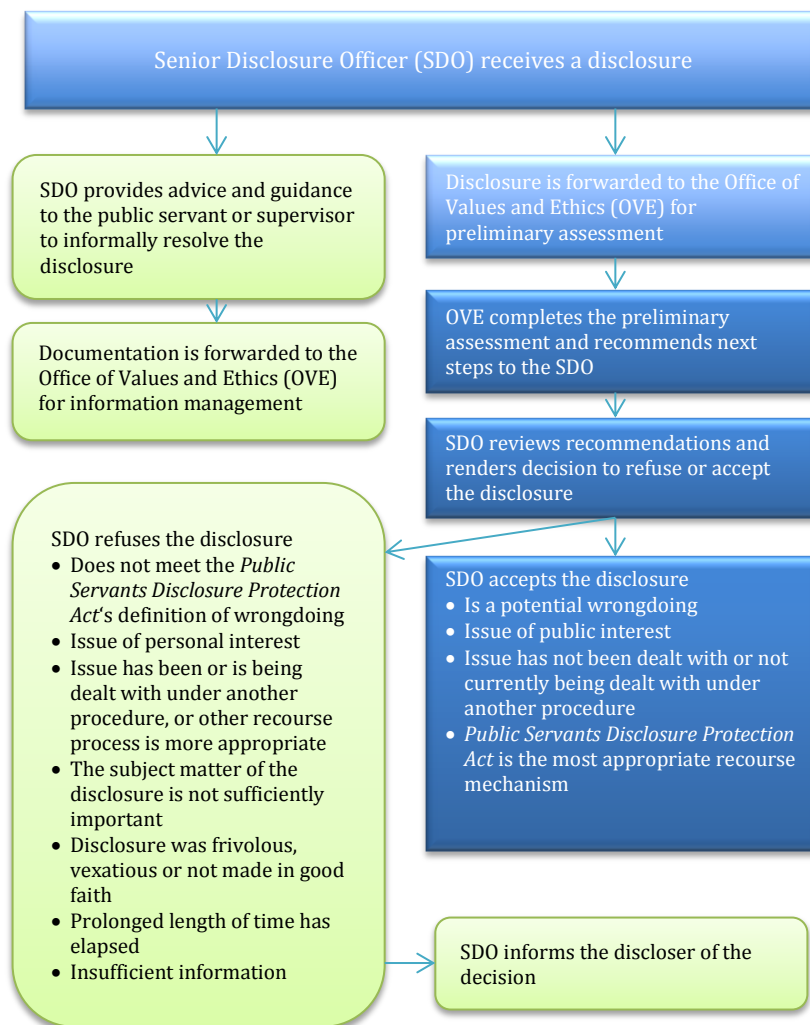
A preliminary assessment of the disclosure or allegation is conducted once a disclosure of wrongdoing is received by the Senior Disclosure Officer. This step is necessary to determine whether there are reasonable grounds to proceed with an investigation. During the preliminary assessment, the Office of Values and Ethics performs the following:

- Review the allegation against the requirements of the *Act* (i.e. meets the definition of wrongdoing and the disclosure is in the public interest);
- Collect and evaluate information and evidence from internal sources or resources (i.e. computer data, documentary sources, statement or testimony from subject matter experts);
- Analyze and determine what information or evidence or activities are required to arrive at a conclusion.

The Senior Disclosure Officer may decide to refuse a disclosure, or refer the matter to the appropriate authority, or not commence an investigation, or cease an investigation, if the allegation of wrongdoing:


- Involves an issue of personal interest;
- Does not meet the definition of wrongdoing as defined by the PSDPA;
- Has been properly and adequately dealt with, or could more appropriately be dealt with, or is being dealt with by another procedure or recourse mechanism;
- Involves a disclosure that was frivolous or vexatious, or not made in good faith, or the information that led to the investigation was not provided in good faith;
- The subject matter of the disclosure is not sufficiently important;

- A prolonged length of time has elapsed since the alleged wrongdoing occurred and it may no longer serve any useful purpose to deal with the disclosure;
- Does not include sufficient information to act on;
- The information disclosed relates to a matter that results from a balanced and informed decision-making process on a public policy issue.



