

Administrative
Regulation No.
4090

Classification:
Staff

Effective Date:
May 2, 2019

Public Interest Disclosure (Whistleblower Protection)

1 | Purpose

The purpose of this Administrative Regulation is 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.
- Manage, investigate and make recommendations respecting disclosures of wrongdoings and reprisals.
- Identify the processes and accountabilities for employees for reporting and investigating wrongdoing within the CBE.
- To protect employees from reprisal for making a disclosure.
- To promote public confidence in the administration of the CBE.

2 | Scope

This Administrative Regulation applies to:

- All CBE employees.

3 | Compliance

All employees are responsible for knowing, understanding and complying with this Administrative Regulation.

4 | Principles

The following principles apply:

- CBE provides a positive supportive environment for employees.
- CBE is committed to high standards of ethical and accountable conduct.

5 | Definitions

Act: means the *Public Interest Disclosure (Whistleblower Protection) Act (Alberta)* and any regulations thereunder.

Business Day: means a day other than a Saturday, Sunday, statutory holiday in Alberta or any other day on which the Calgary Board of Education is not open.

CBE: means The Calgary Board of Education.

Chief Officer: has the same meaning as set out in the Act, and for the purposes of the Calgary Board of Education specifically, means the Chief Superintendent.

Commissioner: means the Public Interest Commissioner appointed by the Lieutenant Governor in Council in accordance with the Act.

Designated Officer: means the senior official designated by the Chief Officer to manage and investigate disclosures under the Act, and for the purpose of the Calgary Board of Education specifically, means General Counsel.

Disclosure(s) means a disclosure of wrongdoing made in good faith to the Calgary Board of Education or through the Commissioner in accordance with the CBE Public Interest Disclosure Framework.

Employee means an individual employed by the Calgary Board of Education or an individual who is no longer employed by the CBE and has suffered reprisal.

Framework: means the CBE Public Interest Disclosure (Whistleblower Protection) Framework that details the processes and accountabilities for disclosing a wrongdoing and the investigation of a disclosure.

Reporter means an employee who makes a disclosure.

Reprisal: means any of the following measures taken or directed against an employee because the employee has, in good faith, sought advice about making a disclosure, made a disclosure, co-operated in an investigation under the Act or the procedures, declined to participate in a wrongdoing or done anything in accordance with the Act or the procedures:

- (i) Dismissal, layoff, suspension, demotion or transfer, discontinuation or elimination of a job, change of job location, reduction in wages, change in hours of work or reprimand;
- (ii) Any measure, other than one mentioned in (i) above, that adversely affects the employee's employment or working conditions (e.g. harassment); or
- (iii) A threat to take any of the measures mentioned in (i) or (ii) above.

Wrongdoing: means an act that falls into one or more of the following:

- a) contravention of an act or a regulation of Alberta or Canada;
- b) an act or omission that creates:
 - i. 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
 - ii. a substantial and specific danger to the environment;

- c) gross mismanagement (*deliberate* omission or *reckless or willful disregard* for proper management) of:
 - i. public funds or a public asset;
 - ii. the delivery of a public service; or
 - iii. 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; or
- d) knowingly directing or counseling an individual to commit a wrongdoing as identified above.

6 | Regulation Statement

Role of Chief Officer

- 1) The Chief Superintendent is the Chief Officer as outlined in the *Public Interest Disclosure (Whistleblower Protection) Act* (Alberta).
- 2) The Chief Officer must:
 - a) establish and maintain, in accordance with the Act, written procedures, including timelines, for managing and investigating disclosures;
 - b) appoint a Designated Officer to manage and investigate disclosures under the Act.;
 - c) ensure *Freedom of Information and Protection of Privacy Act Regulations* are followed with regard to access of information limitations;
 - d) receive recommendations resulting from investigations;
 - e) fulfil the annual reporting requirements; and
 - f) ensure employee awareness of the Act, this Regulation and disclosure procedures.

