



## TRANSIT POLICE

# PUBLIC INTEREST DISCLOSURE ACT

Effective Date: INTERIM POLICY – December 5, 2019

Revised Date:

Reviewed Date:

Review Frequency: As Required

Office of Primary Responsibility: Deputy Chief Officer Operations

## POLICY

### SUMMARY

Under the BC “*Public Interest Disclosure Act*” (“*PIDA*”), “Employees” of certain government agencies may disclose alleged governmental ‘Wrongdoing’ in a prescribed manner, which protects them from employer reprisal. In most cases, such disclosure is to be made to a designated official within the Employee’s workplace. However, in situations that may constitute an imminent risk of a substantial and specific danger to public safety (“Urgent Matter”), the Employee may make a “Public Interest Disclosure”, following the guidance received from a “Protection Official”. As a BC police force, Transit Police is included as a designated “Protection Official”. Members will follow Transit Police policy and the *PIDA* upon receipt of a report of an Urgent Matter.

### Definitions

Chief Officer – The Transit Police Chief Officer or delegate.

Employee – An Employee of a ministry, government body or office, including a person appointed under section 15 of the *Public Service Act*, or a member of a class of persons prescribed by regulation. (NOTE: At this time, police agency personnel are not Employees covered by the legislation.)

FOIPPA – The BC *Freedom of Information and Protection of Privacy Act*, as amended from time to time.

Member – Designated Constable (all ranks), the Chief Officer or a Deputy Chief Officer of the Transit Police.

Metro Vancouver Transit Police (“Transit Police”) – The operating name of the South Coast British Columbia Transportation Authority Police Service.

PIDA – The BC *Public Interest Disclosure Act* and regulations, as amended from time to time.

Protection Official – As set out in s. 16 of *PIDA*:

- (a) In respect of a health-related matter, the provincial health officer,
- (b) In respect of an environmental matter, the agency responsible for the BC *Emergency Program Act*, or

- (c) In any other case, an appropriate police force.

Public Interest Disclosure (“Disclosure”) – Same meaning as “disclosure” in s.1 of *PIDA*.

Urgent Matter – As set out in s. 16 of *PIDA*, Wrongdoing that constitutes an imminent risk of a substantial and specific danger to the life, health or safety of persons or to the environment that is reported to a Protection Official by an Employee.

Wrongdoing – As set out in s. 7 of *PIDA*, includes:

- (a) A serious act or omission that, if proven, would constitute an offence under an enactment of British Columbia or Canada;
- (b) An act or omission that creates a substantial and specific danger to life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of an employee’s duties or functions’
- (c) A misuse of public funds or assets;
- (d) Gross or systemic mismanagement;
- (e) Knowingly directing or counselling a person to commit a wrongdoing described in paragraphs (a) to (d).

## General

1. *PIDA* allows Employees of provincial government ministries and other provincial government bodies to, under certain conditions, publicly disclose wrongdoing by governmental officials, without being at risk of reprisal from their employer. Specific to Urgent Matters, *PIDA* requires the Employee to consult and seek direction from a Protection Official, specific to the making of a public disclosure.
2. To fulfill requirements of *PIDA* and requirements of a Protection Official under s. 16 of *PIDA*, the Chief Officer or delegate will:
  - (1) Receive reports from Employees who are seeking to make a public disclosure about Wrongdoing by government officials that may constitute an imminent risk of a substantial and specific danger to public safety;
  - (2) Assess the risk to the public or specific persons posed by the reported Wrongdoing; and
  - (3) Direct the Employee whether or not to carry out the public disclosure.

## PROCEDURES

### Receipt and Record of Report and Investigation

3. Transit Police personnel will, through the chain of command, refer to the Deputy Chief Officer Operations any report received from an Employee (as defined by *PIDA*), about Wrongdoing by government officials that may constitute an imminent risk of a substantial and specific danger to public safety, which the Employee wants to publically disclose.

- (1) As soon as is practicable, the Deputy Chief Officer will inform the Chief Officer of the receipt of a report under *PIDA*.
4. Upon receipt of an Urgent Matter report, the Deputy Chief Officer will ensure that a General Occurrence Report (“GO”) is created on PRIME and the file is privatized if deemed necessary. Where privatization deemed appropriate, Members will refer to Transit Police [Policy AF130 – Making Records Private or Invisible](#). The GO to include documenting of the information reported by the Employee, the steps taken to investigate the information, the assessment of whether imminent risk exists and the actions taken in response.