The initial screening and preliminary assessment can be followed by an investigation whose steps are listed below:

Investigating a disclosure of wrongdoing



Investigations under the PSDPA are for the purpose of gathering information and evidence with respect to the disclosure and determining if wrongdoing occurred. Investigations are to be conducted as informally and expeditiously as possible.

Once the Senior Disclosure Officer decides that an investigation is warranted, an investigation is mandated and an investigator is identified.


Generally, the following elements are included in an investigation:

- The affected parties (i.e. the discloser, witness, alleged wrongdoer) are informed of the decision to investigate. The alleged wrongdoer is informed of the substance of the disclosure of wrongdoing;
- Evidence is collected;
- Witnesses are interviewed;
- The alleged wrongdoer(s) is/are interviewed. Where there is a possibility of a finding of wrongdoing, the investigator shall provide the alleged wrongdoer with the opportunity to present all the evidence they deem relevant to be considered in the investigation;
- The investigator prepares a report of their findings and provides a copy of the report to the alleged wrongdoer for their comments. The investigator collects any comments, and any new or additional information from the alleged wrongdoer and includes these in their investigation report;
- The investigator provides their report, including all records and documents from their investigation, to the Office of Values and Ethics.

Findings and conclusions

The Office of Values and Ethics reviews the investigators findings and prepares a final report for the Senior Disclosure Officer. The Senior Disclosure Officer reviews the final report and renders a decision based on the facts of the case.

- If the final report indicates that wrongdoing has been found, the Senior Disclosure Officer informs the Deputy Minister of the finding of wrongdoing and of any recommended corrective

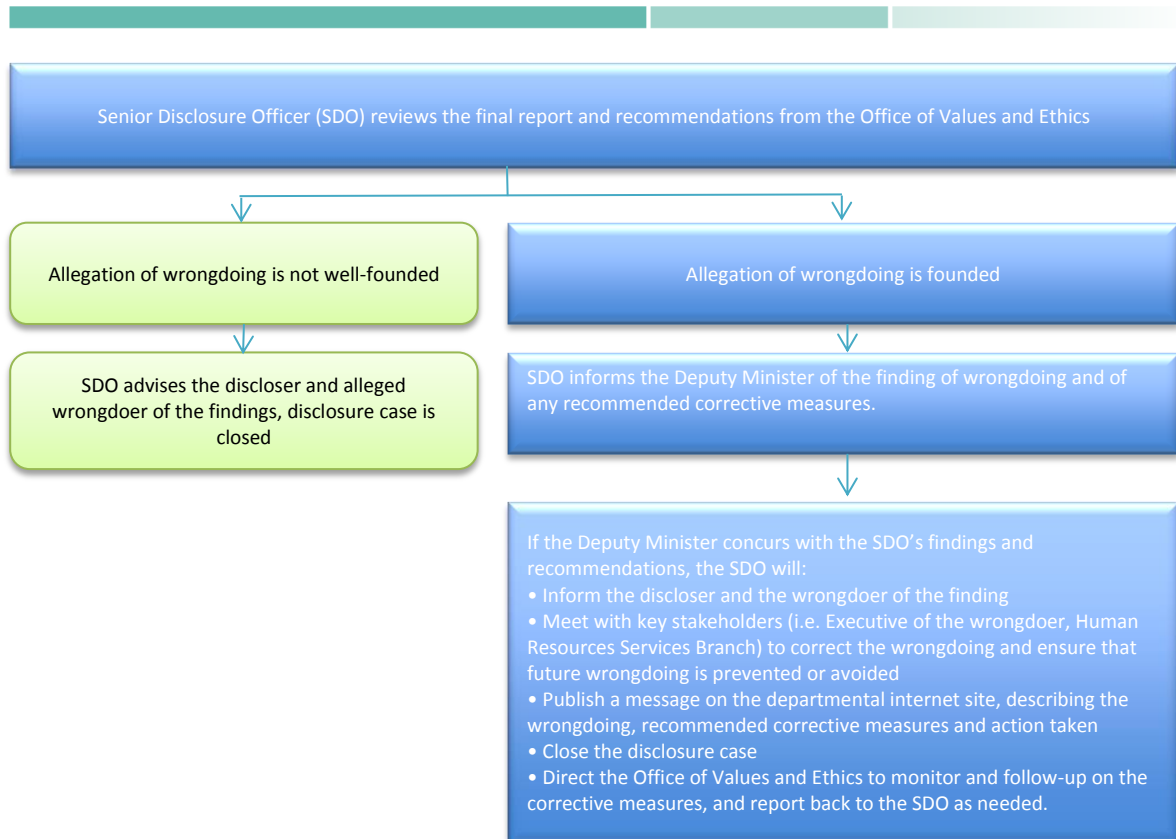


measures. If the Deputy Minister concurs with the Senior Disclosure Officer's finding and recommendations, the Senior Disclosure Officer:

