

14.1 Disclosure of Wrongdoing Policy

Policy Statement

The Government of Nova Scotia is committed to providing employees with a reporting process for the disclosure of government wrongdoing and with protection against reprisal action which might have resulted from the disclosure.

This policy balances the employee's protection against reprisal for disclosing government wrongdoing, with the rights of the alleged wrongdoer. The clearly defined process for disclosure will allow for confidentiality, investigation, and recommendations.

This policy and the Regulations Respecting Civil Service Disclosure of Wrongdoing are in addition to provisions that already exist under acts such as the *Occupational Health and Safety Act*, *Ombudsman Act*, *Environment Act*, *Human Rights Act* and *Civil Service Act*, and also under collective agreements and at common law.

This policy has been developed pursuant to the Regulations Respecting Civil Service Disclosure of Wrongdoing.

Definitions

COMMISSIONER

The Public Service Commissioner.

CONFLICT OF INTEREST COMMISSIONER

A person designated under Section 26 of the *Members and Public Employees Disclosure Act*.

DEPUTY HEAD

The deputy minister or designate of a department, or the senior administrative officer of an agency not reporting to a deputy minister.

EMPLOYEE

- an employee as defined in the *Civil Service Act*
- an employee as defined in the *Corrections Act*
- an employee as defined in the *Highway Workers Collective Bargaining Act*; or
- any other person directly employed by the Province of Nova Scotia

EMPLOYER

Her Majesty in the right of the Province of Nova Scotia, as represented by Nova Scotia government departments, offices, and public service entities as specified in Category I of Appendix I-A (Management Manual 100, Chapter 1, Policy 1.2 Management Manuals Policy).

GROSS MISMANAGEMENT

A deliberate act or an omission showing a reckless or wilful disregard for the efficient management of significant government resources.

OMBUDSMAN

The Ombudsman appointed pursuant to the *Ombudsman Act*.

REPRISAL

Reprisal action taken against an employee who has made a disclosure, in good faith, of wrongdoing under the Regulations Respecting Civil Service Disclosure of Wrongdoing includes

- a disciplinary measure
- demotion of the employee
- termination of the employment of the employee
- any measure that adversely affects the employment or working conditions of the employee, or
- a threat to take any of the previously identified measures.

WRONGDOING

A wrongdoing occurs if there is

- a violation of any Parliament of Canada or *Nova Scotia Legislature Act* or of any regulations made under any act, if the violation relates to the official activities of employees or any public funds or assets
- gross mismanagement
- an act or an omission that creates a substantial and specific danger to the life, health or safety of a person; or
- the taking of a reprisal against an employee.

Policy Objectives

- To provide a process for the disclosure of wrongdoing and protection to employees who want to report government wrongdoing without fear of reprisal action being taken against them.
- To offer advice and direction for employees who want to disclose government wrongdoing.

- To protect the identity (whenever possible) of those involved in the process (e.g., alleged wrongdoer, employee disclosing and witnesses).
- To promote accountability for government by tabling an annual report in the House of Assembly.
- To clearly define wrongdoing in government and reprisal action not acceptable against the employee disclosing wrongdoing in good faith.

Application

This policy applies to all employees as defined above.

Policy Directives

An employee may request advice on the disclosure of a wrongdoing from the Conflict of Interest Commissioner by submitting a written request for advice (Appendix 14-A).

DISCLOSURE PROCESS

Employees are expected to follow a systematic approach for the disclosure of a wrongdoing by the disclosure process identified below. **All disclosures must be made in written form** (Appendix 14-B), unless there is imminent and serious danger.

1. An employee who reasonably believes that they are being asked to commit a wrongdoing, or who reasonably believes that a wrongdoing has been committed or is about to be committed, may disclose the matter to their immediate supervisor/manager.
2. If an employee reasonably believes the matter is not being appropriately addressed by their immediate supervisor/manager, or if the employee reasonably believes it is not appropriate to disclose the matter to their immediate supervisor they may disclose the matter to their deputy head.
3. If an employee reasonably believes the matter is not being appropriately addressed by their deputy head or if the employee reasonably believes it is not appropriate to disclose the matter to their deputy head, they may disclose the matter to the Ombudsman.
4. An employee may make a disclosure of wrongdoing to the police department or police agency that the employee reasonably believes can address imminent and serious danger, only if they believe on reasonable grounds that
 - it is necessary to do so to prevent imminent and serious danger to the life, health or safety of a person; and