### Assessment/Investigation

5. The Deputy Chief Officer (or delegate) will assess the reported information and determine whether the matter meets the threshold of Urgent Matter. [Refer to Appendix “A” for guidance on interpretation on ‘substantial and specific danger’.] The Deputy Chief Officer may wish to consult with legal counsel to assist in the assessment and interpretations.

- (1) Does Not Meet Threshold – If the Deputy Chief Officer determines that the matter does not meet the threshold, they will direct the Employee not to publically disclose the matter and, instead, to seek to have the matter addressed by their employer. The determination of the Deputy Chief Officer may be given verbally to the Employee; however, a written confirmation of the direction will also be issued to the Employee and an electronic copy added to the GO.

- (2) Health or Environmental Urgent Matter – If the Deputy Chief Officer determines that the matter meets the threshold, but it is a health related or environmental concern, they will refer the Employee to the Provincial Health Officer or Emergency Management BC (for environmental concerns). The determination of the Deputy Chief Officer may be given verbally to the Employee; however, a written confirmation of the direction will also be issued to the Employee and an electronic copy added to the GO.

- (3) Meets Threshold of Urgent Matter – If the Deputy Chief Officer determines that the matter the Employee wants to publically disclose meets the threshold of Urgent Matter, the Deputy Chief Officer will:

- a. Assess the situation and determine whether a public disclosure of the reported Wrongdoing is required to alleviate or manage the risk;
- b. Identify personal information privacy considerations and give consideration to the same in relation to any public disclosure of information;
- c. Identify parameters around how disclosure is to be made and what types of information is to be included;

- d. Consult with the Chief Officer on the nature of public disclosure being recommended and whether public disclosure is to be carried out by the Employee, the Transit Police or others;
- e. Direct the Employee on whether or not they are to personally carry out the public disclosure and any parameters on what is to be disclosed; and
- f. Ensure written direction to the Employee is contained within the investigative file.

### **Public Disclosure**

6. Where public disclosure is being considered as appropriate, the Deputy Chief Officer will consult with the Transit Police Privacy Officer on *FOIPPA* considerations (to occur prior to giving any direction under s. 5 of this policy). This will also include whether Transit Police needs to issue a warning to the public pursuant to s. 25 of *FOIPPA*.
7. When disclosure is directed, the Chief Officer or delegate will advise and involve the Media Relations Officer, as appropriate.
8. Any Transit Police personnel engaged in issuing a public disclosure on behalf of the Transit Police must comply with any directions provided by the Chief Officer or delegate.

### **Policing Matters**

9. Under s. 22 of *PIDA*, an Ombudsmen or Designated Officer must not conduct a *PIDA* investigation when disclosure relates primarily to law enforcement by members of a police force or the conduct of its members.
10. If a disclosure under *PIDA* leads the Ombudsmen or government official to believe that an alleged offence has been committed, it may be referred to a police agency for investigation. When this occurs, it is separate from a police force role under the urgent public disclosure provisions in *PIDA*. Transit Police standard investigation protocol would apply upon notification of an alleged offence occurring.

### **Citizens**

11. *PIDA* does not impose any restriction on a citizen who has information related to wrongdoing by a ministry or office of the government.

### **References:**

BC *Freedom of Information and Protection of Privacy Act*

BC [Public Interest Disclosure Act](#)

[PowerPoint to BC police forces on new Public Interest Disclosure Act from Ministry of Public Safety and Solicitor General, October 9, 2019](#)

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## APPENDIX “A”

**What is “substantial and specific danger”** *(As provided by the Public Service Agency to Police Agencies – 2019 November)*

### **Substantial Danger**

A risk or situation that would be considered by a reasonable person to be serious in nature. A substantial danger would have clearly resulted or would be reasonably likely to result in real harm to life, health, safety of a person(s) or to the environment.

Questions to ask when assessing:

- Would it have clearly resulted or is it reasonably likely to result in real harm to life, health, or safety of a person(s) or to the environment?
- What is the nature, level, or severity of the danger?

### **Specific Danger**

Clearly identifiable. An actual threat, as opposed to a speculative threat or improbable occurrence. Reasonably expected to occur within a foreseeable time in a manner that can be reliably described.

Questions to ask when assessing:

- What is the actual threat?
- Who or what in particular is at risk?
- Is it reasonably expected to occur? When?
- How, in particular, was the danger created or did the harm occur?