- informs the discloser and the wrongdoer of the finding;
- provides public access to information that describes the wrongdoing, including the recommended corrective measures and action taken;
- coordinates efforts to ensure the corrective action is implemented;
- closes the disclosure case.

A finding of wrongdoing may lead to administrative or disciplinary measures being taken, up to and including termination of employment.

- If the final report indicates no wrongdoing:
 - the Senior Disclosure Officer may inform the Deputy Minister of the finding and any necessary control measures to prevent or avoid any future wrongdoing;
 - the Senior Disclosure Officer advises the discloser and the alleged wrongdoer of the finding;
 - the disclosure case is closed;
 - the Senior Disclosure Officer, in their capacity as a senior executive, may address any other concerns that were uncovered by the investigation



Service Standards

Every case is unique and the timeframes for the disclosure process will vary from case to case. Factors that affect the length of time the disclosure process can take could include: the number of allegations and individuals involved, the availability of documentary evidence and witnesses, the complexity of the issues, and whether specific expertise or additional research is needed.

The PSDPA states that investigations are to be conducted as expeditiously as possible. Barring unforeseen circumstances, the Senior Disclosure Officer will strive for the following service standards:

- General inquiries will be responded to within five working days;
- In 80% of cases, a decision to investigate a disclosure of wrongdoing will be made within 90 days of the receipt by the Senior Disclosure Officer of a disclosure of wrongdoing;
- In 80% of cases, investigations into a disclosure of wrongdoing will be completed within one year of being launched.

Obstruction/Offences/Prohibition and Discipline

The PSDPA states that any employee who, in a disclosure of wrongdoing or in the course of any fact-finding exercise or investigation under the PSDPA, commits any of the following offences may be subject to administrative or disciplinary measures, up to and including termination of employment:

- willfully obstructs the Senior Disclosure Officer, or any person acting on behalf of or under the direction of the Senior Disclosure Officer in the performance of the Senior Disclosure Officer's duties under the PSDPA;
- knowingly makes a false statement, either orally or in writing, to the Senior Disclosure Officer or a person acting on behalf of or under the direction of the Senior Disclosure Officer;
- conceals or attempts to conceal wrongdoing or allegation of wrongdoing from the Senior Disclosure Officer or any person acting on behalf of or under the direction of the Senior Disclosure Officer;
- destroys or mutilates or alters or conceals or falsifies a document or thing that is likely to be relevant to a fact-finding exercise or investigation under the PSDPA;
- directs or counsels or proposes or causes, in any manner, any person to do any of the above.

Information on Wrongdoing or Reprisal to the Public Sector Integrity Commissioner

Any individual can disclose wrongdoing to the Public Sector Integrity Commissioner.

If a disclosure of wrongdoing presents allegations against a Deputy Minister of ESDC, the allegation of wrongdoing must be referred to the Public Sector Integrity Commissioner for review and, if warranted, investigation. This process will help to preserve the public's and the employees' trust in the integrity of the Department.

The Public Sector Integrity Commissioner has exclusive jurisdiction in handling and investigating complaints of reprisal. If a discloser or witness believes that they have experienced reprisal after they have made a disclosure of wrongdoing or were involved in the disclosure

process, they should contact the Public Sector Integrity Commissioner immediately. The PSDPA states that a reprisal complaint must be filed within 60 days of the day on which the discloser or witness knew or ought to have known that the reprisal had occurred. The Commissioner may extend this period if he believes that it is appropriate to do so considering the circumstances.

The Public Sector Integrity Commissioner may provide access to legal advice, up to the amount of \$1500 (and up to \$3000 in exceptional circumstances), to any person involved in a complaint or investigation under the PSDPA.