Role of Designated Officer

- 3) The Designated Officer will manage and investigate disclosures, in accordance with the Act.
- 4) The authority and discretion to determine the nature and the scope of the investigative process rests with the Designated Officer.
- 5) The Designated Officer is to act as a neutral party to facilitate and process internal reports of suspected wrongdoing. This includes:
 - a) providing education, access and advice on the terms of this Regulation;



- b) assisting employees who wish to report a suspected wrongdoing;
- c) receiving and processing reports of suspected wrongdoing;
- d) assessing reports of suspected wrongdoing and determining if there are sufficient grounds to warrant further action;
- e) determining what actions must be taken to address the suspected wrongdoing, including providing a report to the Chief Officer or to outside law enforcement, where necessary;
- f) implementing measures to protect employees who report suspected wrongdoing in good faith from reprisals;
- g) implementing measures to protect employees, who are witnesses or provide information in relation to a report of suspected wrongdoing from reprisals;
- h) making recommendations for consequences if a complaint or allegation is filed maliciously or in bad faith;
- i) keeping records of all complaints and allegations and any investigations or remedial action taken;
- j) refer any disclosure to the Public Interest Commissioner as soon as reasonably practicable if there is reason to believe that the matter relates to an imminent risk of a substantial or specific danger to the life, health or safety of individuals, or to the environment;
- k) refer a disclosure to another public entity or office of the Legislature if the disclosure would be more appropriately dealt with there; and
- l) prepare an annual report on all disclosures.

Role of Supervisor

- 6) Supervisors are expected to:
 - a) ensure employees are aware of the process for reporting wrongdoing;
 - b) be open and accessible to employees who express concerns about suspected wrongdoings;
 - c) provide information and advice about the Act to employees under their supervision;
 - d) upon receiving the report, refer the employee to the Designated Officer or the Public Interest Commissioner;

- e) cooperate with investigations; and
- f) protect employees who report suspected wrongdoings from reprisals.

Request for Advice

- 7) An employee who is considering making a disclosure may request information or advice from the employee’s supervisor, Designated Officer, or Chief Officer, or from the Commissioner.

Reporting a wrongdoing

- 8) An employee who perceives a wrongdoing has been committed, is about to be committed, or has been asked to commit a wrongdoing, may report the perceived wrongdoing to the CBE Designated Officer or the Public Interest Commissioner.
- 9) All reports of wrongdoing must be made in writing, completed using the current Public Interest Disclosure Reporting Form and in accordance with the Framework.
- 10) Reports must be made in good faith and based on reasonable grounds.
- 11) Reports must be made on a timely basis.
- 12) The Designated Officer must be satisfied that any applicable processes, including those under a collective agreement, to address bullying, harassment, or intimidation have been exhausted. This includes, but is not limited to:
 - i. AR4080-Workplace Violence;
 - ii. grievance procedures;
 - iii. AR4027-Employee Code of Conduct;
 - iv. AR1070-Occupational Health and Safety.

Reporting to the Office of the Commissioner

- 13) If the disclosure is believed to be a matter of imminent risk of a substantial or specific nature to the life, health or safety of individuals or to the environment, the report should be made directly to the Chief Officer, the Designated Officer, or the Commissioner under section 30 of the Act.
- 14) If the disclosure involves the Chief Officer or Designated Officer, the report can be made directly to the Commissioner.
- 15) If the disclosure has been made and not resolved within the specified time periods or according to procedures, a report may be made directly to the Commissioner.
- 16) If the employee is not satisfied with the resolution of a completed investigation, a report can be made directly to the Commissioner.

Investigation of Wrongdoing

- 17) All complaints and allegations received through the processes in this Regulation will be reviewed and evaluated for possible investigation, in accordance with the Framework.