- there is not sufficient time to make the disclosure using the processes identified above in this policy.
5. A supervisor/deputy head who receives the disclosure must respond in writing to the disclosing employee within **30 days**, in addition
 - a supervisor must report in writing to their deputy head, within 30 days of receiving the disclosure from the disclosing employee; **or**
 - a deputy head must report in writing to the Commissioner, within 30 days of receiving the disclosure from the disclosing employee.
 6. A deputy head who receives a disclosure of wrongdoing or a report notifying them of an alleged wrongdoing, may within **30 days** of receiving the information, refer the matter to the Ombudsman.
 7. The Ombudsman, after receiving the disclosure either from the disclosing employee or the deputy head will determine if an investigation is warranted (Appendix 14-C).
 - If it is not appropriate to investigate the Ombudsman will give written notice to the disclosing employee, Commissioner, and deputy head in such cases where the deputy head has been made aware of the disclosure.
 - If it is appropriate to investigate the Ombudsman will give written notice to the disclosing employee, the deputy head of the department to be investigated, and the Commissioner.
 8. After an investigation, the Ombudsman must report the findings in writing (Appendix 14-C), to the disclosing employee, any deputy head involved in the disclosure or the investigation, and the Commissioner.
 9. If a finding of wrongdoing is made by the Ombudsman, the Ombudsman
 - must recommend measures in writing to correct the wrongdoing to the appropriate deputy head, and send copies to the disclosing employee and the Commissioner; and
 - may request notification, within a specified time, of any steps taken to give effect to the recommendations.
 10. The deputy head must respond in writing within **30 days** to the Ombudsman with respect to any recommendations in the investigation report. A copy of the deputy head's response must be provided to the Commissioner.
 11. The Ombudsman may report a matter to an appropriate member of the Executive Council, in situations as specified in Section 15 of the Regulations Respecting Civil Service Disclosure of Wrongdoing.

12. The Ombudsman must, within **3 months** after the end of each fiscal year, submit an annual report to the Commissioner setting out, for that fiscal year, the information specified in Appendix 14-C.
13. The Commissioner must report annually to the Minister responsible for the Public Service Commission, respecting disclosures of wrongdoing made during the fiscal year.
14. The Minister will table the report received from the Commissioner in the House of Assembly.

POWERS AND LIMITATIONS

- A disclosure of wrongdoing must be made within 12 months of the employee becoming aware of the wrongdoing.
- A deputy head must provide the Ombudsman with any facilities, assistance, information and access to the offices under their control and direction that the Ombudsman requires for the performance of their duties under this policy.
- No person shall wilfully obstruct a supervisor, a deputy head, the Ombudsman or any person acting on behalf of or under the direction of any of them, in the performance of their duties under this policy.
- Every employee must co-operate with the Ombudsman and provide them with any information that they may require in the performance of the Ombudsman's duties under this policy.

PROTECTION AND CONFIDENTIALITY

- To the extent possible, the identity of the persons involved in the disclosure process, including employees, witnesses and persons who are alleged to be responsible for wrongdoings, shall be protected from publication.
- No person should publically disclose any information that comes to their knowledge in the performance of their duties under this policy.
- An employee shall not disclose information that would reveal the substance of deliberations of the Executive Council or any of its committees; or information that is protected by solicitor-client privilege.

FALSE OR MISLEADING DISCLOSURES

- No person shall, in a disclosure of a wrongdoing or in the course of any investigation of a wrongdoing, knowingly make a false or misleading statement, either orally or in writing, to a supervisor, deputy head, the Ombudsman or a person acting on behalf of or under the direction of any of them.

- No person, knowing that a document or thing is likely to be relevant to an investigation under this policy, shall
 - destroy, mutilate or alter the document or thing
 - falsify the document or make a false document
 - conceal the document or thing; or
 - direct, counsel or cause, in any manner, any person to do anything mentioned above, or propose, in any manner, to any person that they do anything mentioned in the above clauses.
- An employee may be subject to appropriate disciplinary action, including termination of employment, if the employee
 - commits a wrongdoing
 - makes a disclosure of a wrongdoing which is determined to be frivolous, vexatious, or in bad faith; or
 - makes a disclosure of a wrongdoing other than in the course of a procedure established under this policy or any act of the Legislature or when otherwise lawfully required to do so.

Accountability

EMPLOYEES

Employees are responsible for acting in accordance with this policy.