Roles and Responsibilities


The Deputy Minister

In the context of the PSDPA, the Deputy Minister is responsible for:

- a) Promoting a strong culture of values and ethics throughout ESDC and demonstrating a positive tone at the top;
- b) Ensuring that the PSDPA is applied at ESDC;
- c) Designating a senior disclosure officer to receive and deal with disclosures of wrongdoing from ESDC employees;
- d) Establishing internal procedures to manage disclosures made under the PSDPA;
- e) Protecting the identity of persons involved in the disclosure process, including that of persons making disclosures, witnesses and persons alleged to be responsible for wrongdoing, subject to the principles of procedural fairness and natural justice;
- f) Protecting from reprisal all employees who disclose wrongdoing in good faith, and witnesses involved in a disclosure process;
- g) Ensuring that the information collected in relation to disclosures of wrongdoing remain confidential; and
- h) Providing public access to information on cases of founded wrongdoing.

The Senior Disclosure Officer

The Senior Disclosure Officer helps promote a positive environment




for disclosing wrongdoing and deals with disclosures of wrongdoing made by employees of ESDC. The Senior Disclosure Officer is expected to uphold integrity and exemplify ethical practices. They are responsible for supporting the Deputy Minister in meeting the requirements of the PSDPA.

In line with the Values and Ethics Code for the Public Sector, the responsibilities of the Senior Disclosure Officer include the following:

- a) Provide information, advice and guidance to public servants regarding the organization's internal disclosure procedures, including the making of disclosures, the conduct of investigations into disclosures, and the handling of disclosures made to supervisors.
- b) Receive and record disclosures and review them to establish whether there are sufficient grounds for further action under the PSDPA.
- c) Manage investigations into disclosures, including determining whether to deal with a disclosure under the PSDPA, initiate an investigation or cease an investigation.
- d) Coordinate handling of a disclosure with the senior disclosure officer of another federal public sector organization, if a disclosure or an investigation into a disclosure involves that other organization.
- e) Notify the person(s) who made a disclosure in writing of the outcome of any review and/or investigation into the disclosure and on the status of actions taken on the disclosure, as appropriate.
- f) Report the findings of investigations, as well as any systemic problems that may give rise to wrongdoing, directly to the Deputy Minister, with recommendations for corrective action, if any.
- g) Provide an annual report to the Treasury Board Secretariat.

If, during the course of an investigation "A" or as a result of any information provided to the Senior Disclosure Officer for a disclosure "A", the Senior Disclosure Officer has reason to believe that another wrongdoing "B", or a wrongdoing, as the case may be, has been committed, he or she may, commence an investigation into the



wrongdoing “B” if he or she believes on reasonable grounds that the public interest requires an investigation.

The Chief Audit Executive

The Chief Audit Executive of Internal Audit Services Branch at ESDC is one of the resources available to the Deputy Minister and the Senior Disclosure Officer.

The Chief Audit Executive also acts as the Senior Disclosure Officer in cases where the disclosure of wrongdoing presents a conflict of interest or other impediment giving rise to a reasonable apprehension of bias for the incumbent Senior Disclosure Officer.

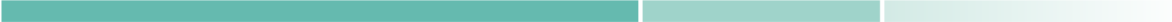
A conflict of interest situation involves a disclosure of wrongdoing with allegations against the Senior Disclosure Officer or their office, or an individual in the Senior Disclosure Officer’s branch, or the Office of Values and Ethics in its supporting role to the Senior Disclosure Officer. To avoid such situations of conflict of interest, the disclosure of wrongdoing must be referred to the Chief Audit Executive, and the Senior Disclosure Officer must recuse him or herself from the disclosure process (review, analysis, investigation, presentation of findings and recommendations to the Deputy Minister) to preserve the credibility of ESDC and the Deputy Minister in managing disclosures of wrongdoing.

The Office of Values and Ethics

The Office of Values and Ethics supports the Deputy Minister and the Senior Disclosure Officer in their roles and responsibilities under the PSDPA. The Office of Values and Ethics also provides advice to public servants and supervisors regarding the PSDPA, the Values and Ethics Code for the Public Sector and the ESDC Code of Conduct.

As part of supporting the Deputy Minister and Senior Disclosure Officer, officials in the Office of Values and Ethics:

- Receive, screen and review allegations of wrongdoing, perform the preliminary assessment, analyze and make recommendations to the Senior Disclosure Officer if an investigation is warranted.
- If the Senior Disclosure Officer decides to launch an investigation, the Office of Values and Ethics conducts or



manages the investigation, reviews the results of the investigation, presents the investigation findings and prepares recommendations to the Senior Disclosure Officer.