- 18) The Designated Officer may consult with the Chief Officer or the Commissioner before launching an investigation.
- 19) All employees will cooperate fully with the Designated Officer or any investigators designated by the Designated Officer.
- 20) Information obtained through the course of an investigations will be managed in accordance with the *Alberta Freedom of Information and Protection of Privacy Act (Alberta)* and, where applicable, the *Public Interest Disclosure (Whistleblower Protection) Act*. Except where the Act or the regulations provide otherwise, the *Public Interest Disclosure (Whistleblower Protection) Act* prevails to the extent of any inconsistency or conflict with the *Freedom of Information and Protection of Privacy Act or the Health Information Act* or any other Act or regulation prescribed in the regulations.
- 21) In cases where the disclosure is of imminent risk to the life, health or safety of individuals or the environment, the Designated Officer must report such matters to;
 - a) an appropriate law enforcement agency;
 - b) the Chief Medical Officer of Health, in the case of a health-related matter;
 - c) the department, public entity or office responsible for managing, controlling or containing the risk; and
 - d) a person identified in the procedures created by the Chief Officer.
- 22) In circumstances where the Chief Officer or Designated Officer has reason to believe that an offence has been committed under a statute or regulation, the offence will be reported to a law enforcement agency or other appropriate agency. In such cases, the investigation into the matter will be suspended until procedures of the other agencies are complete.

Communication and Reporting

- 23) A disclosure must be acknowledged, in writing to the disclosing employee, within five (5) business days from the date the disclosure is received.
- 24) The Designated Officer shall decide whether an investigation is required and shall notify the disclosing employee in writing of that decision within a maximum of ten (10) business days from the date on which the disclosure was received.
- 25) The findings of the investigation will be reported, in writing, to the Chief Officer and the person making the complaint or allegation

within one hundred ten (120) business days of receiving the report of suspected wrongdoing.

- 26) The Chief Officer may extend the above time limits provided that the overall time period for investigation and the provision of a report is not extended for more than thirty (30) business days.
- Conflict of Interest** 27) Individuals engaged in the investigation of an alleged wrongdoing will not include any individuals who have a potential, perceived or real conflict of interest to the matter being investigated.
- Confidentiality** 28) Information collected during the course of a disclosure investigation will be kept confidential according to the limits outlined by the Act and as applicable in the Framework.
- 29) All employees who have knowledge of, or are participants in, an investigation pursuant to this Regulation shall keep the details and results of the investigation confidential.
- Records** 30) All records will be maintained according to CBE records retention schedule.
- Reprisal** 31) No person will engage in reprisal against an individual, who has acted in good faith, for:
- a) making a report;
 - b) cooperating with an investigation; or
 - c) refusing to commit a wrongdoing.
- 32) All complaints of reprisals will be managed and investigated by the Office of the Public Interest Commissioner.
- False Accusations/ Vexatious reporting** 33) An employee who intentionally makes a false, bad faith or vexatious report will suffer appropriate consequences, up to and including termination of employment.
- Annual report** 34) The Chief Officer must report annually to the Commissioner on all disclosures made or referred to the Designated officer including:
- a) the number of disclosures received or referred to the Designated Officer;
 - b) the number of disclosures acted on;
 - c) the number of disclosures not acted on;
 - d) the number of investigations commenced by the Designated Officer;

- e) the number of investigations commenced by the Designated Officer as a result of disclosures; and
- f) in the case of an investigation that results in a finding of wrongdoing, a description of the wrongdoing; any recommendations or corrective measures taken; and reasons for not taking any corrective measures.

35) The annual report must not include:

- a) any health information identifying an individual,
- b) the identity of any employee who:
 - i. sought advice,
 - ii. made a disclosure or
 - iii. made a complaint of reprisal.

36) This report must be made available to the public.

7 | History

Approval	February 3, 2014
Next Review	February 2018
Revised	May 2, 2019

8 | Related Information

- AR 4027 Code of Conduct for Employees
- AR 4038 Harassment, Sexual Harassment, and Discrimination
- AR 4080 Workplace Violence
- *Alberta Public Interest Disclosure (Whistleblower Protection) Act (Alberta)*
- CBE reporting form
- CBE Public Interest Disclosure (Whistleblower Protection) Framework