SUPERVISORS/MANAGERS

Supervisors/managers are responsible for ensuring that employees are informed of the policy and process. They are also responsible for responding to any disclosures of wrongdoing that are reported to them in accordance with the process established in this policy.

DEPUTY HEADS

Deputy Heads are responsible for ensuring that employee disclosures are reviewed and addressed as provided for in this policy. They are also responsible for responding to any disclosures of wrongdoing that are reported to them in accordance with the process established in this policy.

Deputy Heads shall ensure all employees are provided education, training, and support during the implementation of this policy.

COMMISSIONER

The Public Service Commissioner is responsible for an annual report to the Minister of Human Resources.

OMBUDSMAN

The Ombudsman is responsible for responding to any disclosure of wrongdoing in accordance with the process as established in this policy, and reporting annually to the Public Service Commissioner.

Monitoring

The Public Service Commission is responsible for monitoring the effectiveness of the process within the policy, and may periodically conduct audits of departmental practices to ascertain compliance by departments with this policy.

Departments are responsible for complying with all the terms of this policy.

References

Civil Service Act

General Civil Service Regulations

Regulations Respecting Civil Service Disclosure of Wrongdoing

Highway Workers Collective Bargaining Act

Corrections Act

Ombudsman Act

Members and Public Employees Disclosure Act

Enquiries

General Enquiries, Public Service Commission (902) 424-7660

Appendices

Appendix 14-A Request for Advice

Appendix 14-B Disclosure of Wrongdoing Form

Appendix 14-C Investigation Criteria for Ombudsman to Investigate a Disclosure of Wrongdoing and Reporting Requirements of the Ombudsman

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Most recent review:



Appendix 14-A

Request for Advice

I, _____ of the Department _____ in
(Print Name) (Print Department)

_____ request advice on the following matter:
(Print Location)

Nature of the wrongdoing:

Date of wrongdoing:

Name of person alleged to have committed or to commit the wrongdoing:

Department and Position of wrongdoer:

Advice requested:

Further comments:

Signature

Date

Contact Information:

Conflict of Interest Commissioner
Granville Level, Joseph Howe Building
1690 Hollis Street
Halifax, NS
Phone: (902) 424-5345
Fax: (902) 424-0632

Email: _____

Phone: _____



Appendix 14-B

Disclosure of Wrongdoing Form

I, _____ of the Department _____ in
(Print Name) (Print Department)
_____ would like to disclose a wrongdoing.
(Print Location)

Nature of the wrongdoing:

Date of wrongdoing:

Name of person alleged to have committed or to commit the wrongdoing:

Department and Position of wrongdoer:

Has this disclosure been made before? _____

If yes, to whom and when (name, position, department, date):

Further comments:

Signature

Date

Contact Information:

Email: _____

Phone: _____



Appendix 14-C

Investigation Criteria for Ombudsman to Investigate a Disclosure of Wrongdoing and Reporting Requirements of the Ombudsman

Investigation Criteria

The Ombudsman must investigate a disclosure of a wrongdoing if

- all other procedures available to the disclosing employee have been exhausted before submitting the disclosure of wrongdoing to the Ombudsman's Office
- the subject matter of the disclosure would not be dealt with more appropriately by an alternate procedure under an act of the Legislature, regulation or policy
- the subject matter of the disclosure is not trivial, frivolous or vexatious
- the disclosure was made in good faith with the reasonable belief in the truth of the allegations
- the disclosure provides adequate particulars of a wrongdoing in writing as outlined in Appendix 14-B
- the disclosing employee was not aware of the wrongdoing for longer than twelve (12) months
- if no other authority has jurisdiction over the investigation (e.g., criminal investigation being conducted by Law Enforcement)
- having regard to all the circumstances of the case, an investigation is warranted.

Reporting Requirements

The Ombudsman must report any investigation findings in writing, including

- the information received in the disclosure
- the steps taken in the investigation
- a summary of the evidence obtained
- whether a wrongdoing has been established
- any additional relevant information, to the disclosing employee, any deputy head involved in the disclosure or the investigation, and the Commissioner

The Ombudsman must, within 3 months after the end of each fiscal year, submit an annual report to the Commissioner setting out, for that fiscal year

- the number of general inquiries relating to this policy
- the number of disclosures received
- the number of investigations commenced
- the number of recommendations made to appropriate deputy heads
- whether there are any systemic problems that give rise to wrongdoings
- any recommendations for improvement that the Ombudsman considers appropriate
- any additional matter that the Ombudsman considers necessary.