- As set out above, keep, maintain and protect all disclosure of wrongdoing files. The Office of Values and Ethics ensures that only the individuals that have been designated to assist the Senior Disclosure Officer have access to the disclosure of wrongdoing file or record.
- Follow-up on recommendations and corrective measures determined by the Senior Disclosure Officer or Deputy Minister or Human Resources Services Branch or Public Sector Integrity Commissioner.
- Liaise with the Public Sector Integrity Commissioner on investigations by the Commissioner.
- Liaise with the Treasury Board Secretariat in all matters related to the administration and implementation of the PSDPA within ESDC.

Human Resources Services Branch (HRSB)

The Human Resources Services Branch provides advice, guidance, recommendations and support to management as it relates to corrective measures, including discipline, when allegations of wrongdoing are founded.

Once an allegation of wrongdoing is founded, the SDO and the Office of Values and Ethics will advise the appropriate HRSB Division (e.g. Labour Relations, Staffing) who will liaise with management regarding corrective measures and next steps.

Managers and Supervisors

Managers and supervisors have important responsibilities in promoting the awareness of, and compliance with, the PSDPA. In this regard, managers and supervisors are accountable to the Senior Disclosure Officer and are expected to:

- Demonstrate visible leadership in fostering an ethical culture in the workplace.
- Inform their employees of the PSDPA, their options for making disclosures, the protection the legislation provides, and where to go if they need more information

- Receive disclosures of wrongdoing from their employees, and protect the identity of the discloser.
- Seek information, advice, and direction from the Office of Values and Ethics upon receiving a disclosure of wrongdoing.
- Protect from reprisal the employee who discloses wrongdoing or who is involved in a disclosure investigation process.
- Seek advice and direction from the Office of Values and Ethics upon witnessing wrongdoing in the workplace.
- Ensure that all information and/or reports concerning wrongdoing in the workplace or acts of reprisal are promptly forwarded to the Senior Disclosure Officer.
- Cooperate with the Deputy Minister, Public Sector Integrity Commissioner, Senior Disclosure Officer and the Office of Values and Ethics in any fact-finding exercise and/or investigation into a disclosure.
- Collaborate with the Deputy Minister, Public Sector Integrity Commissioner, Senior Disclosure Officer and the Office of Values and Ethics in implementing recommendations and/or corrective measures.

Contact information for Inquiries and Disclosures of Wrongdoing

For interpretation, clarification and inquiries regarding these internal procedures or disclosure of wrongdoing, please do not hesitate to contact the Office of Values and Ethics via e-mail at: NC-V&E-GD

To disclose wrongdoing, please do not hesitate to contact the Office of the Senior Disclosure Officer via:

Telephone: 1-866-369-7731 or 819-654-5043

E-mail: NC-MIN-DIVULGATION_DISCLOSURE-GD

Mail: Senior Disclosure Officer

Place du Portage, Phase II

165 Hotel-de-Ville Street

Mail Stop L804

Gatineau, Quebec K1A 0J9

References:

- *The Public Servants Disclosure Protection Act*
<http://laws-lois.justice.gc.ca/eng/acts/P-31.9/>
- ESDC Code of Conduct
http://iservice.prv/eng/is/ve/code_of_conduct/code_of_conduct.shtml
- Values and Ethics Code for the Public Sector
<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>
- The Public Sector Integrity Commissioner
<http://www.psic-ispc.gc.ca/eng>

Frequently Asked Questions

Q1 What is the difference between an employee and a public servant?

The term “public servant” is defined in the *Public Servants Disclosure Protection Act* as follows: “...every person employed in the public sector, every member of the Royal Canadian Mounted Police and every chief executive.”

Within the context of these internal procedures, the term “employee” refers to indeterminate and term employees, individuals on leave without pay, students participating in Student Employment Programs, casual, seasonal and part-time workers, individuals on secondment from other government organizations, and individuals participating in exchange programs such as Interchange Canada.

Q2 Why should I disclose wrongdoing?

You may choose to disclose wrongdoing because:

- We all rely on our federal public institutions and we all have a stake in making them as strong as possible for the benefit of all Canadians. Disclosing wrongdoing can have a significant and positive impact on the trust that Canadians have in ESDC’s ability to carry out its mandate.

- It is in the public interest and in the interest of ESDC to share information about wrongdoing with someone in a position to do something about it.
- It is part of doing your job well, and being a responsible, committed and honest employee.
- The earlier a problematic situation is addressed, the less negative impact it will have.
- If you ignore wrongdoings, they may likely be repeated, become more serious and may damage your organization.
- You want to be part of the solution.

Q3 How am I protected from reprisal?

There are strong safeguards in the *Public Servants Disclosure Protection Act* to protect your identity and the disclosure process is confidential to the greatest extent possible. For example, information that could identify a discloser, witnesses and other persons involved in disclosures, as well as information obtained in the course of an investigation, cannot be released under the *Access to Information Act*, the *Privacy Act* or the *Personal Information Protection and Electronic Documents Act*.

If you made a protected disclosure or participated as a witness in a disclosure of wrongdoing investigation, and reprisal action has been taken against you, please contact the Public Sector Integrity Commissioner (the Commissioner) as soon as possible. The Commissioner has sole jurisdiction in handling reprisal complaints.

Q4 If I contact your office with some general questions, would it be considered a disclosure?

No. A general question is not a disclosure and you do not have to provide your name. Please contact us if you have seen something that you believe might be wrongdoing in the workplace and are looking for guidance. We will listen to you and help you determine if your concerns could be considered wrongdoing. Some situations may not meet the definition of wrongdoing under the Act, but may still require attention. If our Office is not the most appropriate mechanism to deal with the situation you raise, we will do our best to direct you to the right place.

Q5 Can I make an anonymous disclosure of wrongdoing?

Yes, you can disclose a wrongdoing anonymously. However, it is important to be aware that an anonymous disclosure is not considered a disclosure under the *Public Servants Disclosure Protection Act* (PSDPA). As a result, protections against reprisal and provisions respecting protections of information are not available for disclosures that are submitted in this manner. Similarly, a disclosure made through a representative (e.g. a union representative or third party) would not provide the direct protections under the PSDPA to the public servant who requests that a disclosure be made on their behalf. To be accorded all the protections the PSDPA provides a public servant must make the disclosure of wrongdoing themselves.

If the Senior Disclosure Officer receives a disclosure of wrongdoing from an anonymous source, and the disclosure concerns serious wrongdoing, appears credible and is sufficient to enable the allegation to be investigated, the Senior Disclosure Officer may act on the information or refer the matter to the appropriate branch or office for conducting a review or an administrative investigation.

Employees are encouraged to write their name when making a disclosure since the Senior Disclosure Officer may need more information or have questions on the disclosure before launching a preliminary assessment.

Q6 Can I go public with a disclosure of wrongdoing?

The PSDPA specifies that you can go public with a disclosure only if there is not sufficient time to make the disclosure using the internal process and you believe, on reasonable grounds, that there is a serious offence under a federal or provincial law, or an imminent risk of a substantial and specific danger to the life, health and safety of persons, or to the environment. We strongly encourage you, when these conditions are not met, to raise the issue internally with the Senior Disclosure Officer. You may be subject to disciplinary measures should you not respect these conditions.

Q7 I have witnessed wrongdoing in the workplace, but I'm not sure under what process it should be dealt with.

ESDC is committed to providing a work environment where all persons are treated with respect and dignity. If you feel that an act of wrongdoing has been committed but are not sure which process it falls under, please speak to your manager, a Values and Ethics Advisor, your union representative, or to the Senior Disclosure Officer.

Q8 What is “gross mismanagement”?

The term “gross mismanagement” is not defined in the *Public Servants Disclosure Protection Act*. There are numerous factors that the Senior Disclosure Officer considers in determining whether an action or omission comprises gross mismanagement under subsection 8(c) of the Act, these include:

- Matters of significant importance;
- Serious errors that are not debatable among reasonable people;
- More than minor wrongdoing or negligence;
- Management action or inaction that creates a substantial risk of significant adverse impact upon the ability of an organization, office or unit to carry out its mandate;
- The deliberate nature of the wrongdoing; and
- The systemic nature of the wrongdoing.

Not all factors are required to be engaged in order to meet the definition of 'gross mismanagement'.

Q9 What is a “serious breach” of a code of conduct?

The term “serious breach” of a code of conduct is not defined in the *Public Servants Disclosure Protection Act*. There are numerous factors that the Senior Disclosure Officer considers in determining whether an action or omission comprises a serious breach of a code of conduct under section 8(e) of the Act, these include:

- The breach represents a significant departure from generally accepted practices within the federal public sector;
- The impact or potential impact of the breach on the organization's employees, clients and the public trust is significant;
- The alleged wrongdoer occupies a position that is of a high level of seniority or trust within the organization;
- Serious errors which are not debatable among reasonable people;

- The breach of the applicable code(s) of conduct is systemic or endemic;
- There is a repetitive nature to the breaches of the applicable code(s) of conduct or they have occurred over a significant period of time; and
- There is a significant degree of wilfulness or recklessness related to the breach of the applicable code(s) of conduct.

Q10 What is a “misuse of public funds or a public asset”?

Amongst the numerous factors considered to make a finding of a misuse of public funds or a public asset, the Senior Disclosure Officer will take into account the following interpretation:

- Misuse of public funds includes expenditures that are made without proper authorization or that are unlawful or contrary to applicable legislation, regulations, policies and procedures;
- Purchases that are wastefully unnecessary and that are not in keeping with the business or operational needs of the organization may also constitute a misuse of public funds; and
- Misuse of public assets includes making inappropriate or unauthorized use of government property, and also includes a failure to safeguard such assets.

Note that the above will not include mistakes made in good faith.

Q11 I’m a manager or supervisor, what should I do if one of my employees comes to me to make a disclosure of wrongdoing?

As a manager or supervisor, you must:

- Promptly consult with and follow the instructions of the Senior Disclosure Officer;
- Protect the identity of all persons involved in the disclosure process;
- Keep all notes and information concerning the disclosure strictly confidential. Remember, a disclosure of wrongdoing is between you and the employee only at this point in the process;
- Keep all information concerning disclosures separate from existing files in a combination-protected cabinet; disclosure files are not part of personnel files;

- Protect employees from possible reprisals as a result of disclosing a wrongdoing.
- Collaborate with the Senior Disclosure Officer and the Office of Values and Ethics in respect of any preliminary assessment, investigation and/or corrective measures.

Q12 Who do I contact if I see that wrongdoing is taking place?

If you believe that wrongdoing is taking place, you are encouraged to make a disclosure to your supervisor or manager, or the ESDC Senior Disclosure Officer or externally to the Public Sector Integrity Commissioner.

Q13 I have been accused of wrongdoing, what are my rights?

The Senior Disclosure Officer is committed to ensuring that the principles of natural justice and procedural fairness are applied to all persons involved.

If you are alleged to have committed a wrongdoing, you will be informed of the substance of the disclosure. You will be given full opportunity to answer any allegation. You have the right to be assisted, accompanied or represented by any person of your choice.


Q14 What could happen if I make a disclosure that is frivolous, vexatious or in bad faith?

The person that makes such disclosure may be subject to administrative and/or disciplinary action.

Q15 What happens if someone is found to have committed a wrongdoing?

Specific sanctions will depend on the type and seriousness of the wrongdoing. In addition to any sanctions that may be required by law, ESDC has the authority to apply administrative and disciplinary measures. The range includes the return of any monies owed, financial penalties, reprimands, suspensions, demotions and termination of employment.

Q16 What should I do if I am the target of a reprisal?



If you feel that a reprisal has been taken against you, you should contact the Public Sector Integrity Commissioner (PSIC). The PSIC is the only route under the PSDPA for receiving reprisal complaints.

Alternatively, you can choose to deal with the matter through the grievance process or through another recourse process, if applicable. If the PSIC accepts to deal with the complaint (he or she can refuse in certain situations) the PSIC will conduct an investigation.

Q17 What is the role of the Public Servants Disclosure Protection Tribunal?

The Tribunal receives applications from the Public Sector Integrity Commissioner to hear and deal with reprisal complaints. The Tribunal will determine if a reprisal has occurred, and if so, make orders for the appropriate remedial measures in favour of the complainant. The Tribunal may also order that disciplinary action be taken against people who have engaged in the act of reprisal.

Q18 How do I receive more information regarding the PSDPA and the ESDC Internal Procedures for disclosure of wrongdoing?

Please contact the Office of Values and Ethics by submitting a ticket with the [Human Resources Service Centre](#).